

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**7-11-17
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Ratesetting

July 11, 2017

TO PARTIES OF RECORD IN RULEMAKING 15-02-020:

This is the proposed decision of Administrative Law Judge (ALJ) Anne E. Simon and ALJ Robert Mason III. 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 August 10, 2017 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.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ DARWIN E. FARRARDarwin E. Farrar,
Acting Chief Administrative Law Judge

EDF:avs

Attachment

Decision PROPOSED DECISION OF ALJ SIMON AND ALJ MASON
(Mailed 7/11/2017)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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)

**DECISION REVISING ELIGIBILITY REQUIREMENTS FOR THE
RENEWABLES PORTFOLIO STANDARD FEED-IN TARIFF IN ACCORDANCE
WITH ASSEMBLY BILL 1979 AND ASSEMBLY BILL 1923**

Summary

This decision updates California's renewables portfolio standard (RPS) feed-in tariff programs in accordance with Assembly Bill (AB) 1979 (Bigelow), Stats. 2016, ch. 665, and AB 1923 (Wood), Stats. 2016, ch. 663. Participation in the feed-in tariff programs has been limited to RPS-eligible generation facilities with effective capacity of up to three megawatts. Pursuant to AB 1979, conduit hydroelectric generation facilities with effective capacity of up to four megawatts and meeting certain other criteria may be eligible for the RPS renewable market adjusting tariff (ReMAT). Pursuant to AB 1923, bioenergy generation facilities with effective capacity of up to five megawatts and meeting certain other criteria may be eligible for the RPS bioenergy market adjusting tariff (BioMAT).

This decision, implements these legislative provisions for exceptions to the capacity limitations of the RPS feed-in tariff programs. The decision directs Pacific Gas and Electric Company, Southern California Edison Company, and

San Diego Gas & Electric Company to modify their ReMAT and BioMAT tariffs and power purchase agreements to allow the participation in ReMAT and BioMAT of the types of RPS-eligible generation facilities identified by the legislation under the conditions specified.

1. Background

Assembly Bill (AB) 1969 (Yee), Stats. 2006, ch. 731, added Section 399.20 to the Public Utilities Code, creating California's Feed-in Tariff (FIT) program within the procurement programs of the renewables portfolio standard (RPS) program.¹ Senate Bill (SB) 32 (Negrete-McLeod), Stats. 2009, ch. 328, increased the maximum eligible FIT project size from 1.5 megawatts (MW) to 3 MW, while increasing the overall statewide procurement requirement under the FIT to 750 MW. In Decision (D.) 12-05-035 and D.13-05-034, the Commission implemented the Renewable Market Adjusting Tariff (ReMAT) program, a tariff to provide market-based adjusting prices for small RPS-eligible generators to sell power to utilities under standard terms and conditions.

SB 1122 (Rubio), Stats. 2012, ch. 612, added an additional 250 MW of RPS-eligible procurement from small-scale bioenergy projects that commence operation on or after June 1, 2013 to the existing FIT program under Section 399.20. In D.14-12-081 and D.15-09-004, the Commission implemented SB 1122 through the new Bioenergy Market Adjusting Tariff (BioMAT). Most recently, in D.16-10-025, the Commission implemented several changes to the BioMAT program in response to the tree mortality emergency identified in the

¹ The RPS is codified at Pub. Util. Code §§ 399.11 – 399.32. Unless otherwise noted, all further references to sections are to the Public Utilities Code.

Governor's October 30, 2015 Proclamation of a State of Emergency² and to the provisions of SB 840, Stats. 2016, ch. 341, responding to the emergency.³

This decision is issued on the Commission's own motion to implement minor changes to the eligibility criteria and accompanying adjustments to pricing terms for the ReMAT and BioMAT programs made by recent legislation, AB 1979 (Bigelow), Stats. 2016, ch. 665, and AB 1923 (Wood), Stats. 2016, ch. 663.⁴

2. Assembly Bill 1979

2.1. Eligibility

AB 1979 adds Section 399.20.5 to the RPS statute.⁵ Section 399.20.5 creates a narrow exception to the 3 MW effective capacity limitation for the ReMAT program.⁶ This exception provides that a conduit hydroelectric generation facility of up to 4 MW in nameplate capacity may be eligible for ReMAT tariff provided that it:

- was operational as of January 1, 1990;
- interconnects and complies with Rule 21 or other distribution access tariff; and
- delivers no more than 3 MW to the grid at any time, with no payment made under the ReMAT contract for delivery to the grid in excess of 3 MW.

² The Emergency Proclamation may be found at www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf.

³ SB 840 added new Section 399.20(f)(4), creating an interconnection process especially for biomass generation facilities participating in the BioMAT program.

⁴ AB 1923 made changes to both subsection (b) and subsection (f) of § 399.20. Only the amendment to subsection (f) is addressed in this decision. The amendment to subsection (b) will be addressed in a future decision.

⁵ The new statutory section is set out in Appendix A.

⁶ The effective capacity limit for ReMAT is the nameplate capacity of the facility. (See D.12-05-035 at 65.)

By providing ReMAT program eligibility for conduit hydroelectric facilities of up to 4 MW nameplate capacity, while limiting ReMAT-eligible payment to delivery volumes of no more than 3 MW, AB 1979 strikes a balance between the participation of conduit hydroelectric generators with larger capacities and the fundamental design of the ReMAT program, which is based on capacities of no more than 3 MW.

2.2. Changes to ReMAT Tariff and Standard Contract

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) are the investor owned utilities (IOUs) that offer the ReMAT tariff and standard contract (or power purchase agreement (PPA)). The IOUs must modify the ReMAT tariff and standard contract to allow conduit hydroelectric facilities of up to 4 MW nameplate capacity that meet the other conditions set out above to be eligible for the ReMAT tariff and standard contract. Eligibility includes the condition that the seller assumes responsibility for limiting deliveries to the grid to no more than 3 MW.

The PPAs must be modified to provide that, if the seller is a conduit hydroelectric generation facility with a nameplate capacity of up to 4 MW, the seller is responsible for delivering energy within the statutory limit of 3 MW, independent of the contract capacity set in the PPA. The pricing term of the PPA⁷ should be modified to add a term that includes the special pricing provision set by AB 1979. If the seller is eligible to participate in ReMAT through the 4 MW conduit hydroelectric capacity exception, there will be no payment

⁷ The current ReMAT PPA Contract Price terms are found in Section 3.6.

under the ReMAT contract for deliveries to the grid exceeding 3 MW at any time. This provision balances the exception to the ReMAT tariff that allows the participation of the larger conduit hydroelectric facilities by providing a modification to the contract pricing that protects against those facilities delivering excess electricity to the grid. The pricing modification puts a limit on the potential for ratepayers having to pay for a larger conduit hydroelectric facility delivering a volume of electricity to the grid in excess of the general ReMAT capacity limit of 3 MW under the ReMAT PPA.⁸

3. Assembly Bill 1923

3.1. Eligibility

AB 1923 amends Section 399.20(f)(2), which authorizes and sets requirements for RPS FIT projects that generate electricity using bioenergy resources (BioMAT).⁹ The BioMAT tariff shares many provisions with the general ReMAT program, including the eligibility criterion of no more than 3 MW nameplate capacity for a bioenergy generation facility.

Amended Section 399.20(f)(2)(E) makes an exception to the general 3 MW effective capacity limitation in the RPS FIT for bioenergy resources identified in Section 399.20(f). This exception provides that an RPS-eligible bioenergy generation facility of up to 5 MW in nameplate capacity may be eligible for the BioMAT tariff provided that it:

⁸ Since conduit hydropower facilities eligible under AB 1979 may have an effective capacity up to 4 MW, electricity generated in excess of the ReMAT program's limits may be sold pursuant to other CPUC programs, consistent with all state and federal requirements, if the generating facility so chooses. The generation facility could also use excess generated electricity at the site where the facility is located, using the "excess sale agreement" option in the ReMAT PPA.

⁹ Section 399.20(f) as amended by AB 1923 is set out in Appendix B.

- interconnects and complies with Rule 21 or other distribution access tariff; and
- delivers no more than 3 MW to the grid at any time, with no payment made under the BioMAT contract for delivery to the grid in excess of 3 MW.

By providing BioMAT program eligibility for RPS-eligible bioenergy generation facilities of up to 5 MW nameplate capacity, while limiting BioMAT-eligible payment to delivery volumes of no more than 3 MW, AB 1923 strikes a balance between the participation of bioenergy generators with larger capacities and the fundamental design of the RPS FIT program, which is based on nameplate capacities of no more than 3 MW.

3.2. Changes to BioMAT Tariff and Standard Contract

The IOUs must modify the BioMAT tariff and standard contract to allow bioenergy facilities of up to 5 MW nameplate capacity that meet the other conditions set out above to be eligible for the BioMAT tariff and standard contract. Eligibility includes the condition that the seller assumes responsibility for limiting deliveries to the grid to no more than 3 MW.

The PPA must be modified to provide that, if the seller is a bioenergy generation facility with a nameplate capacity of up to 5 MW, the seller is responsible for delivering energy within the statutory limit of 3 MW, independent of the contract capacity set in the PPA. The pricing terms of the PPA¹⁰ should be modified to add a term that includes the special pricing provision set by AB 1923. If a generation facility is eligible to participate in

¹⁰ The current BioMAT PPA Contract Price terms are found in Section 2.6.

BioMAT through the 5 MW capacity exception, there will be no payment under the BioMAT contract for deliveries to the grid exceeding 3 MW at any time.

This provision balances the exception to the RPS FIT program that allows the participation of the larger bioenergy facilities by providing a modification to the contract pricing that protects against those facilities delivering excess electricity to the grid. The pricing modification puts a limit on the potential for ratepayers having to pay for a larger bioenergy facility delivering a volume of electricity to the grid in excess of the general capacity limit of 3 MW with which the RPS FIT was designed.¹¹

4. Next Step

As discussed above, the modifications to the ReMAT and BioMAT programs made by AB 1979 and AB 1923 are limited. The IOUs must collaborate on updated tariffs and PPAs consistent with the limited changes implemented in this decision so that the ReMAT and BioMAT programs reflect the eligibility and pricing rules set by this decision.

Within 30 days of the effective date of this decision, the IOUs shall each file a Tier 2 advice letter to conform their ReMAT and BioMAT tariffs, standard contracts, and ancillary documents to the changes to the ReMAT and BioMAT program adopted by this decision.

¹¹ Since eligible generation facilities under AB 1923 may have an effective capacity up to 5 MW, electricity generated in excess of the BioMAT program's limits may be sold pursuant to other CPUC programs, consistent with all state and federal requirements, if the generating facility so chooses. The generation facility could also use excess generated electricity at the site where the facility is located using the "excess sale agreement" option in the BioMAT PPA.

5. Comments on Proposed Decision

The proposed decision of ALJ Simon and ALJ Mason 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 _____, and reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Anne E. Simon and Robert M. Mason III are the assigned ALJs for this proceeding.

Findings of Fact

1. The current RPS FIT program limits participation in ReMAT and BioMAT to RPS-eligible generation facilities with a nameplate capacity of no more than 3 MW.
2. Some RPS-eligible conduit hydropower generation facilities may have nameplate capacities of up to 4 MW.
3. Some RPS-eligible bioenergy generation facilities may be built with nameplate capacities of up to 5 MW.

Conclusions of Law

1. In order to allow greater participation in the ReMAT program, as mandated by AB 1979, the nameplate capacity for conduit hydroelectric generation facilities to be eligible for the ReMAT tariff must be increased to up to 4 MW.
2. In order to allow greater participation in the BioMAT program, as mandated by AB 1923, the nameplate capacity for bioenergy generation facilities to be eligible for the BioMAT tariff must be increased to up to 5 MW.
3. In order to encourage efficient planning for participation in the ReMAT and BioMAT programs, this decision should be effective today.

O R D E R**IT IS ORDERED** that:

1. Not later than 30 days after the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each file with Energy Division and serve on the service list of this proceeding a Tier 2 advice letter with all the revisions to their Renewable Market Adjusting (ReMAT) tariffs, standard contracts, and all ancillary documents, necessary to reflect the increase in nameplate capacity to up to four megawatts for conduit hydroelectric facilities that may be eligible for the ReMAT tariff and the related pricing terms set by this decision.

2. Not later than 30 days after the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each file with Energy Division and serve on the service list of this proceeding a Tier 2 advice letter with all the revisions to their Bioenergy Market Adjusting (BioMAT) tariffs, standard contracts, and all ancillary documents, necessary to reflect the increase in nameplate capacity of up to five megawatts for bioenergy generation facilities that may be eligible for the BioMAT tariff and the related pricing terms set by this decision.

3. The advice letters filed pursuant to this decision must include both a clean, fully revised final copy of each document and a redlined document that shows the changes made to conform to the requirements of this decision.

4. Rulemaking 15-02-020 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
Public Utilities Code Section 399.20.5
Added by Assembly Bill 1979

399.20.5.

(a) Notwithstanding paragraph (1) of subdivision (b) and paragraph (2) of subdivision (j) of Section 399.20, a conduit hydroelectric facility with an effective capacity of up to four megawatts that otherwise meets the requirements of Section 399.20 shall be eligible for the standard contract or tariff established pursuant to subdivision (c) of Section 399.20 if the electric generation facility meets all the following additional requirements:

- (1) It was operational as of January 1, 1990.
- (2) It delivers no more than three megawatts to the grid at any time.
- (3) It complies with the electrical corporation's Electric Rule 21 tariff or other distribution access tariff.

(b) A facility meeting the requirements of subdivision (a) shall receive payment pursuant to paragraph (1) of subdivision (d) of Section 399.20, provided that no payment shall be made for any electricity delivered to the grid in excess of three megawatts at any time.

(END OF APPENDIX A)

APPENDIX B
Amendments to Public Utilities Code Section 399.20(f)
As amended by Assembly Bill 1923 (shown as underlined)

399.20(f)

(f) (1) An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 399.32. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.

(2) By June 1, 2013, the commission shall, in addition to the 750 megawatts identified in paragraph (1), direct the electrical corporations to collectively procure at least 250 megawatts of cumulative rated generating capacity from developers of bioenergy projects that commence operation on or after June 1, 2013. The commission shall, for each electrical corporation, allocate shares of the additional 250 megawatts based on the ratio of each electrical corporation's peak demand compared to the total statewide peak demand. In implementing this paragraph, the commission shall do all of the following:

(A) Allocate the 250 megawatts identified in this paragraph among the electrical corporations based on the following categories:

(i) For biogas from wastewater treatment, municipal organic waste diversion, food processing, and codigestion, 110 megawatts.

(ii) For dairy and other agricultural bioenergy, 90 megawatts.

(iii) For bioenergy using byproducts of sustainable forest management, 50 megawatts. Allocations under this category shall be determined based on the proportion of bioenergy that sustainable forest management providers derive from sustainable forest management in fire threat treatment areas, as designated by the Department of Forestry and Fire Protection.

(B) Direct the electrical corporations to develop standard contract terms and conditions that reflect the operational characteristics of the projects, and to provide a streamlined contracting process.

(C) Coordinate, to the maximum extent feasible, any incentive or subsidy programs for bioenergy with the agencies listed in subparagraph (A) of

paragraph (3) in order to provide maximum benefits to ratepayers and to ensure that incentives are used to reduce contract prices.

(D) The commission shall encourage gas and electrical corporations to develop and offer programs and services to facilitate development of in-state biogas for a broad range of purposes.

(E) Direct the electrical corporations to authorize a bioenergy electric generation facility with an effective capacity of up to five megawatts to participate in the tariff made available pursuant to this paragraph, if it meets the following conditions:

(i) It delivers no more than three megawatts to the grid at any time.

(ii) It complies with the electrical corporation's Electric Rule 21 tariff or other distribution access tariff.

(F) Payment is made pursuant to paragraph (1) of subdivision (d) and no payment is made for any electricity delivered to the grid in excess of three megawatts at any time.

(3) (A) The commission, in consultation with the State Energy Resources Conservation and Development Commission, the State Air Resources Board, the Department of Forestry and Fire Protection, the Department of Food and Agriculture, and the Department of Resources Recycling and Recovery, may review the allocations of the 250 additional megawatts identified in paragraph (2) to determine if those allocations are appropriate.

(B) If the commission finds that the allocations of the 250 additional megawatts identified in paragraph (2) are not appropriate, the commission may reallocate the 250 megawatts among the categories established in subparagraph (A) of paragraph (2).

(4) For the purposes of this subdivision, "bioenergy" means biogas and biomass.

(END OF APPENDIX B)