

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**10-31-16  
02:42 PM

October 31, 2016

**Agenda ID #15294**  
**Ratesetting**

TO PARTIES OF RECORD IN RULEMAKING 08-08-009:

This is the proposed decision of Administrative Law Judge Anne E. Simon. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 1, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ Darwin E. Farrar for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC: avs

Decision PROPOSED DECISION OF ALJ SIMON (Mailed 10/31/2016)

**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 08-08-009  
(Filed August 21, 2008)

**DECISION DENYING PETITIONS FOR MODIFICATION  
OF DECISION 10-12-048 AND REQUIRING APPLICATIONS  
TO ALLOCATE COSTS FOR PROCUREMENT PURSUANT  
TO RESOLUTION E-4770 THROUGH A TREE MORTALITY  
NONBYPASSABLE CHARGE**

**Summary**

This decision denies two substantially similar petitions for modification of Decision (D.)10-12-048, which established the renewable auction mechanism (RAM) for procurement under the renewables portfolio standard (RPS) program. For consistency with recent legislative developments and Commission actions, this decision does not modify D.10-12-048. Instead, this decision requires the petitioners, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, to file applications to allocate capacity costs and benefits of contracts with biomass energy generation facilities executed in response to the Commission's instructions in Resolution (Res.) E-4770 to unbundled customers through a Tree Mortality Nonbypassable Charge, as described in Res. E-4805.

## 1. Procedural History

On April 18, 2016, the Petition for Modification of Decision 10-12-048 by San Diego Gas & Electric Company (SDG&E Petition) was filed. On April 19, 2016, the Petition for Modification of Decision 10-12-048 by Pacific Gas and Electric Company and Southern California Edison Company (Joint Petition) was filed. Requests to shorten time for responses made by the investor-owned utilities (IOUs) in each Petition were denied by the Administrative Law Judge's Ruling Denying Requests to Shorten Time to Respond to Petitions for Modification of Decision 10-12-048 and Authorizing Replies to Responses (May 2, 2016).

On May 18, 2016 responses to the SDG&E Petition were filed by Marin Clean Energy (MCE), Office of Ratepayer Advocates (ORA), and Solar Energy Industries Association (SEIA). On the same date, responses to the Joint Petition were separately filed by County of Los Angeles (LA County) and MCE. Responses to both IOU Petitions were filed by Alliance for Retail Energy Markets and Direct Access Customer Coalition (jointly)(AReM) and Independent Energy Producers Association (IEP). ORA's response to the Joint Petition was filed on May 19, 2016. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) jointly filed a reply to the responses on May 31, 2016 (Joint Reply). SDG&E filed a reply the same date (SDG&E Reply).

Two actions outside of this proceeding, but relevant to it, are noted here. The Commission adopted two resolutions related to procurement under the California renewables portfolio standard (RPS) program to respond to the Governor's Proclamation of a State of Emergency due to tree mortality

(October 30, 2015) (Emergency Proclamation),<sup>1</sup> and Senate Bill (SB) 859, Stats. 2016, ch. 368: Resolution (Res.) E-4770 (March 17, 2016) and Res. E-4805 (October 13, 2016), respectively.

## **2. Discussion**

### **2.1. Background**

The petitions for modification (PFMs), taken together, seek to modify Decision (D.) 10-12-048 to allow special treatment of cost recovery for procurement by the three large investor-owned electric utilities (IOUs)<sup>2</sup> of electric generation resources using forest biomass, including fuel from high hazards zones (HHZ) designated pursuant to the Emergency Proclamation, as required by the Commission in Res. E-4770. Since the PFMs were filed, additional actions by the Legislature and this Commission have substantially changed the context in which the PFMs are being considered. These changed circumstances are detailed below.

---

<sup>1</sup> The Emergency Proclamation may be found at [https://www.gov.ca.gov/docs/10.30.15\\_TreeMortality\\_State\\_of\\_Emergency.pdf](https://www.gov.ca.gov/docs/10.30.15_TreeMortality_State_of_Emergency.pdf).

<sup>2</sup> The three large IOUs are PG&E, SCE, and SDG&E.

### **2.1.1. Resolution E-4770**

In Res. E-4770, the Commission implemented one element in the Emergency Proclamation<sup>3</sup> by requiring the IOUs to use the renewable auction mechanism (RAM) method of RPS procurement to procure at least 50 megawatts (MW) of RPS-eligible energy from existing or new forest bioenergy generation facilities.<sup>4</sup> The resolution requires that specific percentages of the fuel used must come from HHZ. (Res. E-4770, Ordering Paragraph (OP) 1 and at 5-6.) Parties have dubbed this requirement “BioRAM,” a usage the Commission adopts.<sup>5</sup>

#### **2.1.1.1. RAM**

The Commission established RAM in D.10-12-048 to streamline the RPS procurement process in order to “facilitate development of [RPS-eligible] projects of up to 20 MW by mitigating costs and administrative burdens on projects, developers, utilities, and regulators.” (D.10-12-048 at 11.) The Commission observed that, whether or not it could be shown that smaller generation facilities were not competing successfully against larger projects in the general RPS solicitation process, “there is considerable agreement that it is feasible and desirable to streamline the process for smaller projects.” (D.10-12-048 at 10.)

---

<sup>3</sup> Paragraph 9 of the Emergency Proclamation provides in relevant part:

The California Public Utilities Commission shall 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 initiation of a targeted renewable auction mechanism. . .

<sup>4</sup> The 50 MW total is divided into 20 MW for each of PG&E and SCE, and 10 MW for SDG&E.

<sup>5</sup> In Res. E-4805 (at 9-10), the Commission identified one procurement option to meet the requirements of that resolution as “BioRAM 2,” which has its own requirements separate from the “BioRAM” requirements of Res. 4-4770.

Since diversity of generation sources is one of the goals of the RPS program,<sup>6</sup> the Commission instituted RAM to allow smaller projects to compete against each other for RPS contracts with IOUs. The RAM paradigm is a stand-alone auction, with a standard non-negotiable contract; potential projects would compete on price.<sup>7</sup> D.10-12-048 established semiannual RAM auctions, with total MW goals for each IOU, allocated in each auction. (D.10-12-048 at 25-32; Conclusion of Law 10; Appendix A at 2.)

In D.14-11-042, the decision conditionally approving the IOUs' RPS procurement plans for 2014, the Commission expanded the scope of the RAM process from a particular RPS procurement program to a general RPS procurement mode. The RAM procurement mode established in D.14-11-042 requires, in addition to the basic stand-alone reverse auction and standard non-negotiable contract:

- Projects are no longer limited to 20 MW or less; IOUs can determine the optimal maximum project size for any procurement targeted through RAM;
- Geographic location of projects is no longer limited to IOU service territory; projects may be located in the entire California Independent System Operator (CAISO) control area, as well as utilizing resources that can be dynamically scheduled into the CAISO;

---

<sup>6</sup> See Pub. Util. Code Sec. 399.11(b)(6). All further references to sections are to the Public Utilities Code unless otherwise noted.

<sup>7</sup> Over time, the RAM auction has added elements of conventional RPS procurement. These elements include adding network and deliverability upgrade costs and resource adequacy benefits in offer valuations (Res. E-4489, OP 5 (April 19, 2012)) and aligning RAM valuation with RPS least cost best fit criteria. (D.14-11-042, OP 30.)

- IOUs must rank and select bids using Commission-approved least-cost best-fit methodology, consistent with RPS program requirements; and
- A Phase II Interconnection Study must be obtained prior to participating in a utility's RAM procurement process consistent with the annual IOU RPS procurement plans.

Projects should be online within 36 months with a six-month regulatory delay extension.

## **2.2. SB 859 and Res. E-4805**

SB 859 is a budget trailer bill that addresses a number of issues related to greenhouse gas emissions reduction, as well as biomass generation as part of the response to the tree mortality emergency.<sup>8</sup> Section 14 of SB 859, codified as new Section 399.20.3, among other things requires the Commission to:

- Require electrical corporations to collectively procure by December 1, 2016 their proportionate share of 125 MW from existing, qualifying biomass facilities through five year contracts, with 80% of fuel stock a product of sustainable forest management, and 60% from HHZs specifically;
- Allocate each electrical corporation's proportionate share of the 125 MW based on the ratio of its peak demand to the total statewide peak demand;

---

<sup>8</sup> The Legislature passed SB 859 on August 31, 2016 and Governor Brown signed it into law on September 14, 2016. Section 19 of SB 859 provides that:

This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

- Allow procurement pursuant to Res. E-4770 that is in excess of the procurement requirement set out in Res. E-4770 to count toward meeting the utility's share allocated under Section 399.20.3(c)(1);
- Direct the development of new RPS contract terms and conditions, or require the use of the process under Res. E-4770, to meet the new procurement requirements set by SB 859; and
- Make the costs of procurement to satisfy the requirements of Section 399.20.3 recoverable from all customers on a nonbypassable basis.

The Commission responded to the mandates of SB 859 by adopting Res. E-4805 (October 13, 2016). In Res. E-4805, the Commission, among other things, allocates the IOUs' shares of the 125 MW procurement requirement; authorizes both procurement by the IOUs of their shares, and methods for contracting for that procurement; requires the IOUs to file applications within 30 days to create a new Tree Mortality Nonbypassable Charge; and requires the IOUs to file advice letters within 30 days, creating two new memorandum accounts – the SB 859 Biomass Memorandum Account, and the BioRAM Memorandum Account.

### **2.3. Proposed Modifications to D.10-12-048**

The IOUs request that D.10-12-048 be modified to change the general approach to cost recovery for RPS contracts that decision reflects. In D.10-12-048, the Commission rejected a proposal of the IOUs to allow RAM procurement costs to be collected from all customers, instead affirming the usual RPS cost recovery from bundled customers and from departing customers as required by existing Commission rules. (D.10-12-048 at 77-78; Appendix A at 7.)

The IOUs now seek to have BioRAM costs treated differently from other RPS procurement using the RAM mechanism. The IOUs propose that BioRAM costs should be recovered from all customers through a nonbypassable charge (NBC). The two PFMs are largely similar in their proposals and rationales, though they diverge slightly in their treatment of their proposed NBC. The SDG&E Petition proposes that the NBC be part of the charges for public purpose programs (PPP) paid by all customers; the Joint Petition does not.<sup>9</sup> Alternatively, all the IOUs suggest that the costs could be recovered through the use of the cost allocation mechanism (CAM) adopted in D.06-07-029.<sup>10</sup> As stated in the Joint Petition (at 4), the requested changes:

would provide that any costs incurred and benefits received as part of the BioRAM program must be allocated to all benefitting parties pursuant to a BioRAM NBC, or alternatively the CAM, so that the net costs of the program are not borne exclusively by the utilities' bundled customers.

ORA and IEP each support the request for modification, in either the NBC or CAM form. SEIA, responding to the SDG&E Petition, opposes the use of PPP charges, but supports recovery of appropriate BioRAM costs through SDG&E's CAM (SEIA Response at 2-3).

LA County states that it is in the process of forming a community choice aggregation (CCA) joint powers authority. LA County asserts that the Joint Petition proposal could have a negative effect on its CCA efforts by affecting the power cost indifference adjustment (PCIA) charges for its potential CCA customers. (LA County Response at 1.) MCE, a currently active CCA, asserts

---

<sup>9</sup> SDG&E discusses this difference in its Reply to Parties' Responses at 3 n. 10.

<sup>10</sup> Additional detail on the CAM may be found in D.12-12-015 at 98-100.

that the requested modifications should be made by application, with full record development, rather than via PFMs. To the extent that the Commission would consider the requests as PFMs, MCE urges that treatment as an NBC under the PPP would be appropriate, but only for the duration of the declared tree mortality emergency. (MCE Response to Joint Petition at 3, 5-7.)

AReM argues that the PFMs should be rejected because the IOUs' bundled customers will benefit from the BioRAM contracts, while the customers of electric service providers (ESPs) will not. AReM asserts that the more general benefits from dealing with dead and dying trees are public safety benefits, not electric reliability benefits that might justify allocating any BioRAM costs to ESP customers.

The IOUs reply that the PFMs are a procedurally appropriate way to make their requests for cost recovery. (Joint Reply at 13-14; SDG&E Reply at 12-13.)<sup>11</sup> They point out that the PCIA does not apply to all benefitting customers (only those who depart bundled service after the BioRAM contracts are executed), and that the PCIA methodology is not appropriate for allocating BioRAM costs. (Joint Reply at 4-7; SDG&E Reply at 13-15.) The IOUs also reassert their arguments that the broad benefits from the procurement under BioRAM support cost recovery from all customers. (Joint Reply at 7-13; SDG&E Reply at 6-12.)

---

<sup>11</sup> The IOUs point to the Commission's observation in response to comments on the draft of Res. E-4770 (at 15) as an instruction to file their PFMs. (Joint Reply at 14; SDG&E Reply at 12-13.) This is an overstatement, since the observation was not repeated in any Finding or Ordering Paragraph. However, in view of the complexities that have been revealed by the responses to the PFMs and the work on Res. E-4805, applications are a better vehicle for seeking allocation of appropriate BioRAM costs and benefits, regardless of any prior procedural approaches.

It is unnecessary to engage with the parties' arguments in any detail at this time. As MCE has proposed, it is more appropriate and will ultimately be more effective for the IOUs to file applications to address the complex regulatory issues implicated by their requests for allocation of costs for procurement pursuant to Res. E-4770. Furthermore, since the context for these requests has been changed by SB 859 and Res. E-4805, it is more efficient to consider the allocation of the capacity costs and benefits in the development of a Tree Mortality NBC, rather than trying to shoehorn that allocation into modification of a decision setting up a particular RPS procurement program.<sup>12</sup> The IOUs' requests to modify D.10-12-048 should therefore be denied.

---

<sup>12</sup> Additionally, modification of D.10-12-048 has the potential to create confusion in two different programs. First, a modification of D.10-12-048 to deal with cost recovery for BioRAM, no matter how carefully drafted, could raise unanticipated questions related to both past and ongoing RAM-based RPS procurement other than BioRAM.

Second, the Commission's implementation of the green tariff shared renewables (GTSR) program created by SB 43 (Wolk), Stats. 2013, ch. 413, includes direction to the IOUs "to each hold two [RAM] solicitations each year to procure Enhanced Community Renewables and Enhanced Community Renewables-Environmental Justice projects until the program sunsets on December 31, 2018." (D.16-05-006 at 10; OP 1.) Modification of the cost recovery mechanism in the underlying RAM authorization decision could also raise unanticipated questions for the Enhanced Community Renewables program.

#### **2.4. Application for Tree Mortality NBC**

SB 859, in new Section 399.20.3(f), provides:

The commission shall ensure that the costs of any contract procured by an electrical corporation to satisfy the requirements of this section are recoverable from all customers on a nonbypassable basis.

With respect to the procurement specifically order by SB 859, Res. E-4805 requires both that the IOUs set up SB 859 Memorandum Accounts and that they file applications to create a new Tree Mortality NBC. (OPs 4, 5.)

The approach taken by Res. E-4805 is also appropriate in considering cost recovery to allocate the capacity costs and benefits of procurement required by Res. E-4770. As noted in Finding 5 of Res. E-4805, procurement that is in excess of an IOU's required procurement under Res. E-4770 may be applied to the IOU's biomass procurement allocation under Res. E-4805.<sup>13</sup> It therefore is reasonable, and likely to improve the efficiency of both procurement processes, for the IOUs to use the same mechanism to allocate allowable costs and benefits of procurement under both resolutions.

The IOUs should therefore follow the instructions in Res. E-4805 with respect to creating BioRAM Memorandum Accounts.<sup>14</sup> They should also file

---

<sup>13</sup> Section 399.20.3(c)(2) provides that:

Procurement by an electrical corporation of generation capacity pursuant to a contract under the commission's Resolution E-4770 that is in excess of the requirement of that electrical corporation under that resolution shall count towards meeting the electrical corporation's proportionate share allocated pursuant to paragraph (1).

<sup>14</sup> Because Res. E-4805 places the IOUs under an obligation to file Tier 2 advice letters creating BioRAM Memorandum Accounts. (OP 5), this decision imposes no additional requirements in relation to the upcoming BioRAM Memorandum Account.

applications for Tree Mortality NBCs to allocate the capacity costs and benefits of procurement under Res. E-4770 to unbundled customers.<sup>15</sup> The applications may be in the form of amendments to the applications required in E-4805, or they may be new applications, to be consolidated with the applications required in E-4805.

### **3. Next Steps**

The filing of applications (or amendments to already filed applications) to establish a Tree Mortality NBC is the next step the IOUs must take.

Nothing further is required in this proceeding.

### **4. Comments on Proposed Decision**

The proposed decision of ALJ Simon in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on \_\_\_\_, by \_\_\_\_, and reply comments were filed on \_\_\_\_ by \_\_\_\_.

### **5. Assignment of Proceeding**

Carla A. Peterman is the assigned Commissioner and Anne E. Simon is the assigned ALJ in this proceeding.

---

<sup>15</sup> The applications must be served on the service list for this proceeding and Rulemaking (R.)15-02-020, the current RPS proceeding.

**Findings of Fact**

1. Res. E-4770 implements a part of the Emergency Proclamation by requiring PG&E, SCE, and SDG&E each to procure RPS-eligible generation from facilities using forest biomass fuel, with specified proportions of fuel from HHZ.

2. Res. E-4805 implements SB 859 by requiring PG&E, SCE, and SDG&E each to procure RPS-eligible generation from facilities using fuels that are byproducts of sustainable forest management, with specified proportions of fuel from HHZ.

3. SB 859 and Res. E-4805 allow excess procurement pursuant to Res. E-4770 to be counted toward procurement requirements pursuant to Res. E-4805 under specified circumstances.

4. Res. E-4805 requires PG&E, SCE, and SDG&E each to file advice letters establishing BioRAM Memorandum Accounts to record costs of procurement in compliance with Res. E-4770.

5. Res. E-4805 requires PG&E, SCE, and SDG&E each to file applications to create a Tree Mortality NBC to allocate to unbundled customers allowable capacity costs and benefits of procurement pursuant to Res. E-4805.

**Conclusions of Law**

1. In order to avoid confusion and the potential for unintended impacts on RPS and other programs, the Joint Petition should be denied.

2. In order to avoid confusion and the potential for unintended impacts on RPS and other programs, the SDG&E Petition should be denied.

3. In order to maintain consistency with Res. E-4805, PG&E, SCE, and SDG&E should each file advice letters establishing BioRAM Memorandum Accounts to record costs of procurement in compliance with Res. E-4770, as directed by Res. E-4850.

4. In order to maintain consistency with SB 859 and Res. E-4805, PG&E, SCE, and SDG&E should each file applications, served on the service lists of this proceeding and R.15-02-020, to create a Tree Mortality NBC to allocate capacity costs and benefits of procurement under Res. E-4770 to unbundled customers.

5. In order to allow timely filing of applications for Tree Mortality NBCs, this decision should be effective immediately.

## O R D E R

### IT IS ORDERED that:

1. The Petition for Modification of Decision 10-12-048 Filed by San Diego Gas & Electric Company, filed April 18, 2016, is denied.

2. The Petition for Modification of Decision 10-12-048 Filed Jointly by Pacific Gas and Electric Company and Southern California Edison Company, dated April 19, 2016, is denied.

3. Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company must each comply with the requirements of Resolution E-4805 in filing advice letters to establish their respective BioRAM Memorandum Accounts.

4. Not later than 30 days from the effective date of this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) must each file applications to establish a Tree Mortality Nonbypassable Charge (Tree Mortality NBC) to allocate capacity costs and benefits of procurement pursuant to Resolution (Res.) E-4770. If any of PG&E, SDG&E, or SCE has already filed an application to establish a Tree Mortality NBC pursuant to Res. E-4805, they may amend the

application to include the use of the Tree Mortality NBC to allocate capacity costs and benefits of procurement required by Res. E-4770.

5. Rulemaking 08-08-009 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.