PROPOSED DECISION

Agenda ID #14212 (Rev. 1)
Ratesetting
9/17/2015 Item 10

Decision **PROPOSED DECISION OF ALJ SIMON** (Mailed 8/14/2015)

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 APPROVING, AS MODIFIED, BIOENERGY ELECTRIC GENERATION TARIFF, STANDARD CONTRACT, AND SUPPORTING DOCUMENTS TO IMPLEMENT DECISION 14-12-081 ON BIOENERGY FEED-IN TARIFF FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Table of Contents

Title **Page**

DECISION APPROVING, AS MODIFIED, BIOENERGY ELECTRIC GENERATION TARIFF, STANDARD CONTRACT, AND SUPPORTING DOCUMENTS TO IMPLEMENT DECISION 14-12-081 ON BIOENERGY FEED-IN TARIFF FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM 1
Summary 2
1. Procedural History 3
2. Discussion 5
2.1. Plan of This Decision 5
2.2. Terms of Draft Tariff 5
2.2.1. Eligibility Criteria (Section D.5.) 6
2.2.2. Developer Experience (Section D.7.) 7
2.2.3. Daisy Chaining (Section D.8.) 7
2.2.4. Net Energy Metering (Section D.10.) 10
2.2.5. Renewable Market Adjusting Tariff (Section D.11) 10
2.2.6. Capacity Allocation (Sections E and G) 11
2.2.7. Pricing Structure (Section H.4.a. and H.4.b.) 14
2.2.8. Subscription (Section I) 16
2.3. Terms of Draft Standard Contract 18
2.3.1. Commercial Operation Date (Section 1.1.) 19
2.3.1.1. Guaranteed Commercial Operation Date 19
2.3.1.2. Delay in Interconnection or Other Problems Related to IOU's Actions 20
2.3.1.3. Transmission Delay 20
2.3.1.4. Force Majeure 21
2.3.2. Notice of Permitting Delay (Section 1.2.) 22
2.3.3. Changes to Contract Quantity of Energy (Section 2.2.) 22
2.3.4. Changes to Contract Price (Section 2.6) 23
2.3.5. Billing and Time of Delivery (Section 2.7.4.) 27
2.3.6. Green Attributes (Section 3.1.) 28
2.3.6.1. Biomethane Transactions (Section 3.1.1.) 29
2.3.6.2. Green Attributes (Section 3.1.) 30
2.3.7. Resource Adequacy Benefits (Section 3.4.3) 35
2.3.8. Participation in Other Programs (Sections 4.3.1. and 5.15) 35

Table of Contents (cont.)

Title **Page**

2.3.9. Fuel Resource Usage in Facility (Section 4.4.) ... 36
2.3.10. Safety Plan (Section 5.17.) ... 37
2.3.11. Seller Curtailment (Section 5.8.4.) ... 38
2.3.12. Equipment to Communicate with CAISO (Section 5.8.5.) ... 40
2.3.13. Guaranteed Energy Production (Section 11) ... 41
2.3.14. Events of Default and Termination (Section 13.2.) ... 44
2.3.14.1. General Provisions (Sections 13.2.1.2.-13.2.1.4.) ... 44
2.3.14.2. Additional Generating Equipment (Section 13.2.2.8.). 45
2.3.15. Transmission Costs Termination Right (Section 13.9.1.) ... 45
2.3.16. Forecasting Penalties (Section 14.2.1.) ... 46
2.3.17. Forecasting and Outage Notification (Appendix D) ... 47
2.3.18. Form of Financing Consent (Appendix I) ... 48
2.4. Additional Documents ... 48
2.5. Implementation ... 49
3. Next Steps ... 50
Comments on Proposed Decision ... 51
Assignment of Proceeding ... 51
Findings of Fact ... 52
Conclusions of Law ... 52
ORDER ... 74
Appendix A - Informational Table of Status of Provisions of Proposed Tariff and Standard Contract Addressed

DECISION APPROVING, AS MODIFIED, BIOENERGY ELECTRIC GENERATION TARIFF, STANDARD CONTRACT, AND SUPPORTING DOCUMENTS TO IMPLEMENT DECISION 14-12-081 ON BIOENERGY FEED-IN TARIFF FOR THE RENEWABLES PORTFOLIO STANDARD PROGRAM

Summary

This decision follows up the Commission's implementation in Decision (D.) 14-12-081 of the structure and rules for the bioenergy feed-in tariff in the renewables portfolio standard (RPS) program. The bioenergy feed-in tariff mandated by Senate Bill 1122 (Rubio), Stats. 2012, ch. 612, requires California's three large investor-owned electric utilities (IOUs)[1] to procure 250 megawatts of RPS-eligible generation from bioenergy generation facilities, including biogas from wastewater treatment, municipal organic waste diversion, food processing, and codigestion; dairy and other agricultural bioenergy; and bioenergy using byproducts of sustainable forest management.

D.14-12-081 requires the IOUs to submit for Commission approval a draft tariff, standard contract, and certain ancillary documents to implement D.14-12-081. This decision authorizes the IOUs to file a tariff, standard contract, and ancillary documents that comply with the determinations made in this decision about the draft documents.

Consistent with the Commission's direction in D.14-12-081, this decision:

- Accepts with modifications the draft documents submitted by the large IOUs that are necessary for the operation of the Bioenergy Market Adjusting Tariff (BioMAT);

[1] They are Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

- Minimizes the variations between the provisions of the proposed BioMAT tariff and standard contract and the provisions of the existing RPS renewable energy market adjusting tariff (ReMAT) tariff and standard contract for ReMAT participants;
- Allows variations from the ReMAT tariff and standard contract in situations where the particular nature of the bioenergy resources or bioenergy market as defined in D.14-12-081 require it;
- Conforms the language of BioMAT contract terms to prior Commission decisions where necessary;
- Rejects the request of Southern California Edison Company (SCE) to create an exception to the guaranteed energy delivery requirements for SCE's standard contract; and
- Sets a schedule for expeditious implementation of the BioMAT program.

1. Procedural History

The implementation of Senate Bill (SB) 1122 (Rubio), Stats. 2012, ch. 612,[2] was added to the scope of Rulemaking (R.) 11-05-005, the predecessor to this proceeding, in the Second Amended Scoping Memo and Ruling of Assigned Commissioner (January 9, 2013). On November 19, 2013, the Administrative Law Judge's Ruling Seeking Comments on Staff Proposal on Implementation of SB 1122 and Accepting Consultant Report into the Record was issued. Comments were filed on December 20, 2013. Reply comments were filed on January 16, 2014.

After receiving some additional comments from the parties on several topics, the Commission issued Decision (D.) 14-12-081, implementing the requirements of SB 1122. D.14-12-081 further required the three large

[2] SB 1122 is codified at Pub. Util. Code § 399.20(f)(2)-(4).

investor-owned electric utilities (IOUs) to file and serve joint proposed revisions to the most current version of the renewable market adjusting tariff (ReMAT) tariff and standard contract, as well as ancillary documents, that would fully implement the requirements set out in D.14-12-081.

On February 9, 2015, the IOUs filed and served their Joint Submission of Proposed Tariffs and Standard Forms to Implement SB 1122 in R.11-05-005.[3] In a ruling on February 24, 2015, the Administrative Law Judge (ALJ) extended the time for comments and reply comments on the IOUs' submission, allowing comments to be filed and served by March 6, 2015, and reply comments to be filed and served by March 16, 2015.[4]

On February 26, 2015, the Commission opened this proceeding, R.15-02-020, as the successor to R.11-05-005. In order to facilitate communication during the transition between proceedings, the ALJ issued an E-Mail Ruling on Transitional Filing and Service Requirements (March 2, 2015) that required that comments and reply comments on the IOUs' submissions be filed in this proceeding.[5]

---

[3] The IOUs named the tariff BioMAT, a practical and expressive designation that the Commission now adopts (without a hyphen) for both the tariff and the program.

[4] Administrative Law Judge's Ruling Extending Time for Comments on Draft Tariff, Standard Contract, and Related Documents Implementing Decision 14-12-081 and Denying Extension of Time for Responses to Petition of Southern California Edison Company to Modify Decisions 13-05-034 and 14-12-081.

[5] Comments were filed March 6, 2015 by Agricultural Energy Consumers Association (AECA); Bioenergy Association of California (BAC); Green Power Institute (GPI); Harvest Power California, LLC (Harvest); and Placer County Air Pollution Control District (Placer APCD). Reply comments were filed March 16, 2015 by AECA; BAC; Center for Biological Diversity (CBD); Office of Ratepayer Advocates (ORA); Pacific Gas and Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); and Southern California Edison Company (SCE).

2. Discussion

2.1. Plan of This Decision

This decision will largely track the documents submitted by the IOUs; i.e., the proposed tariff; the proposed standard contract; and, in much more limited degree, ancillary documents required by D.14-12-081. The decision accepts without discussion those draft provisions that were not topics of party comment or revealed by our own analysis to require discussion. The discussion begins with the relevant provisions of the draft tariff, then reviews provisions of the draft standard contract. A brief section on ancillary documents concludes the analysis.

In conformity with the requirements of D.14-12-081, the draft provisions are analyzed with respect to:

- consistency with the analogous ReMAT provisions;
- need for modification to accommodate the particular circumstances of bioenergy generation; and
- consistency with other relevant Commission decisions and requirements.

Overall, almost all of the draft provisions submitted by the IOUs are accepted either as written or with some modification.

A table summarizing the status of the draft tariff and contract provisions is provided for reference in Appendix A.

2.2. Terms of Draft Tariff

The Bioenergy Market Adjusting Tariff (BioMAT) lays out the basic requirements of the program, as set out in D.14-12-081. These include eligibility criteria, capacity allocation among the IOUs, pricing methodology, program participation requests, queue management, and other foundational elements of

the BioMAT program. All provisions of the IOUs' draft tariff that are not discussed below are accepted as submitted.

2.2.1. Eligibility Criteria (Section D.5.)

Harvest identifies two aspects of this section that it claims are unnecessarily restrictive. The first is the interconnection study provision.[6] Harvest asserts that this provision as drafted would prevent an otherwise eligible repowered generation facility with an existing interconnection agreement from participating in BioMAT, without justification. SCE agrees that the IOUs' proposed language is too limited. To address Harvest's concerns, SCE proposes the addition of the underlined language shown in footnote 6 below. SCE's proposed revision adequately accounts for the possibility of repowering and should be accepted.

Harvest also argues that the IOUs' proposed language on the generator's responsibility for network upgrade costs in excess of $300,000 is ambiguous. Harvest, supported by SCE, proposes revised language to make this section clearer.[7] The proposed clarifying language is consistent with D.14-12-081 and should be accepted.

---

[6] Section D.5 provides:

> An Applicant must have passed the Fast Track screens, passed Supplemental Review, completed an [PG&E; SCE; SDG&E] System Impact Study in the Independent Study Process, completed an [PG&E; SCE; SDG&E] Distribution Group Study Phase 1 Interconnection Study in the Distribution Group Study Process, or completed an [PG&E; SCE; SDG&E] Phase 1 Study in the Cluster Study Process for its Project (Interconnection Study, <u>or make use of an existing interconnection Agreement to the extent permitted by [PG&E's; SCE's; SDG&E's] tariffs.</u>

[7] Section D.5.a, with Harvest's proposed deletions in ~~strikethrough~~ and additions <u>underlined</u>, provides:

Footnote continued on next page

2.2.2. Developer Experience (Section D.7.)

The IOUs' draft language on developer experience is the same as that in ReMAT.[8] BAC and Harvest argue that the range of experience allowed should be increased to include a member of the development team who has experience with interconnection of a generator of similar technology to the grid. SCE opposes this suggestion, noting that the IOUs' language is the same as that in the ReMAT section on developer experience.

BAC and Harvest do not provide any reason to believe that the proposed change would have any impact on the viability or timeliness of the development of a BioMAT-eligible facility. The IOUs' proposed language should be accepted.

2.2.3. Daisy Chaining (Section D.8.)

The process of breaking up one larger project into a series of smaller projects that each meet size limitations, but cumulatively are larger than the size limitation (for BioMAT and ReMAT, 3 megawatts (MW)) is often referred to as

---

> The Project must be interconnected to [PG&E's; SCE's; SDG&E's] distribution system, and the Project's most recent Interconnection Study or Interconnection Agreement must affirmatively support the Project's ability to interconnect within twenty four (24) months of the execution of the Bio-MAT power purchase agreement (PPA) Form # XXX-XXXX. To the extent the cost of transmission system Network Upgrades incurred in connection with the Project exceed $300,000, the Applicant will bear ~~such additional~~ the actual costs in excess of $300,000 in accordance with the Bio-MAT PPA.

[8] The relevant portion of section D.7 provides:

> The Applicant must provide to [PG&E; SCE; SDG&E] an attestation that at least one member of its development team has: (a) completed the development of at least one project of similar technology and capacity; or (b) begun construction of at least one other project of similar technology and capacity.

"daisy chaining."[9] The IOUs' proposed language to control the possibility of daisy chaining in BioMAT projects is the same as that in ReMAT.[10]

AECA asserts that this language would unnecessarily preclude co-location of distinct dairy bioenergy projects, including those with affiliated ownership. BAC agrees, and proposes that AECA's idea be extended to include the possibility of co-located projects of all technology types. AECA additionally proposes that generators be able to seek review by Commission staff for the eligibility of co-located projects greater than 3 MW.

PG&E and SCE oppose AECA's suggestions. They argue that the proposal to allow co-location of potentially affiliated dairy projects could allow the behavior of one group of affiliated generators to trigger an adjustment in the statewide price for that technology category. SCE additionally notes that appeal of eligibility determinations to Commission staff is already provided for; thus, AECA's specific review request is unnecessary.

The IOUs' concern about the ability of a small group of affiliated entities to affect the statewide price for this technology category is reasonable. AECA's proposed expansion of the language of this provision should not be accepted.

---

[9] See SCE Reply Comments at 14.

[10] As proposed by the IOUs, section D.8 provides:

> The Applicant must provide to [IOU] an attestation that the Project is the only exporting project being developed or owned or controlled by the Applicant on any single or contiguous pieces of property. [IOU] may, in its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of an installation in the same general location that has been or is being developed by the Applicant or the Applicant's Affiliates.

PG&E and SCE agree with AECA and Harvest, however, that the language of this section should be clarified to allow multiple exporting projects so long as the total aggregated installed capacity of all the projects does not exceed 3 MW.

Harvest also argues that the daisy chaining prohibition should apply only to multiple BioMAT-eligible facilities; the nearby installation of a project that is not BioMAT-eligible should not matter for this purpose. This argument potentially affects two sections: section D.8 and section D.11.[11]

PG&E and SCE agree with Harvest that the daisy chaining language should be clarified to be specifically related to the 3 MW capacity limit. PG&E proposes revised language for section D.8, but PG&E's proposal does not capture the full scope of the needed revision. The IOUs' language should be revised as follows with additions <u>underlined</u>:

> The Applicant must provide to [PG&E; SCE; SDG&E] an attestation that <u>either</u> the Project is the only exporting project being developed or owned or controlled by the Applicant on any single or contiguous pieces of property <u>or, if more than one exporting project is being developed or owned or controlled by the Applicant on any single or contiguous pieces of property, the total aggregated installed capacity of the projects does not exceed 3 MW.</u> [PG&E; SCE; SDG&E] may, in its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of an installation in the same general location that has been or is being developed by the Applicant or the Applicant's Affiliates <u>and the total aggregated installed capacity of the installation is greater than 3 MW</u>.

[11] Section D.11 is discussed below.

2.2.4. Net Energy Metering (Section D.10.)

The IOUs' proposed language requiring a project that participates in the net energy metering (NEM) program to terminate its NEM participation prior to signing a BioMAT PPA is the same as that in ReMAT.[12]

Harvest argues that a BioMAT project should be allowed to participate in the NEM program if it is providing energy for its onsite need, so this section should be removed.

As PG&E and SCE point out, this requested change is precluded by statutory language. Pub. Util. Code § 399.20(k)(3) provides:

> A customer that receives service under a tariff or contract approved by the commission pursuant to this section [i.e., Section 399.20] is not eligible to participate in any net metering program.

The IOUs' proposed language for tariff section D.10 should be adopted.

2.2.5. Renewable Market Adjusting Tariff (Section D.11)

The purpose of Section D.11 is to implement the requirement of D.14-12-081 that a project cannot have an active Program Participation Request (PPR) in both the ReMAT and the BioMAT queues at the same time. The IOUs' proposed language, however, sweeps more broadly than the intention of the provision. As drafted, this section provides:

> An Applicant may not submit a PPR or maintain a position in the queue for the same Project in both the Renewable Market

---

[12] The IOUs' proposed language provides:

> An Applicant that is a net energy metering (NEM) customer can only participate in Bio-MAT if the Applicant terminates its participation in the NEM program for the Project prior to the Bio-MAT PPA's Execution Date.

> Adjusting Tariff (Re-MAT) program and the Bio-MAT program. For the purposes of this Section D.11 only, projects that share, utilize, or are based on the same interconnection request, study, or agreement will be considered the same Project.

The second sentence does not limit its prohibition to projects that are eligible for the ReMAT or BioMAT programs. Although it may not be common, it is possible, as Harvest argues, that a project not eligible for these programs could share interconnection elements with one that is eligible. Since the revision to Section D.8, explained above, clarifies and reiterates the 3 MW capacity limit for multiple BioMAT-eligible projects, revising Section D.11 to allow shared interconnection that does not run afoul of D.14-12-081 should be possible. The revised section, with additions <u>underlined</u>, should read:

> An Applicant may not submit a PPR or maintain a position in the queue for the same Project in both the Renewable Market Adjusting Tariff (Re-MAT) program and the Bio-MAT program. For the purposes of this Section D.11 only, projects <u>that are eligible for ReMAT or BioMAT and</u> that share, utilize, or are based on the same interconnection request, study, or agreement will be considered the same Project.

2.2.6. Capacity Allocation (Sections E and G)

The IOUs' draft of these two sections is the same as the analogous ReMAT provisions. Some parties request changes to parts of these sections, arguing that they are confusing and undermine the goals of the BioMAT program.

Parties raise questions about the methods both for allocating capacity to IOUs upon execution of a BioMAT contract, and for reallocating capacity when a

project with a contract fails. The provisions at issue are found in draft tariff sections E.1[13] and G.4.[14]

Placer APCD argues that the identified language in section E.1 is misleading, because it appears to state that mere execution of a PPA will allow an IOU to obtain credit toward its SB 1122 procurement target, while section G.4 appears to provide a different rule. GPI points out that RPS compliance is attained by actual electricity deliveries, not contracts signed. Placer APCD proposes that section E.1 should be revised to eliminate the attribution of capacity to the IOU's capacity target.[15]

SCE points out that the IOUs' approach was approved in D.14-12-081, from which the language in section E.1 is drawn.[16] SDG&E notes that the

---

[13] As drafted, the relevant portion of section E.1 provides:

> . . .The Applicant will submit a PPR for a Project to the IOU in whose territory the Project is located, and execution of a Bio-MAT PPA will result in the capacity of that Project being attributed to the capacity target for the IOU with which the Bio-MAT PPA was executed.

[14] As drafted, section G.4 provides:

> Any capacity associated with Bio-MAT PPAs that are terminated prior to the delivery of any electricity to [PG&E; SCE; SDG&E] will be allocated by [PG&E; SCE; SDG&E] to the Fuel Resource Category corresponding to the Fuel Resource Category of the terminated Bio-MAT PPA. Any capacity associated with Bio-MAT PPAs that are terminated after the delivery of any electricity to [PG&E; SCE; SDG&E] will not be re-allocated.

[15] Placer APCD's proposal, with deletions in ~~strikeout~~, reads:

> . . .The Applicant will submit a [program participation request] PPR for a Project to the IOU in whose territory the Project is located~~, and execution of a Bio-MAT PPA will result in the capacity of that Project being attributed to the capacity target for the IOU with which the Bio-MAT PPA was executed~~.

[16] Compare D.14-12-081 at 64:

Footnote continued on next page

capacity an IOU has available to offer in the market is reduced by the amount of capacity represented in signed contracts. The draft language thus appropriately captures the way available capacity is accounted for.

The IOUs correctly note that the disputed language in section E.1 is consistent with the language in ReMAT and in D.14-12-081. PG&E's suggested clarification will avoid the appearance of inconsistency between section E.1 and section G.4; PG&E's language should be adopted. The second sentence of section E.1 should be revised to read (additions underlined):

> The Applicant will submit a PPR for a Project to the IOU in whose territory the Project is located, and execution of a Bio-MAT PPA will result in the capacity of that Project being attributed to the capacity target for the IOU with which the Bio-MAT PPA was executed, subject to Section G.4 of this schedule.

The draft of Section G.4 is itself the subject of some controversy. AECA and Harvest argue that the time to measure termination for purposes of reallocation should be later in the process than "prior to the delivery of any electricity," as currently drafted. AECA proposes that the cut-off time should be the commercial operation date. Harvest proposes a later time, the completion of one year of delivery of electricity to the buyer.

The IOUs and ORA argue that the draft language is appropriate, especially since it is the same as that in ReMAT. They assert that the language as drafted provides a clear cut-off point for determining whether the capacity from a contract that has been terminated will be reallocated.

Execution of a bioenergy FiT contract by a bioenergy project will result in the capacity of that project being attributed to the SB 1122 capacity target for the IOU with which the project signs the contract.

The IOUs' proposed cut-off time has been used in ReMAT and is reasonable. AECA and Harvest provide no persuasive justification for varying from ReMAT on this issue.

Placer APCD proposes additional language for this section that, Placer APCD asserts, will make it clearer that any reallocations are IOU-specific. SCE agrees that such clarification would be useful, and proposes additional language. SCE's proposed clarifying language is useful, is not inconsistent with the language in ReMAT, and should be adopted, as set forth below (with deletions in ~~strikethrough~~ and additions underlined.)

> Any capacity associated with Bio-MAT PPAs that are terminated prior to the delivery of any electricity to [PG&E; SCE; SDG&E] will be allocated by [PG&E; SCE; SDG&E] to the Fuel Resource Category corresponding to the Fuel Resource Category of the terminated Bio-MAT PPA~~.~~ and will not be attributed to the total capacity target for [PG&E; SCE; SDG&E]. Any capacity associated with Bio-MAT PPAs that are terminated after the delivery of any electricity to [PG&E; SCE; SDG&E] will not be re-allocated, and will result in the capacity of that project being attributed to the capacity target for [PG&E; SCE; SDG&E].

2.2.7. Pricing Structure (Section H.4.a. and H.4.b.)

These sections address how the IOUs will determine when the statewide prices for each technology type in the BioMAT program will adjust. Section H.4.a. addresses initial contract price adjustments;[17] section H.4.b.

---

[17] As drafted by the IOUs, section H.4.a. provides:

> Until at least one Project in a Statewide Pricing Queue accepts the Contract Price, a Contract Price adjustment may occur in a subsequent Period for that Statewide Pricing Category only if at the beginning of the prior Period there are at least three (3) eligible Projects from three (3) different Applicants (including Applicant's Affiliates) with Bio-MAT Queue Numbers for the applicable Statewide Pricing Queue, in which case the Contract Price for that Statewide

Footnote continued on next page

addresses subsequent contract price adjustments.[18] Because the pricing structure for BioMAT is different from ReMAT, these sections are redrafted for the BioMAT tariff. They are referred to as "market depth" requirements.

BAC and Placer APCD object to the direction that a project will be attributed to an applicant if the applicant or its affiliates "have any ownership interest" in the project. They assert that this provision is too restrictive and could impede participation in BioMAT.

PG&E points out that the language regarding "any ownership interest" is carried over from ReMAT. SCE and SDG&E assert that since the BioMAT

> Pricing Category may increase or decrease in the next Period based on the criteria described below in Sections H.4.d and H.4.f of this Schedule. If an Applicant or its Affiliates have any ownership interest (based on the information provided by and attested to by the Applicant as described in Section E.2.c.3 of this Schedule) in a Project, the Project will be attributed to the Applicant(s) for purposes of this provision. If there are fewer than three (3) eligible Projects from three (3) different Applicants in the applicable Statewide Pricing Queue at the beginning of any Period, then the Contract Price for that Statewide Pricing Category will remain the same in the next Period.

[18] As drafted by the IOUs, section H.4.b. provides:

> After at least one (1) Project in a Statewide Pricing Queue accepts the Contract Price, a Contract Price adjustment may occur in a subsequent Period for that Statewide Pricing Category only if at the beginning of the prior Period there are at least five (5) eligible Projects from five (5) different Applicants (including Applicant's Affiliates) with Bio-MAT Queue Numbers for the applicable Statewide Pricing Queue, in which case the Contract Price for that Statewide Pricing Category may increase or decrease in the next Period based on the criteria described below in Sections H.4.d and H.4.f of this Schedule. If an Applicant or its Affiliates have any ownership interest (based on the information provided by and attested to by the Applicant as described in Section E.2.c.3 of this Schedule) in a Project, the Project will be attributed to the Applicant(s) for purposes of this provision. If there are fewer than five (5) eligible Projects from five (5) different Applicants in the applicable Statewide Pricing Queue at the beginning of any Period, then the Contract Price for that Statewide Pricing Category will remain the same in the next Period.

program only requires bids from three projects statewide to adjust the initial starting price, it is important not to weaken this requirement by allowing entities that have ownership connections to be counted as separate bidders.

The IOUs' concern that a small group of affiliated entities could satisfy the statewide market depth requirements is legitimate. It is reasonable to require potential BioMAT projects to have an ownership structure that minimizes the risks to ratepayers that might come from allowing a small number of related bidders to trigger adjustments to the BioMAT price. The IOUs' draft section H.4.a. should be accepted.

Harvest, supported by AECA, argues that the IOUs' draft of section H.4.b. is too rigid with respect to the number of bidders required to adjust the price. Harvest asserts that it is possible that one bidder would accept a contract in a particular technology category, triggering the adjustment from three to five bidders statewide to adjust the price, but that one bidder would not necessarily mean that there is a market that could support the requirement of five bidders.

ORA, SCE, and SDG&E oppose this suggestion, on the basis that it has the potential to increase prices and encourage market manipulation.

The IOUs' draft language for section H.4.b. properly implements Conclusion of Law 37 in D.14-12-081. Harvest and AECA offer no persuasive reason why the draft tariff language should be different from the conclusion reached in D.14-12-081. The IOUs' draft language for section H.4.b. should be accepted.

2.2.8. Subscription (Section I)

Because projects eligible for BioMAT (or ReMAT) can come in a variety of sizes within the allowable 1-3 MW range, it is possible that in any particular program period, the size of the bids and the capacity available in the technology

category will not match up.[19] The IOUs propose language that follows ReMAT, with an additional sentence that is intended to account for the statewide pricing mandate in BioMAT.[20]

AECA, supported by Harvest, suggests that the "deemed fully subscribed" provision should only apply if the remaining available capacity is 500 kW or less. ORA opposes this proposal on the basis that it could distort the response of the BioMAT price to market interest.

AECA's proposed 500 kW limit on the "deemed fully subscribed" provision is arbitrary. Because it is arbitrary, it could provide opportunities for gaming by bidders. The IOUs' draft language, which reflects the practice in ReMAT, should be accepted.

---

[19] For example, an IOU has 5 MW available in a program period. It receives, in order, bids for generation facilities of 1 MW, 2 MW, 0.5 MW, and 3 MW. The first three projects, totaling 3.5 MW, can be accepted. The fourth project would bring the total to 6.5 MW, too many MW for the period.

[20] The IOUs' proposed section I.3 provides:

> [PG&E; SCE; SDG&E] will award Bio-MAT PPAs to Applicants that meet the Eligibility Criteria in Bio-MAT Queue Number order until the Available Allocation for the Fuel Resource Category is met or Deemed Fully Subscribed. [PG&E; SCE; SDG&E] will input information from the PPR into the Bio-MAT PPA for execution. [PG&E; SCE; SDG&E] will provide written notice to Applicants that are awarded a Bio-MAT PPA within ten (10) business days following the deadline for Applicants to accept or reject the Contract Price. If the Contract Capacity of the next Project that has provided notice to [PG&E; SCE; SDG&E] within ten (10) business days after the first business day of a Period indicating a willingness to execute a Bio-MAT PPA, in Bio-MAT Queue Number order, for a Fuel Resource Category is larger than the remaining Available Allocation for that Fuel Resource Category, that next Applicant will not be awarded a Bio-MAT PPA and [PG&E; SCE; SDG&E] will deem the Available Allocation to be fully subscribed (Deemed Fully Subscribed). Any portion of the Available Allocation Deemed Fully Subscribed shall be counted toward the Statewide Subscription for that Period.

Harvest notes that the use of the term "statewide subscription" in the last sentence of the IOUs' draft could cause confusion about whether the subscription for the program period, or instead the IOUs' ultimate obligation for procuring MW under BioMAT, is affected. Harvest proposes an addition to the last sentence to remove the possibility of confusion. SCE agrees with this language; PG&E finds it unnecessary but does not object.

Although it is not strictly necessary, given the precise interaction of the definitions of the various terms involved, Harvest's suggested language would provide additional clarity, and therefore should be adopted. The IOUs' draft language for Section I.3 should be accepted, with the addition of the <u>underlined</u> addition to the last sentence:

> Any portion of the Available Allocation Deemed Fully Subscribed shall be counted toward the Statewide Subscription for that Period, <u>but shall not be counted against either the total statewide program cap or [PG&E's; SCE's; SDG&E's] allocated share of that cap, as provided in Section A</u>.

2.3. Terms of Draft Standard Contract

The BioMAT tariff is not sufficient in itself. Each generator participating in the BioMAT program must also enter into a standard contract with the IOU that is buying the generation output. The terms of the standard contract cannot be varied, making it important to have clear and complete terms.[21] All provisions of the IOUs' draft standard contract that are not discussed below are accepted as submitted.

[21] The price term, which can be different depending on how it has adjusted over time, is the exception to this rule.

2.3.1. Commercial Operation Date (Section 1.1.)

The proposed BioMAT contract requires that a project become operational within 24 months of the effective date of the contract, with a six-month extension available for specified reasons, including permitting and transmission delays, force majeure, and the seller's election to pay liquidated damages for the delay. These provisions are virtually identical to those in the ReMAT standard contract. Several parties have proposed changes to various parts of the IOUs' draft.

2.3.1.1. Guaranteed Commercial Operation Date

Harvest seeks to extend the guaranteed commercial operation date (GCOD) another 12 months, arguing that the permitting of bioenergy generation is new and complex, and permitting delays are likely. AECA proposes that buyers and sellers be able to negotiate GCOD extensions of varying lengths.

These proposals are opposed by SCE and SDG&E. The IOUs point out that the Commission rejected proposals to change the ReMAT PPA with respect to these terms in D.14-12-081 (at 68), and argue that Harvest and AECA have not provided any new reasons for the Commission to change this result.

The IOUs' draft on GCOD appropriately uses the terms from the ReMAT PPA. The BioMAT program is designed for commercially available bioenergy technologies that are ready to participate in a competitive procurement program. The special provisions proposed by Harvest and AECA are not consistent with that program design. These parties have not offered sufficient justification of the need for the changes to support deviation from the ReMAT provisions.

Parties also propose changes to the management of factors leading to delays in commercial operation, discussed below.

2.3.1.2. Delay in Interconnection or Other Problems Related to IOU's Actions

BAC asserts that IOUs' delays in scheduling inspections and managing relations with a project add to the uncertainties created by the timing of the interconnection process. None of these issues, BAC argues, is addressed by the draft language. Placer APCD asserts that it is too easy for the buyer to cancel the contract for reasons beyond the control of the seller. These parties argue for allowing an extension of the commercial operation date in such circumstances.

PG&E objects to making changes to the provisions related to interconnection delays, asserting that any more flexibility could create loopholes in the eligibility criteria for the BioMAT program.

Though it is unclear at this time whether the draft BioMAT PPA fully addresses the issues related to delays that are arguably the fault of the IOU, the arguments presented by BAC and Placer APCD do not provide a strong enough basis to change the draft contract, which tracks the existing ReMAT PPA. If, as the BioMAT program develops, there is evidence of problems caused by delays that are largely the fault of the IOU, this can be examined in one of the review mechanisms set up in D.14-12-081.

2.3.1.3. Transmission Delay

BAC and Harvest Power propose that the provision for extension in cases of transmission delay be extended from six months to a period equal to the time of the delay. This issue was resolved in D.14-12-081, in favor of retaining the

ReMAT provision of six months. The parties here provide no reason to change that determination.[22]

2.3.1.4. Force Majeure

BAC and Placer APCD, supported by Harvest, propose that the definition of Force Majeure found in Appendix A of the IOUs' proposed BioMAT PPA be altered. These parties suggest that the IOUs should not be allowed to claim that interconnection problems of the IOU or of the California Independent System Operator (CAISO) resulted from force majeure, and are thus excusable reasons for delay in the BioMAT PPA. Since the point of a force majeure provision is to prevent a party from being liable for circumstances completely beyond its control, this proposal amounts to removing part of the protection of the provision for the IOUs.

The risk of a contract being canceled because of problems well beyond the control of the seller, as put forward by BAC and Placer APCD, is a commercial risk in many situations. The parties have not shown sufficient reason to deviate from the ReMAT provisions on force majeure.

In sum, the IOUs' draft of Section 1.1 appropriately carries forward the relevant provisions of the ReMAT contract. No persuasive reason has been presented to change any of those provisions at this time. Section 1.1 should be accepted as drafted.

---

[22] To the extent that this topic also implicates the issue of delays that arguably are the fault of the IOU, it could be appropriate for discussion in one of the forums set up to review the BioMAT program.

2.3.2. Notice of Permitting Delay (Section 1.2.)

Harvest proposes that the requirement for the time in which a developer must notify the IOU of a permitting delay be extended from three business days to 10 business days. SCE opposes this request. SCE points out that the three-day provision is carried over from the ReMAT contract, and that Harvest has provided no reason why developers of small bioenergy projects would need more time than developers of other small RPS-eligible generation projects to notify the IOU of permitting delays.

Harvest provides no justification for varying the ReMAT provision on notice of permitting delay. The IOUs' draft of Section 1.2 appropriately carries forward the ReMAT contract provision. It should be accepted as drafted.

2.3.3. Changes to Contract Quantity of Energy (Section 2.2.)

The ReMAT PPA provides that the seller has one opportunity to decrease the contract quantity of electricity to be delivered for any or all years of the contract. The draft BioMAT contract expands the seller's ability to request a decrease by adding an opportunity to do so in Year 1 of the delivery term.

BAC and Harvest propose that one change be allowed in the first two years of the contract, with one additional opportunity to change the contract quantity for every five years of contract duration. Harvest amplifies that either a decrease in quantity or an increase in quantity of no more than 20% should be allowed in each five-year period.

ORA objects that additional changes to the contract quantity may lead to excessive price increases. SDG&E also argues that allowing an increase in quantity is not acceptable because it could facilitate gaming of the quantity of energy bid, with a lower bid that matches available contract capacity, increased

after the bidder has been awarded a contract. SDG&E and PG&E agree that allowing an opportunity for the seller to decrease the quantity within the first two years of the contract would be acceptable. PG&E proposes language to that effect.[23]

ORA and the IOUs are correct to be concerned about the ultimate impact on price of changes in contract quantity. However, there is clearly less risk associated with a decrease in quantity than with an increase. The position of PG&E and SDG&E that there should be two opportunities, in the first two years of the contract only, for the generator to request one decrease (but not increase) to the contract quantity is a reasonable adaptation of the ReMAT provisions to the circumstances of generators eligible for BioMAT.

The language proposed by PG&E in its reply comments to effectuate this modification to the draft contract should be adopted.

2.3.4. Changes to Contract Price (Section 2.6)

The draft PPA proposes several changes to the ReMAT terms on variations from the contract price. Section 2.6.2 reduces the amount of surplus delivered energy that the buyer must pay for (if the seller builds more than the contract capacity) from 110% of the contract capacity (the quantity in the ReMAT PPA) to 100% of the contract capacity. A new term is also introduced into Section 2.6.2,

---

[23] PG&E Reply Comments (March 16, 2015) Appendix A, at 1-2, with addition <u>underlined</u>:

> Additionally, Seller may provide Notice to Buyer during Contract Year 1 <u>or Contract Year 2</u> of the Delivery Term to request a one (1)-time decrease to the Contract Quantity for any or all Contract Years in the Delivery Term Contract Quantity Schedule.

providing that the seller must pay for the value of the surplus energy during a period of negative energy prices.[24]

SCE argues that limiting payment to 100% of contract capacity discourages overbuilding of capacity by a generator. The IOUs and ORA further support the proposed changes as being consistent with modifications to the pro forma contract for RPS solicitations approved in D.14-11-042.

AECA, BAC, and Harvest assert that these proposed changes from ReMAT are not required to accommodate particular circumstances of BioMAT generators, and indeed penalize BioMAT generators in particular.

The argument of the IOUs and ORA extends the scope of the change made to the RPS pro forma contract to eliminate payment for surplus generation beyond its reach. D.14-11-042 authorizes these changes to the contract used for the IOUs' annual solicitation for utility-scale RPS-eligible generation. The small generators covered by BioMAT may have more variation in their as-built capacity than the large generators participating in the annual RPS solicitations.[25] Since this change to reduce payment for surplus energy has not been examined in the context of small RPS-eligible generators in the more mature ReMAT

---

[24] Section 2.6.2 as submitted February 9, 2015 provides:

> In no event shall Buyer be obligated to receive or pay for, in any Settlement Interval, any Delivered Energy that exceeds one hundred percent (100%) of Contract Capacity ("Surplus Delivered Energy"), and Seller shall not receive payment for such Surplus Delivered Energy. To the extent Seller delivers such Surplus Delivered Energy in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.

[25] Any variations do not, of course, change the basic statutory eligibility requirements of capacity of not more than three MW. (Section 399.20(B)(1).

program, this proposed change should be rejected. The language in the ReMAT PPA allowing payment for up to 110% of contract capacity should be carried forward in the BioMAT PPA.

The IOUs' proposed language also goes even further than the change to the pro forma solicitation contract by imposing a payment obligation on the seller for excess generation delivered during periods of negative prices. This provision does not appear in ReMAT and has not been approved by the Commission for any RPS contract. The IOUs present no justification for adopting such a novel provision for the first time in the BioMAT PPA. Since the BioMAT contract is intended to carry forward the ReMAT PPA terms, with any adjustments necessary for BioMAT generators, the proposed language on periods of negative prices found in the draft section 2.6.2 should also be rejected. The language of the existing ReMAT section 3.6.2 should be used for section 2.6.2 in the BioMAT PPA.[26]

In draft section 2.6.3, the IOUs propose two changes to the provisions on reductions in price for delivered energy in excess of the annual contract quantity.[27] The first would reduce from 120% (the amount in the ReMAT PPA)

---

[26] This language provides:

> In no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred and ten percent (110%) of Contract Capacity, and the Contract Price for such Delivered Energy in excess of such one hundred and ten percent (110%) of Contract Capacity shall be adjusted to be Zero dollars ($0) per kWh.

[27] The draft language of section 2.6.3 provides:

> In any Contract Year, if the amount of Delivered Energy exceeds one hundred fifteen percent (115%) of the annual Contract Quantity the Contract Price for such Delivered Energy in excess of such one hundred fifteen percent (115%) shall

Footnote continued on next page

to 115% the amount of delivered energy that would trigger reduced compensation to the seller for any additional deliveries. The second is a new provision that would change the compensation for any such additional deliveries to be the lesser of 75% of the contract price (the current ReMAT provision) or the hourly day-ahead (DA) price at the delivery point.

AECA, BAC, and Harvest object that neither of the proposed changes from the ReMAT PPA are necessary to accommodate small bioenergy generators, the standard set in D.14-12-081; further, the proposals are less favorable to BioMAT generators than the ReMAT terms.[28] The IOUs respond that the changes are necessary to avoid the potential for ratepayers paying significant extra costs for baseload BioMAT generation, which is expected to be more expensive than generation participating in ReMAT. The IOUs also note that their proposed language is consistent with provisions approved for the IOUs' utility-scale solicitation contracts in D.14-11-042.

The IOUs' concern about the potential for large payments for excess delivered energy is legitimate, but they have not suggested that it is likely that a BioMAT facility would exceed its annual contract quantity by more than 20%. The changes proposed in draft section 2.6.3 are significant variations from the ReMAT PPA provisions. They should not be added in the BioMAT PPA without having been reviewed in the more mature context of ReMAT.

---

be adjusted to the lesser of (I) or (II) where (I) is seventy-five percent (75%) of the applicable Contract Price and (II) is the hourly DA Price at the Delivery Point.

[28] There is no dispute that the DA price proposed by the IOUs will be significantly lower than 75% of the contract price in almost any circumstance.

The IOUs' draft section 2.6.3 should not be adopted. The language of the existing ReMAT section 3.6.3 should be used for section 2.6.3 of the BioMAT PPA.[29]

2.3.5. Billing and Time of Delivery (Section 2.7.4.)

The draft PPA introduces a new provision in its section 2.7.4.[30] This new provision caps the annual time of delivery (TOD) payments the IOU must make

---

[29] This language provides:

> In any Contract Year, if the amount of Delivered Energy exceeds one hundred twenty percent (120%) of the annual Contract Quantity the Contract Price for such Delivered Energy in excess of such one hundred twenty percent (120%) shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

[30] As submitted by the IOUs, the proposed new section 2.7.4 provides:

> In any Contract Year, if the sum of the Monthly TOD Payments ("Annual TOD Payment") exceeds the product of (A) Delivered Energy (exclusive of Surplus Delivered Energy) and Paid Curtailed Product in such Contract Year multiplied by (B) one hundred and five percent (105%) of the Contract Price ("Annual Maximum TOD Payment"), Seller shall pay Buyer the Excess Payment Amount, as defined below within fifteen (15) days of receipt of Buyer's invoice for such amounts; provided that if Seller fails to pay such amount Buyer may net the Excess Payment Amount from the next following payment that would be due from Buyer to Seller and all subsequent payments until Buyer has recouped the entire Excess Payment Amount.
>
> If Annual TOD Payment > Annual Maximum TOD Payment, Seller refunds the amount resulting from subtracting the Annual TOD Payment from the Annual Maximum TOD Payment which amount shall be the "Excess Payment Amount."
>
> Where Annual TOD Payment = sum of Monthly TOD Payment for each month of the applicable Contract Year, and
>
> Where Annual Maximum TOD Payment = ([Contract Price $] × 1.05 × [Delivered Energy MWhhour + Paid Curtailed Product MWhhour])
>
> For the avoidance of doubt, "Delivered Energy" as used in the formula above excludes Surplus Delivered Energy.

to the generator at 105% of the contract price. The IOUs, supported by ORA, justify this addition by asserting that it will provide incentives for generators to operate according to the IOUs' expectations for baseload facilities, rather than generating more in TOD periods with higher prices. PG&E asserts that a similar provision is part of the PPA for deals that result from annual RPS solicitations.

AECA, BAC, and Harvest object that this provision is an intrusion on the ability of the generation facility to shape its generation to match the TOD schedule. They assert that it is not justified by any prior Commission decision.[31]

The objections to the proposed new section 2.7.4 are well-founded. The IOUs do not present any compelling reasons why this cap in this particular amount, should be imposed on small bioenergy generators. The mere existence of a similar term in the RPS solicitation PPA is not sufficient reason to impose it in the BioMAT program. The IOUs' proposed Section 2.7.4 should be removed.

2.3.6. Green Attributes (Section 3.1.)

The IOUs' draft of section 3.1 includes a requirement that the seller "conveys all Green Attributes associated with all electricity generation for the Project to Buyer as part of the Product being delivered." The term "green attributes" is defined in Appendix A to the draft PPA in a manner identical to the former RPS standard term and condition (STC) 2.[32]

Former STC 2 ("green attributes") was eliminated and replaced by the current STC 2 ("bioenergy transactions") in D.13-11-042 (at 22-25). The current

---

[31] GPI notes in more detail that there is no reason for the IOUs to complain if small bioenergy generators produce energy at higher-value TOD periods, assuming that the PPA price reasonably reflects market values in its TOD structure.

[32] See D.08-08-028, Appendix B.

STC 2 is used verbatim in the IOUs' draft section 3.1.1., captioned Biomethane Transactions.

2.3.6.1. Biomethane Transactions (Section 3.1.1.)

Because section 3.1.1 is self-contained, it will be discussed before the provisions of section 3.1 and the corresponding definition of "green attributes" in Appendix A.

AECA and BAC make proposals to change or augment section 3.1.1 (STC 2). However, as GPI notes, section 3.1.1 (current STC 2) implements a statutory directive that applies to all biomethane transactions "that are credited toward. . . renewables portfolio standard procurement obligations." (Pub. Util. Code § 399.12.6(c)).[33] It is therefore not subject to alteration in the BioMAT PPA.

GPI argues that section 3.1.1 should be removed from the BioMAT PPA because no generation project eligible for the BioMAT PPA will be using biomethane that is delivered to the generation facility through a common carrier pipeline. (See Pub. Util. Code § 399.12.(a)(1).) Although GPI's view may well prove to be accurate, if any such project were to exist, section 3.1.1 would have to be applied to it. Since the presence of section 3.1.1 will not affect any BioMAT-eligible projects that do not use biomethane delivered through a common carrier pipeline, the section can be retained without risk of altering the treatment of any BioMAT-eligible project.

The IOUs' draft of section 3.1.1 should be adopted. It applies only to BioMAT projects using biomethane delivered through a common carrier pipeline (if any such projects are proposed).

---

[33] Pub. Util. Code § 399.12.6 codifies the portions of AB 2196 (Chesbro), Stats. 2012, ch. 605, that relate to this Commission's responsibilities in administering the RPS.

2.3.6.2. Green Attributes (Section 3.1.)

It is not clear how a provision repudiated by the Commission in D.13-11-024 made its way into the BioMAT PPA both as part of the definitions of terms in Appendix A to the draft BioMAT PPA and as an element in at least six other sections of the draft PPA and tariff. As explained in D.13-11-024, once the Legislature made the renewable energy credit (REC) the unit of RPS compliance,[34] and the Commission provided a complete definition of a REC,[35] the "green attributes" STC became superfluous for RPS compliance. (D.13-11-024 at 22-23.) Beyond being superfluous, the "green attributes" STC had become deeply confusing. The Commission stated (at 23) that the "green attributes" term

> ... contains redundant, overlapping, and possibly inconsistent elements, many of which date from the negotiation of the original version of the standard terms and conditions in 2003-2004. The ad hoc accretion of new elements to STC 2 as new requirements or new perspectives on 'green attributes' arise has led to the unintended result that it is virtually impossible to know from reading STC 2 what attributes are actually conveyed in an RPS contract.

The force of this analysis is demonstrated by the range of parties' comments about the elements of the IOUs' draft section 3.1 and 3.1.1. GPI and Placer APCD each propose different changes to the "green attributes" definition. AECA, BAC, GPI, and Harvest each propose changes to section 3.1.1. (biomethane transactions). ORA proposes that the requirements of section 3.1.1. should be applied to all BioMAT projects. AECA, CBD, and the three IOUs

---

[34] This was one part of a set of legislative changes to the RPS program made by SB 107 (Simitian), Stats. 2006, ch. 64; codified in relevant part after enactment at Pub. Util. Code § 399.13. These statutory provisions are now codified at Pub. Util. Code § 399.25.

[35] D.08-08-028.

recommend that the Commission should undertake further examination of the issues raised by these sections, including the science of carbon accounting, possibly through workshops led by Energy Division staff.

It is not necessary to examine the merits of any of these suggestions, because none of them is relevant to the BioMAT PPA or tariff. Following the direction of D.13-11-024, the definition of "green attributes" found in Appendix A to the PPA and the various references to "green attributes" in the draft PPA and tariff simply do not belong in the BioMAT PPA or tariff, in any form.

The Commission has made clear that former STC 2, whose language is used in the "green attributes" definition in Appendix A, "should no longer be required in RPS contracts. Instead, the current language of STC 2 should be eliminated." (D.13-11-024 at 23.) All the terms in the BioMAT PPA are "required," since the contract in a feed-in tariff program is not subject to negotiation; the terms are the same for all participants. Using the "green attributes" language to identify obligations in the BioMAT PPA is, therefore, inconsistent with the mandate of D.13-11-024.

Removing this disfavored language will not have any negative impact on BioMAT generators, the IOUs, or ratepayers. As the Commission pointed out in D.13-11-024, the addition of nonmodifiable STCs REC-1, REC-2, and REC-3[36] by D.10-03-021 (Ordering Paragraph (OP) 35) provides all the language necessary for the seller's obligation to convey RECs to the buyer. Since RECs are the

[36] STC REC-3 is not relevant to the BioMAT PPA, since it applies to REC-only transactions.

measure of RPS compliance, the RPS compliance value of generation pursuant to the BioMAT tariff and PPA is covered by these terms.

Parties seem most concerned about the application of the language on "zero net emissions" in the last sentence of the "green attributes" definition.[37] This language does not have a fixed regulatory meaning. The language is difficult to understand on its own terms, since it postulates that the generation facility will receive "tradable Green Attributes" "attributed to its fuel usage," yet Green Attributes are defined as "attributable to the generation from the Project, and its avoided emission of pollutants." [Emphasis supplied]. Moreover, as D.08-08-028 stated, all renewable and environmental attributes of the generation, including avoided emission of pollutants (including greenhouse gases), are included in the REC.[38] It is thus not at all clear what could constitute compliance with the "zero net emissions" obligation.

---

[37] This sentence reads:

> If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

[38] D.08-08-028, OP 1 provides in part:

> A REC includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, including any avoided emission of pollutants to the air, soil or water; any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, or any other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of global climate change; and the reporting rights to these avoided emissions, such as Green Tag reporting rights.

Such complexities and ambiguities have no place in a standard contract implementing a feed-in tariff for small RPS-eligible bioenergy generators. Even if the Commission had not disapproved the "green attributes" language in D.13-11-024, that language should not be used in the BioMAT standard contract or tariff. Since the language appears in several places in the IOUs' draft PPA, and once in the draft tariff, it must be removed in all places in which it appears outside of the definition in Appendix A (which should be eliminated). In general, "Green Attributes" appears to be used where "RECs" should be. In keeping with D.08-08-028 and D.10-03-021, "RECs" should be substituted in those sections, as follows with deletions in ~~strikethrough~~ and additions <u>underlined</u>:

> Section 3.2:
>
> Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the ~~Green Attributes~~ <u>Renewable Energy Credits</u>, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer's benefit throughout the Delivery Term.
>
> Section 13.8.1:
>
> If Seller terminates this Agreement, as provided in Sections 13.10 or 10.4 (based on a Force Majeure as to which Seller is the Claiming Party), or if Buyer terminates this Agreement as provided in Sections 13.2.2.2 and 12.3.1, or due to an Event of Default of Seller prior to the Guaranteed Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, or enter into a contract to sell, Energy, ~~Green Attributes~~, <u>Renewable Energy Credits</u>, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination ("Restricted Period").

Section 13.8.2:

This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller's Affiliate provides Buyer with a written offer to sell the Energy, ~~Green Attributes~~, Renewable Energy Credits, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer's receipt thereof.

Appendix A: "Energy"

"Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh, net of Station Use and, in the case of Excess Sales arrangements, any Site Host Load. ~~For purposes of the definition of "Green Attributes," the word "energy" shall have the meaning set forth in this definition~~.

Appendix A: "Product"

"Product" means all electric energy produced by the Facility throughout the Delivery Term, net of Station Use, electrical losses from the Facility to the Delivery Point, and, in the case of Excess Sale arrangements, any Site Host Load; all ~~Green Attributes~~; Renewable Energy Credits; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the Facility throughout the Delivery Term.

Tariff Section M.6:

. . . There exist any outstanding obligations owed to [PG&E; SCE; SDG&E] by the Applicant under a previously executed Bio-MAT PPA or other agreement Subsection(s) of the sale of energy, capacity, ~~green attributes~~, renewable energy credits, or other related products, in each case, that relates to either any portion of the site or the interconnection queue position to be utilized by the Project seeking Bio-MAT program participation.

2.3.7. Resource Adequacy Benefits (Section 3.4.3)

A proposed change to the ReMAT contract would allow the seller to obtain full capacity deliverability status (FCDS) for resource adequacy purposes, but only if the buyer is PG&E or SDG&E. Harvest asserts that the ability to obtain FCDS should apply for contracts with SCE as well.

SCE points out that the Commission approved a new plan for SCE's TOD factors that eliminates the separate set of TOD factors for generators that obtain FCDS. (D.14-11-042, OP 14.) Because SCE no longer has a TOD schedule in which a change to FCDS is relevant, Harvest's request is not realistic. Section 3.4.3 should be accepted as proposed by the IOUs.

2.3.8. Participation in Other Programs (Sections 4.3.1. and 5.15)

The draft BioMAT contract carries forward ReMAT language with respect to prohibiting a seller in the BioMAT program from participating in the Self-Generation Incentive Program, the net energy metering program, "and/or other similar California ratepayer subsidized program relating to energy production."

There is a consensus among commenting parties that this language may be read to preclude participation by a BioMAT seller in technology demonstration funding provided through the Electric Program Investment Charge (EPIC) program, established by D.11-12-035 and D.12-05-037.[39] The commenters agree that any such preclusion would be inappropriate, since EPIC is not an energy production incentive program. Further, as BAC, notes, the Commission has required that a portion of EPIC funds be allocated to bioenergy projects.

---

[39] AECA, BAC, Harvest, PG&E, and SCE commented on this issue.

SCE suggests adding the qualifying phrase "(other than grants from the Electric Program Investment Charge)" following "and/or other similar California ratepayer subsidized program relating to energy production." This proposal succinctly resolves the issue identified by the parties and should be accepted.[40]

2.3.9. Fuel Resource Usage in Facility (Section 4.4.)

The IOUs propose an addition to the ReMAT contract that includes provisions related to the fuel source content rules and fuel attestation requirement set in D.14-12-081. (Conclusions of Law 25, 26, 43, 44, 45, 46, 47.) It is necessary for the BioMAT contract to take into account the particular requirements for fuel use that are unique to that program, making such provisions an appropriate variance from the ReMAT PPA.

Harvest asserts that the new provision goes too far in one respect, prohibiting the use "for any purpose" of fuel resources not conforming to the

---

[40] Thus, the language for Section 4.3.1 should read, with additions <u>underlined</u>::

> Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073) and/or other similar California ratepayer subsidized program relating to energy production <u>(other than grants from the Electric Program Investment Charge)</u> or rebated capacity costs with respect to the Facility and Seller does not maintain a Program Participation Request for the Project in the Renewable Market Adjusting Tariff program (as established by CPUC Decision 13-05-034).

The language for Section 5.15 should read, with additions <u>underlined</u>::

> Seller agrees that during the Term of this Agreement it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, Buyer's net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility <u>(other than grants from the Electric Program Investment Charge).</u>

fuel resource category chosen for the generation facility. Harvest points out that use of other fuel may be appropriate (for example, for space heating of a control room). Harvest proposes to eliminate the entire requirement that fuel serving site host load and station use must be from the resource category of the facility's electrical generation for purposes of BioMAT participation.

PG&E and SCE agree that the draft language is too broad, but argue that Harvest's proposal could allow substantial use of nonconforming fuel at a facility. PG&E proposes a revision, supported by SCE, that would focus the fuel use restrictions on output from the generation facility itself that is used for various on-site purposes of the generator.[41] This revision adequately protects the interest of the generator in using electricity for on-site consumption, while preserving the fuel use requirements for the BioMAT program.[42] It should be adopted.

2.3.10. Safety Plan (Section 5.17.)

The IOUs propose an addition to the ReMAT PPA that would require the seller to have a written plan for safety for the facility, reviewed by an independent engineer, before beginning construction.[43]

---

[41] PG&E Reply Comments, at 10.

[42] The revised provision, with additions proposed by PG&E underlined and deletions in ~~strikeout~~, reads:

> Seller hereby represents, warrants and covenants to Buyer that the fuel used to generate electricity and if applicable, Useful Thermal Energy Output ~~at~~ from the Facility to serve Site Host Load, Station Use and generate Energy for sale to Buyer ("Fuel Use") conforms and, throughout the Delivery Term, will conform to the definition of the Fuel Resource Category selected in Section A(i) of the Cover Sheet, subject to the Fuel Resource Requirements outlined in Section 4.4.2.

[43] The proposed text provides:

Footnote continued on next page

BAC, supported by AECA, objects that this proposal is not part of the ReMAT PPA and does not address any need or requirement specific to bioenergy generation, as required by D.14-12-081. SCE asserts that this language was in effect approved by the Commission's acceptance of the section on safety in its 2013 RPS procurement plan. (D.13-11-024, at 11.) SCE states that it includes this language in PPAs routinely since that decision.

Although in general the language and requirements of the BioMAT PPA should not deviate from those of the ReMAT PPA unless necessary to accommodate concerns specific to small bioenergy generation, the requirement for a safety plan is an exception. This provision requires that the generator have a written plan for the safe construction and operation of the facility—a step that is obviously in the interests of everyone concerned with the generation facility, as well as nearby residents and ratepayers as a whole. This provision is consistent with the Commission's focus on safety of the electrical system and should be approved. The Commission expects that the IOU and the generator will cooperate fully and expeditiously in finding an independent engineer acceptable to both.

2.3.11. Seller Curtailment (Section 5.8.4.)

The IOUs propose a non-controversial change to the ReMAT provisions to remove forecasting indicators that do not apply to bioenergy generation

---

Seller shall provide to Buyer, prior to commencement of any construction activities on the site, a report from an independent engineer (acceptable to both Buyer and Seller) certifying that Seller has a written plan for the safe construction and operation of the Facility in accordance with Prudent Electrical Practices.

(e.g., solar irradiance data). The IOUs' draft retains, however, the rest of this section in the ReMAT PPA.[44]

Harvest objects to the proposed estimation technique, pointing out that it is not difficult to figure out in advance the quantities of energy a bioenergy generation facility is likely to produce. Harvest urges that the forecast delivery schedule should be the basis for curtailment by the buyer. SCE defends the IOUs' draft language as a way to avoid generators gaming the amount of curtailment and related payments.

PG&E and SDG&E agree with Harvest that the forecast delivery schedule is the appropriate basis for deciding on curtailment. Since almost by definition there is not an extensive history of generation from small bioenergy generators, it makes sense to use the facility-specific forecasted delivery schedule. The language proposed by PG&E should be adopted.[45]

---

[44] The IOUs' proposal, with changes from ReMAT shown as ~~strikeout~~ for deletions and underline for additions, is:

> Buyer shall estimate the amount of Product the Facility would have been able to deliver under Sections ~~6.8.3~~.5.8.3. Buyer shall apply accepted industry standards in making such an estimate and take into consideration past performance of the Facility~~, meteorological data, solar irradiance data~~, and any other relevant information. Seller shall cooperate with Buyer's requests for information associated with any estimate made hereunder. Buyer's estimates under this Section ~~6.8.4~~5.8.4 for the amount of Product that the Facility would have been able to deliver but for Buyer's issuance of a Curtailment Order will be determined in Buyer's reasonable discretion.

[45] The relevant portion of this section as revised by PG&E (Reply Comments, Appendix A, at 3) reads as follows (deletions shown as ~~strikeouts~~; additions shown as underlines:

> Buyer shall estimate the amount of Product the Facility would have been able to deliver under Sections 5.8.3. by reference to the most recent Day-Ahead Availability notice Buyer has received from Seller at the time of the Curtailment Order. In the event this forecast is not representative of past performance of the Facility, Buyer shall apply accepted industry standards in making such an

Footnote continued on next page

2.3.12. Equipment to Communicate with CAISO (Section 5.8.5.)

The proposed PPA includes a new section that would require BioMAT participants to install both physical and software modifications to communicate directly with CAISO.[46] BAC, supported by AECA and Harvest, objects that this provision is not in the ReMAT PPA and is not required to address any bioenergy-specific issues. The IOUs assert that the provision is necessary in order to provide consistency with changes made to the CAISO tariff and the RPS solicitation PPAs.

The IOUs have indicated their preference for BioMAT participants to install these communication upgrades, but they have not demonstrated that this provision is necessary for small baseload generators. It may be desirable for small generators eventually to have state of the art communication capability, but it is unlikely that small baseload generation of no more than three MW

---

estimate and take into consideration past performance of the Facility and any other relevant information. Seller shall cooperate with Buyer's requests for information associated with any estimate made hereunder. ~~Buyer's estimates under this Section 5.8.4 for the amount of Product that the Facility would have been able to deliver but for Buyer's issuance of a Curtailment Order will be determined in Buyer's reasonable discretion.~~

[46] As submitted by the IOUs, the proposed new section 5.8.5 provides:

> Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer and/or the CAISO, including to implement curtailments as set forth in Section 5.8.1 and in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all steps necessary to become compliant as soon as commercially reasonably possible.

would be instructed by CAISO to curtail deliveries on such a short time line that such communication software would be required for grid reliability.

Because it is an addition to the ReMAT PPA that has not been shown to be necessary for the implementation of the BioMAT program, this draft provision requiring communication upgrades should be removed.

2.3.13. Guaranteed Energy Production (Section 11)

The IOUs propose two versions of this section of the PPA. One, to apply to BioMAT contracts with PG&E and SDG&E, carries forward the ReMAT provisions on guaranteed energy production.[47] For SCE, the IOUs propose that there be no guaranteed energy production requirement for any SCE BioMAT PPAs.[48]

SCE argues that eliminating this provision is necessary because SCE's accounting treatment of BioMAT PPAs that include a guaranteed energy production provision would have a negative impact on its credit rating, and eventually on ratepayers. Specifically, SCE asserts that it is likely that BioMAT PPAs that include a guaranteed energy production term would be classified as capital leases. SCE states that energy payments it makes under PPAs that fall in the category of capital leases are likely to be considered as "debt equivalents" by credit rating agencies, because SCE's obligation to pay is fixed by the PPA. SCE

---

[47] The section applicable to PG&E and SDG&E provides that guaranteed energy production is equal to 180% * average of the Contract Quantity over the Performance Measurement Period (2 years) in MWh * [(Hrs in Performance Measurement Period - Seller Excuse Hrs)/Hrs in Performance Measurement Period.]

[48] SCE also separately filed in R.11-05-005, the predecessor to this proceeding, the Petition of Southern California Edison Company (U 338-E) to Modify Decisions 13-05-034 and 14-12-081, seeking the elimination of the guaranteed energy production requirement in its BioMAT and ReMAT PPAs.

claims that the potential increase in debt equivalents could lead to an increase in the costs of SCE's access to capital. Without the guaranteed energy production term, SCE asserts, the BioMAT PPA is likely to be classified as an operating lease for accounting purposes, which will not trigger any increase in the debt equivalents calculated by credit rating agencies. (SCE Reply Comments at 4-5.)[49]

BAC and Harvest support SCE's request, but argue that the guaranteed energy provision should be removed from all BioMAT PPAs in order to avoid giving projects in SCE's service territory an advantage. BAC argues that such projects would presumably be able to make lower bids than projects in the PG&E and SDG&E service territories, potentially keeping the statewide price at a level at which bidders in the PG&E and SDG&E territories could not compete. In the alternative, BAC proposes that the quantity of energy required to meet the guaranteed energy production term should be reduced.

PG&E notes that its accounting treatment of BioMAT PPAs is different from that of SCE, leading PG&E to conclude that it will not have a similar problem with BioMAT contracts. (PG&E Reply Comments at 2.)

As PG&E and SCE point out, although the price is statewide, the contracts are IOU-specific. Bidders in PG&E's or SDG&E's service territory are competing against each other, not against projects in SCE's territory. BAC's concern about competitive difficulties in the BioMAT market arising solely from any differences in the guaranteed energy production term is highly speculative, and should not drive resolution of this issue.

---

[49] SCE's argument in its Reply Comments is based on and substantially follows the argument made in its petition for modification of D.13-05-034 and D.14-12-081.

More importantly, the possibility that SCE's credit rating would deteriorate because SCE enters into BioMAT PPAs totaling a maximum of 114.5 MW over a period of several years is too remote, and contingent on too many accounting assumptions and external factors, to support removal of the guaranteed energy production provision in the BioMAT PPA. To the extent that SCE has identified a possible problem with its access to capital on reasonable terms, that concern should be raised in a more appropriate Commission forum: the cost of capital proceeding undertaken every three years for the large electric IOUs and Southern California Gas.[50] The guaranteed energy production term should not be removed from SCE's BioMAT PPA in this proceeding.

BAC's alternative proposal is to reduce the calculation of the guaranteed energy production requirement from 180% to 170% of the average contract quantity.[51] This suggested revision is not supported by any quantitative analysis, but by BAC's general concern that actual generation in the early years of a small bioenergy generation facility may be difficult to predict. The Commission considered the issue of generation variability in both R.13-05-034 (for ReMAT) and in D.14-12-081, and prescribed the 180% metric. There is no reason to change that now. Further, as a practical matter, as PG&E points out, there are other

---

[50] The Commission's most recent decision on cost of capital is D.12-12-034. The next cost of capital proceeding will be commenced in 2016, giving SCE adequate time to integrate this issue into its application.

[51] The actual calculation is more complex:

> Guaranteed Energy Production = 180% * average of the Contract Quantity over the Performance Measurement Period (2 years) in MWh) * [(Hrs in Performance Measurement Period - Seller Excuse Hrs)/Hrs in Performance Measurement Period].

ways to manage this problem (e.g., allowing decreases in the contract quantity in the first two years of the contract; see discussion in Section 2.3.3, above.).

The guaranteed energy production term should remain the BioMAT PPA as written, except that the IOUs' proposed substitution of a "0%"multiplication factor for SCE should not be accepted. The guaranteed energy production term, as proposed for PG&E and SDG&E, should be the same for all three IOUs.[52]

2.3.14. Events of Default and Termination (Section 13.)

2.3.14.1. General Provisions (Sections 13.2.1.2.-13.2.1.4.)

The draft BioMAT PPA provisions carry forward the existing ReMAT PPA provisions on events of default and termination without any changes. Harvest proposes a number of changes that would extend the time the seller has to cure in various circumstances; create a "good faith" basis for sellers to continue to try to cure; and would provide an opportunity to contest a declaration of default. Harvest asserts that these changes are needed because bioenergy generation facilities may need more time to cure problems than generation facilities using ReMAT.

The IOUs oppose Harvest's changes. PG&E and SCE claim that the proposed language about good faith efforts would make the section essentially impossible to enforce, and bog down the cure process in attempts to identify a subjective "good faith." SCE claims that the contract already allows a party to

---

[52] This includes the entirety of Section 11, including subsections 11.2 and 11.3 that are noted in the IOUs' draft as deleted for SCE. Since the guaranteed energy production term is not deleted for SCE, the subsections on failure and damages will apply to the BioMAT PPAs of all three IOUs. In addition, Appendix F (Guaranteed Energy Production Damages) should apply to all three IOUs.

invoke the dispute resolution process if the other party seeks to terminate the contract. SDG&E points out that these same provisions in ReMAT contracts have not given rise to any problems in contract administration or enforcement of terms.

Harvest simply asserts that the changes it proposes are likely to be necessary because of particular characteristics of small bioenergy generators. No other party identifies circumstances in which Harvest's proposed changes would solve an actual problem that small bioenergy generators would have with the provisions as proposed. The IOUs' draft section should be accepted.

2.3.14.2. Additional Generating Equipment (Section 13.2.2.8.)

The IOUs' draft carries forward the ReMAT provision that provides that the PPA may be terminated if the seller installs generating equipment that exceeds the contract capacity of the generation facility and does not remove it promptly after notice from the IOU.

AECA recommends that additional generation equipment be allowed if it provides for on-site consumption. PG&E states that buyers need this prohibition so that they can verify that the total installed capacity does not exceed the 3 MW limit for participation in the BioMAT program. SCE points out that AECA does not identify any characteristics of small bioenergy generators, or indeed any other reason, that would justify its proposed change from the ReMAT contract. The provision should be accepted as drafted.

2.3.15. Transmission Costs Termination Right (Section 13.9.1.)

The draft includes new language proposed by SCE that would add a new timing element to the existing ReMAT PPA provision allowing the buyer to terminate the agreement if the interconnection study shows more than $300,000

worth of costs or the need to procure transmission from a third party.[53] SCE asserts that its new language clarifies an ambiguity in the ReMAT language. BAC and Harvest object that the new provision gives the buyer more time in which to terminate the PPA than is allowed under ReMAT, without justification.

Although presented as clarifying, the proposed change to the ReMAT provision introduces other uncertainties and possibilities for manipulation of the timing of a termination. The proposed change should not be accepted, and the existing ReMAT language should be carried forward.

2.3.16. Forecasting Penalties (Section 14.2.1.)

The IOUs propose language for this section that is different from that in the ReMAT section on forecasting penalties.[54] In their reply comments, AECA, BAC, and Harvest object to these changes as not consistent with ReMAT, and indeed as placing more stringent obligations on the seller in order to avoid a large forecasting penalty (150% of the contract price). These parties correctly

---

[53] The proposed section 13.9.1, with the addition to ReMAT PPA underlined:

> Subject to Section 13.9.2, Buyer has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the later of (i) the Execution Date and (ii) the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner if:….

[54] The IOUs' proposed section 14.2.1, with additions to ReMAT PPA underlined and deletions shown as ~~strikethrough.~~

> If in any hour of any month in the Delivery Term Seller fails to comply with the requirements in Appendix D of this Agreement with respect to Seller's ~~Available Capacity~~ Expected Generation Output forecasting, and/or the sum of Energy Deviations for each of the Settlement Intervals in that hour exceed the Performance Tolerance Band described in Section 14.2.2, then Seller is liable for a forecasting penalty ("Forecasting Penalty") equal to one hundred fifty percent (150%) of the Contract Price for each MWh of electric Energy Deviation, or any portion thereof, in that hour.

note that the draft PPA's use of "and/or," rather than "and" in the ReMAT PPA, is an expansion of the seller's obligations for which the IOUs have not provided any justification. The ReMAT "and" should be retained.

The IOUs' draft proposal to use "expected generation output" rather than "available capacity" is not entirely clear. In its comments on the proposed decision (PD), SDG&E clarifies that *forecasting* penalties should be based on *forecasted* generation, not the different concept of "available capacity." This analysis is persuasive. However, because SCE uses "available capacity" in its Appendix D without any comment on this topic, we give each IOU the choice of language in this section only, so long as the language of this section 14.2.1 (Forecasting Penalties) and the Appendix D language on notification are the same.

2.3.17. Forecasting and Outage Notification (Appendix D)

The IOUs propose to use separate forms of notification for each IOU; i.e., three different processes for notification. In their reply comments, AECA, BAC, and Harvest argue that Appendix D should be the same for all IOUs, in order to be fair to all BioMAT generators and reduce inconsistencies.

The differences in processes and forms reflected in the IOUs' proposed Appendix D are similar to those in the ReMAT Appendix D. The commenting parties do not claim that uniformity is uniquely required for the BioMAT program, as distinct from ReMAT. The IOUs' proposed Appendix D should be accepted, with one adjustment requested by PG&E.[55]

---

[55] PG&E requests that a condition be added that the seller needs to notify PG&E only of any changes in expected generation output of one MW or greater. This provision, with PG&E's condition (<u>underlined</u>) included, would read:

Footnote continued on next page

2.3.18. Form of Financing Consent (Appendix I)

Placer APCD asserts that the form of consent proposed by PG&E has a section on Setoffs and Deductions that could create problems for a bioenergy generation facility seeking financing by creating uncertainty about the scope of liability for a financing entity.[56] Placer APCD urges that this section be removed.

Placer APCD's argument is misplaced. All IOUs have an analogous provision, which, as PG&E notes, enable the IOUs to recover funds due to them under the terms of the PPA. The language in the Setoffs and Deductions section does not support Placer APCD's assertion that liability of the financing entity is at issue; the section does provide notice that the potential liabilities of the generator to the IOU are at issue. This section should be accepted as drafted by the IOUs.

2.4. Additional Documents

GPI, supported by Harvest, notes a small omission in the IOUs' draft of the initial fuel attestation.[57] GPI states that the IOUs' draft does not provide for a

---

> During the Delivery Term, Seller shall notify Buyer of any changes in Expected Generation Output <u>of one (1) MW (AC) or more</u> through the method preferred by Buyer, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer is required to submit Hour-Ahead schedules to the CAISO.

[56] The Setoffs and Deductions section provides:

> Each of Seller and Financing Provider agrees that Buyer shall have the right to set off or deduct from payments due to Seller each and every amount due Buyer from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any judgments any defenses or causes of action Buyer may have against Seller.

[57] The IOUs' draft of this form is found at Appendix B-2 to the draft PPA.

fuel use category of "other" or "qualifying but out of category," although D.14-12-081 allows use of fuel outside the project's technology category for up to 20% of fuel. The addition of the "other" line is necessary, but it must be limited to those technology categories for which the use of fuel outside that technology category is allowed. As set out in D.14-12-081, Conclusions of Law 25 and 26, generators in the "dairy bioenergy" category are required to use exclusively dairy waste as the fuel source; all other technology categories may use up to 20% of their fuel from other eligible fuel resources. The IOUs' draft of the initial fuel attestation should be modified to include a line to report the use of "other" fuel for all technology categories other than dairy bioenergy.

2.5. Implementation

The IOUs must implement the BioMAT program promptly. Because the IOUs have had experience with administering the ReMAT program, it is reasonable to require them to open the BioMAT program without undue delay. The following schedule, adapted from but more expeditious than the schedule set for ReMAT in D.13-05-034, will be implemented.

Each IOU must file a Tier 2 Advice Letter (AL) for approval of the BioMAT tariff, the joint standard contract, and the ancillary documents necessary for implementing the BioMAT program, consistent with the terms of this decision, not later than 30 days after the effective date of this decision.[58] Unless an AL is suspended by the Commission, the ALs (and the attached tariffs, standard contract, and ancillary documents) will become effective 30 days after they were filed.

---

[58] The Advice Letters must be served on the entire service list of this proceeding.

The IOUs must begin accepting PPRs for projects on and after the first business day of the month following the date that all three of the ALs have become effective. The IOUs must initiate the first bi-monthly program period on the first business day of the second month after the month in which PPRs are first accepted.[59]

In order to provide flexibility to respond to unexpected events, the Director of Energy Division should be authorized to alter this schedule, within the context of the prompt implementation of the BioMAT program.

3. Next Steps

The most important next steps are those set out above, for the prompt implementation of the BioMAT program.

The parties' discussion of the BioMAT draft tariff and PPA has shown that the ReMAT tariff and PPA could benefit from review in light of recent developments in the RPS program, at CAISO, and with the Commission's approach to distributed renewable generation as a whole. Review and possible updating of the ReMAT program will be taken up at an appropriate point in this proceeding.

Parties have expressed interest, in their comments on BioMAT, in the implications of California's greenhouse gas (GHG) reduction policies for RPS procurement, including both the particular concept of "zero net emissions" of greenhouse gases, as well as accounting for GHG reduction benefits not tied to the generation of the RPS-eligible electricity. This policy issue is encompassed in

---

[59] PG&E, in its comments on the PD, observes that the schedule in the PD would not allow time to correct problems with the initial PPRs. SCE and SDG&E concur. The IOUs' experience with ReMAT justifies their suggestion, which is adopted.

the tasks set out in the scope of this proceeding,[60] and can be addressed in that context.

Parties are also reminded that D.14-12-081 established processes for exploring third-party verification of fuel sources (OP 7); investigation of the BioMAT program if certain price triggers are met (OP 8); and a program review forum (OP 9). Parties may bring to the attention of Energy Division staff any issues that they believe should be addressed in these processes.

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 September 3, 2015 by AECA, BAC, GPI, Harvest, PG&E, Placer APCD, and SDG&E. Reply comments were filed on September 8, 2015 by BAC, Harvest, Phoenix Energy, and Placer APCD, jointly; CBD; PG&E; SCE; and SDG&E.

All comments and reply comments have been carefully considered. The PD has been revised to correct a small number of technical errors and inconsistencies. Revisions have also been made to improve the clarity of the PD.

Assignment of Proceeding

Carla A. Peterman is the assigned Commissioner and Anne E. Simon is the assigned ALJ for this portion of this proceeding.

---

[60] See Scoping Memo and Ruling of Assigned Commissioner (May 22, 2015), at 5 ("Begin consideration of integrating goals and metrics for reducing the emission of greenhouse gases into RPS procurement processes and evaluation").

Findings of Fact

1. The current ReMAT tariff and standard contract provide an appropriate basis for the development of the BioMAT tariff and standard contract.

2. The circumstances of small bioenergy generation facilities eligible for BioMAT is different from that of other RPS-eligible generation facilities eligible for ReMAT in certain important regards.

3. The statewide pricing mechanism for the BioMAT program is different from the pricing mechanism of the ReMAT program.

4. In D.13-11-024, the Commission ended the use of what was at that time STC 2, Green Attributes, as a required term in RPS procurement contracts.

Conclusions of Law

1. Because they are consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections A, B, C, D.1, D.2, D.3, and D.4 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

2. In order to accommodate the possibility that generators eligible for BioMAT could repower using an existing interconnection agreement, Section D.5 of the BioMAT tariff as submitted on February 9, 20115 should be modified to read:

> An Applicant must have passed the Fast Track screens, passed Supplemental Review, completed an [PG&E; SCE; SDG&E] System Impact Study in the Independent Study Process, completed an [PG&E; SCE; SDG&E] Distribution Group Study Phase 1 Interconnection Study in the Distribution Group Study Process, or completed an [PG&E; SCE; SDG&E] Phase 1 Study in the Cluster Study Process for its Project (Interconnection Study, or make use of an existing interconnection Agreement to the extent permitted by [PG&E's; SCE's; SDG&E's] tariffs.

Tariff Section D.5 should be approved as so modified and included in the final BioMAT tariff.

3. In order to clarify the language allocating financial responsibility for any network upgrades in excess of $300,000 incurred in relation to interconnection of a BioMAT-eligible generation facility, Section D.5.a of the BioMAT tariff as submitted on February 9, 20115 should be modified to read:

> The Project must be interconnected to [PG&E's; SCE's; SDG&E's] distribution system, and the Project's most recent Interconnection Study or Interconnection Agreement must affirmatively support the Project's ability to interconnect within twenty four (24) months of the execution of the Bio-MAT power purchase agreement (PPA) Form # XXX-XXXX. To the extent the cost of transmission system Network Upgrades incurred in connection with the Project exceed $300,000, the Applicant will bear the actual costs in excess of $300,000 in accordance with the Bio-MAT PPA.

Tariff Section D.5.a should be approved as so modified and included in the final BioMAT tariff.

4. Because it is consistent with the analogous provision of the ReMAT tariff, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections D.5.b. and D.6 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

5. Because it is consistent with the analogous provision of the ReMAT tariff, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section D.7 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

6. In order to maintain the 3 MW limit on projects but provide for the possibility that there could be several small exporting projects on the same or contiguous property, Section D.8 of the BioMAT tariff as submitted on February 9, 20115 should be modified to read:

> The Applicant must provide to [PG&E; SCE; SDG&E] an attestation that either the Project is the only exporting project being developed or owned or controlled by the Applicant on any single or contiguous pieces of property or, if more than one exporting project is being developed or owned or controlled by the Applicant on any single or contiguous pieces of property, the total aggregated installed capacity of the projects does not exceed 3 MW. [PG&E; SCE; SDG&E] may, in its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of an installation in the same general location that has been or is being developed by the Applicant or the Applicant's Affiliates and the total aggregated installed capacity of the installation is greater than 3 MW.

Tariff Section D.8 should be approved as so modified and included in the final BioMAT tariff.

7. Because it is consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section D.9 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

8. Because it is consistent with the analogous provision of the ReMAT tariff, and because its provisions are required by statute, Section D.10 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

9. In order to clarify the prohibition on the same project occupying a place in the queue for both ReMAT and BioMAT contained in Section D.11 as submitted

on February 9, 2015, Section D.11 of the BioMAT tariff should be modified to read:

> An Applicant may not submit a PPR or maintain a position in the queue for the same Project in both the Renewable Market Adjusting Tariff (Re-MAT) program and the Bio-MAT program. For the purposes of this Section D.11 only, projects that are eligible for ReMAT or BioMAT and that share, utilize, or are based on the same interconnection request, study, or agreement will be considered the same Project.

Tariff Section D.11 should be approved as so modified and included in the final BioMAT tariff.

10. Because they are consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, D.12 and D.13 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

11. In order to remove ambiguities in the language of Section E.1 as submitted on February 9, 2015, Section E.1 of the BioMAT tariff should be modified to read:

> As set forth in Section H of this Schedule, Bio-MAT Contract Prices are determined on a statewide basis among Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (each, an investor owned utility (IOU), and collectively the IOUs); however, each IOU administers its own queues to award Bio-MAT PPAs in its service territory according to Section I of this Schedule. The Applicant will submit a PPR for a Project to the IOU in whose territory the Project is located, and execution of a Bio-MAT PPA will result in the capacity of that Project being attributed to the capacity target for the IOU with which the Bio-MAT PPA was executed, subject to Section G.4 of this schedule. Category 2 (Dairy) and Category 2 (Other Agriculture) are maintained in the same Category 2 queue. However, an Applicant with a Category 2 Project must indicate

> in its PPR whether its Project is (i) Category 2 (Dairy) or (ii) Category 2 (Other Agriculture), for the purposes of establishing a Contract Price as set forth in Section H of this Schedule and establishing the Project's fuel resource requirements as set forth in the Bio-MAT PPA and Section D.12 of this Schedule.

Tariff Section E.1 should be approved as so modified and included in the final BioMAT tariff.

12. Because they are consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections E.2, E.3, and E.4 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

13. Because it is consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section F of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

14. Because they are consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections G.1, G.2, and G.3 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

15. In order to increase the clarity of the provisions related to reallocation of capacity within the BioMAT program, Section G.4 of the BioMAT tariff as submitted on February 9, 2015 should be modified to read:

> Any capacity associated with Bio-MAT PPAs that are terminated prior to the delivery of any electricity to [PG&E; SCE; SDG&E] will be allocated by [PG&E; SCE; SDG&E] to the Fuel Resource Category corresponding to the Fuel Resource Category of the

> terminated Bio-MAT PPA and will not attributed to the total capacity target for [PG&E; SCE; SDG&E]. Any capacity associated with Bio-MAT PPAs that are terminated after the delivery of any electricity to [PG&E; SCE; SDG&E] will not be re-allocated, and will result in the capacity of that project being attributed to the capacity target for [PG&E; SCE; SDG&E].

Tariff Section G.4 should be approved as so modified and included in the final BioMAT tariff.

16. Because they appropriately accommodate the circumstances of generators eligible for BioMAT, Sections H.1, H.2, and H.3 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

17. In order to maintain reasonable consistency with the provisions of the ReMAT tariff and to try to protect ratepayers from the possible negative effects of a very small BioMAT market, Section H.4.a of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

18. In order to provide consistency in the BioMAT market and carry out the requirements of D.14-12-081, Section H.4.b of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

19. Because they are consistent with the analogous provision of the ReMAT tariff, and make appropriate revisions to accommodate the circumstances of generators eligible for BioMAT, Sections H.4.c, H.4.d, H.4.e, H.4.f, H.5, and H.6 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

20. Because they are consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for

BioMAT are not necessary, Sections I.1 and I.2 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

21. In order to provide greater clarity about the process of allocating capacity in the BioMAT program, Section I.3 of the BioMAT tariff as submitted on February 9, 2015 should be modified to read:

> [PG&E; SCE; SDG&E] will award Bio-MAT PPAs to Applicants that meet the Eligibility Criteria in Bio-MAT Queue Number order until the Available Allocation for the Fuel Resource Category is met or Deemed Fully Subscribed. [PG&E; SCE; SDG&E] will input information from the PPR into the Bio-MAT PPA for execution. [PG&E; SCE; SDG&E] will provide written notice to Applicants that are awarded a Bio-MAT PPA within ten (10) business days following the deadline for Applicants to accept or reject the Contract Price. If the Contract Capacity of the next Project that has provided notice to [PG&E; SCE; SDG&E] within ten (10) business days after the first business day of a Period indicating a willingness to execute a Bio-MAT PPA, in Bio-MAT Queue Number order, for a Fuel Resource Category is larger than the remaining Available Allocation for that Fuel Resource Category, that next Applicant will not be awarded a Bio-MAT PPA and [PG&E; SCE; SDG&E] will deem the Available Allocation to be fully subscribed (Deemed Fully Subscribed). Any portion of the Available Allocation Deemed Fully Subscribed shall be counted toward the Statewide Subscription for that Period, but shall not be counted against either the total statewide program cap or [PG&E's; SCE's; SDG&E's] allocated share of that cap, as provided in Section A.

Tariff Section I.3 should be approved as so modified and included in the final BioMAT tariff.

22. Because they are consistent with the analogous provision of the ReMAT tariff, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections I.4, I.5, I.6, I.7, J, K, L, M.1, M.2, M.3, M.4,

and M.5 of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

23. Because it is not consistent with the requirements of D.13-11-024, Section M.6 of the BioMAT tariff submitted on February 9, 2105 should be modified to read:

> There exist any outstanding obligations owed to [PG&E; SCE; SDG&E] by the Applicant under a previously executed Bio-MAT PPA or other agreement related to the sale of energy, capacity, renewable energy credits, or other related products, in each case, that relates to either any portion of the site or the interconnection queue position to be utilized by the Project seeking Bio-MAT program participation.

24. Because they are consistent with the analogous provision of the ReMAT tariff, and appropriately accommodate the circumstances of generators eligible for BioMAT, Sections M.7 and N of the BioMAT tariff should be approved as submitted on February 9, 2015 and included in the final BioMAT tariff.

25. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, the Cover Sheet of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

26. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 1.1 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

27. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of

generators eligible for BioMAT are not necessary, the entirety of Section 1.2 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

28. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 2.1 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

29. Because it is necessary in order to accommodate the circumstances of generators eligible for BioMAT, Section 2.2. of the BioMAT standard contract submitted on February 9, 2105 should be modified to read:

> The "Contract Quantity" during each Contract Year is the amount set forth in the applicable Contract Year in the "Delivery Term Contract Quantity Schedule", set forth in the Cover Sheet, which amount is net of Station Use, and, for Excess Sale arrangements, Site Host Load. Seller shall have the option to decrease the Contract Quantity for any or all Contract Years of the Delivery Term Contract Quantity Schedule one (1) time if the Contract Capacity is adjusted based on the Demonstrated Contract Capacity within ten (10) Business Days of Buyer's Notice of such adjustment to the Contract Capacity or the date of the Engineer Report, as applicable. Additionally, Seller may provide Notice to Buyer during Contract Year 1 or Contract Year 2 of the Delivery Term to request a one (1) time decrease to the Contract Quantity for any or all Contract Years in the Delivery Term Contract Quantity Schedule. Upon Buyer's approval, the adjusted amounts shall thereafter be the applicable Delivery Term Contract Quantity Schedule.

Section 2.2. should be approved as so modified and included in the final BioMAT standard contract.

30. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 2.3, 2.4, 2.5, and 2.6.1 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

31. Because it is not consistent with the analogous provisions of the ReMAT standard contract, and because the revisions made to the ReMAT contract are not necessary to accommodate the circumstances of generators eligible for BioMAT Section 2.6.2 of the BioMAT standard contract submitted on February 9, 2105 should be modified to incorporate the ReMAT provision. As so modified, it should read:

> In no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred ten percent (110%) of Contract Capacity, and the Contract Price for such Delivered Energy in excess of such one hundred and ten percent (110%)of Contract Capacity shall be adjusted to be Zero dollars ($0) per kWh.

Section 2.6.2 should be approved as so modified and included in the final BioMAT standard contract.

32. Because it is not consistent with the analogous provisions of the ReMAT standard contract, and because the revisions made to the ReMAT contract are not necessary to accommodate the circumstances of generators eligible for BioMAT Section 2.6.3 of the BioMAT standard contract submitted on February 9, 2105 should be modified to incorporate the analogous ReMAT provision. As so modified, it should read:

> In any Contract Year, if the amount of Delivered Energy exceeds one hundred twenty percent (120%) of the annual Contract Quantity the Contract Price for such Delivered Energy in excess

> of such one hundred twenty percent (120%) shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

Section 2.6.3 should be approved as so modified and included in the final BioMAT standard contract.

33. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 2.7.1, 2.7.2, and 2.7.3 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

34. Because it is not consistent with the analogous provisions of the ReMAT standard contract, and because the revisions made to the ReMAT contract are not necessary to accommodate the circumstances of generators eligible for BioMAT Section 2.7.4 of the BioMAT standard contract submitted on February 9, 2105 should be removed from the final BioMAT standard contract.

35. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, the entirety of Sections (as numbered in the February 9, 2015 submission) 2.7.5, 2.7.6, 2.7.7, 2.7.8, 2.7.9, 2.7.10, and 2.8 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

36. Because it is not consistent with the requirements of D.13-11-024, Section 3.1 of the BioMAT standard contract submitted on February 9, 2105 should be removed from the final BioMAT standard contract.

37. Because it is consistent with the requirements of D.13-11-024, Section 3.1.1 of the BioMAT standard contract submitted on February 9, 2105 should be

approved as submitted on February 9, 2015 and included in the final BioMAT standard contract, renumbered to be Section 3.1.

38. Because it is not consistent with the requirements of D.13-11-024, Section 3.2 of the BioMAT standard contract submitted on February 9, 2015 should be modified to be consistent with D.13-11-024. As so modified, it should read:

> Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Renewable Energy Credits, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer's benefit throughout the Delivery Term.

Section 3.2 should be approved as so modified and included in the final BioMAT standard contract.

39. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, the entirety of Sections 3.3 (both alternate versions), 3.5, 3.6, and 3.7 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

40. Because it is consistent with the analogous provisions of the ReMAT standard contract as to PG&E and SDG&E, and consistent with D.14-11-042 as to SCE, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 3.4 should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

41. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 4.1 and 4.2 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

42. Because revisions to the analogous provisions of the ReMAT standard contract to accommodate the circumstances of generators eligible for BioMAT are necessary, Section 4.3.1 is revised to read:

> Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073) and/or other similar California ratepayer subsidized program relating to energy production (other than grants from the Electric Program Investment Charge) or rebated capacity costs with respect to the Facility and Seller does not maintain a Program Participation Request for the Project in the Renewable Market Adjusting Tariff program (as established by CPUC Decision 13-05-034).

Section 4.3.1 should be approved as so modified and included in the final BioMAT standard contract.

43. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 4.3.2, 4.3.3, 4.3.4, 4.3.5, 4.3.6, 4.3.7, 4.3.8, 4.3.9, 4.3.10, 4.3.11, 4.3.12, and 4.3.13 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

44. Because revisions to accommodate the circumstances of generators eligible for BioMAT are necessary, Section 4.4.1 of the BioMAT standard contract as submitted on February 9, 2015 should be modified to read:

> Seller hereby represents, warrants and covenants to Buyer that the fuel used to generate electricity and if applicable, Useful

> Thermal Energy Output from the Facility to serve Site Host Load, Station Use and generate Energy for sale to Buyer ("Fuel Use") conforms and, throughout the Delivery Term, will conform to the definition of the Fuel Resource Category selected in Section A(i) of the Cover Sheet, subject to the Fuel Resource Requirements outlined in Section 4.4.2.

Section 4.4.1 should be approved as so modified and included in the final BioMAT standard contract.

45. Because they appropriately accommodate the circumstances of generators eligible for BioMAT, Sections 4.4.2, 4.4.3, and 4.4.4 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

46. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8.1, 5.8.2, and 5.8.3 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

47. Because revisions to accommodate the circumstances of generators eligible for BioMAT are necessary, Section 5.8.4 of the BioMAT standard contract as submitted on February 9, 2015 should be modified to read:

> Buyer shall estimate the amount of Product the Facility would have been able to deliver under Sections 5.8.3 by reference to the most recent Day-Ahead Availability notice Buyer has received from Seller at the time of the Curtailment Order. In the event this forecast is not representative of past performance of the Facility, Buyer shall apply accepted industry standards in making such an estimate and take into consideration past performance of the Facility and any other relevant information. Seller shall cooperate with Buyer's requests for information associated with any estimate made hereunder.

Section 5.8.4 should be approved as so modified and included in the final BioMAT standard contract.

48. Because it is not a provision of the ReMAT standard contract, and because addition of this term to accommodate the circumstances of generators eligible for BioMAT is not necessary, Section 5.8.5 of the BioMAT standard contract as submitted on February 9, 2015 should be removed from the final BioMAT standard contract.

49. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 5.9, 5.10, 5.11, 5.12, 5.13, and 5.14 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

50. Because revisions to the analogous provisions of the ReMAT standard contract to accommodate the circumstances of generators eligible for BioMAT are necessary, Section 5.15 is revised to read:

> Seller agrees that during the Term of this Agreement it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, Buyer's net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility (other than grants from the Electric Program Investment Charge).

Section 5.15 should be approved as so modified and included in the final BioMAT standard contract.

51. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 5.16 of the BioMAT

standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

52. Although there is not an analogous provision in the ReMAT standard contract, Section 5.17 of the BioMAT standard contract as submitted on February 9, 2015 addresses the topic of planning for the safe construction and operation of a BioMAT-eligible generation facility. Because of the importance of planning for safety, Section 5.17 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

53. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, the entirety of Sections 6, 7, 8, 9, and 10 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

54. Because Section 11 of the BioMAT standard contract as submitted on February 9, 2015 is not consistent with the analogous provisions of the ReMAT standard contract with respect to changes for SCE only, and because the changes with respects to SCE are both not necessary to accommodate the circumstances of generators eligible for BioMAT and appropriately considered in another Commission forum, all changes with respect to SCE in the BioMAT standard contract as submitted on February 9, 2015 should be removed from the final BioMAT standard contract.

55. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 12 of the BioMAT

standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

56. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 13.1 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

57. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 13.2.2.1, 13.2.2.2, 13.2.2.3, 13.2.2.4, 13.2.2.5, 13.2.2.6, 13.2.2.7, 13.2.2.8, 13.2.2.9, 13.2.2.10, 13.2.2.11, 13.2.2.12, 13.2.2.13, 13.2.2.14, and 13.2.2.15 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

58. Because revisions to accommodate the circumstances of generators eligible for BioMAT are necessary, Section 13.2.2.16 of the BioMAT standard contract as submitted on February 9, 2015 should be modified to read:

> Seller uses a fuel resource to generate electricity and if applicable, Useful Thermal Energy Output from the Facility that is not one of the Fuel Resource Categories.

Section 13.2.2.16 should be approved as so modified and included in the final BioMAT standard contract.

59. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 13.3, 13.4, 13.5, 13.6, and 13.7 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

60. Because it is not consistent with the requirements of D.13-11-024, Section 13.8.1 of the BioMAT standard contract submitted on February 9, 2105 should be modified to be consistent with D.13-11-024. As so modified, it should read:

> If Seller terminates this Agreement, as provided in Sections 13.10 or 10.4 (based on a Force Majeure as to which Seller is the Claiming Party), or if Buyer terminates this Agreement as provided in Sections 13.2.2.2 and 12.3.1, or due to an Event of Default of Seller prior to the Guaranteed Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, or enter into a contract to sell, Energy, Renewable Energy Credits, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination ("Restricted Period").

Section 13.8.1 should be approved as so modified and included in the final BioMAT standard contract.

61. Because it is not consistent with the requirements of D.13-11-024, Section 13.8.2 of the BioMAT standard contract submitted on February 9, 2105 should be modified to be consistent with D.13-11-024. As so modified, it should read:

> This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller's Affiliate provides Buyer with a written offer to sell the Energy, Renewable Energy Credits, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer's receipt thereof.

Section 13.8.2 should be approved as so modified and included in the final BioMAT standard contract.

62. Because they are consistent with the analogous provision of the ReMAT standard contract, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 13.8.3. and 13.8.4 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

63. Because it is not consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, 13.9.1 of the BioMAT standard contract as submitted on February 9, 2015 should be modified to read:

> Subject to Section 13.9.2, Buyer has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner if:
>
> 13.9.1.1. Such study or agreement as of the date of the termination Notice estimates, includes, indicates, specifies or reflects that the maximum total cost of transmission upgrades or new transmission facilities to any Transmission/Distribution Owner, including costs reimbursed by any Transmission/Distribution Owner to Seller ("Aggregate Network Upgrade Costs"), may in the aggregate exceed Three Hundred Thousand dollars ($300,000.00) ("Network Upgrades Cap"), irrespective of any subsequent amendment of such study or agreement or any contingencies or assumptions upon which such study or agreement is based; or
>
> 13.9.1.2. Buyer must procure transmission service from any other Transmission/Distribution Owner to allow Buyer to Schedule

> Energy from the Facility and the cost of such transmission service is not reimbursed or paid by Seller.

Section 13.9.1 should be approved as so modified and included in the final BioMAT standard contract.

64. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 13.9.2, 13.10 and 14.1 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

65. Because it is not consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Section 14.2.1 of the BioMAT standard contract as submitted on February 9, 2015 should be modified to read:

> If in any hour of any month in the Delivery Term Seller fails to comply with the requirements in Appendix D of this Agreement with respect to Seller's Available Capacity or Expected Generation Output forecasting [choice of one by {PG&E; SCE; SDG&E]; must conform to [PG&E; SCE: SDG&E] Appendix D], and the sum of Energy Deviations for each of the Settlement Intervals in that hour exceed the Performance Tolerance Band described in Section 14.2.2, then Seller is liable for a forecasting penalty ("Forecasting Penalty") equal to one hundred fifty percent (150%) of the Contract Price for each MWh of electric Energy Deviation, or any portion thereof, in that hour.

Section 14.2.1 should be approved as so modified and included in the final BioMAT standard contract.

66. Because they are consistent with the analogous provision of the ReMAT standard contract, and revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Sections 14.2.2, 14.2.3, 14.3, 14.4, 15, 16, 17,

18, and 19 of the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

67. Because it is not consistent with the requirements of D.13-11-024, the definition of "Green Attributes" presented in Appendix A of the BioMAT standard contract submitted on February 9, 2105 should be removed in its entirety.

68. Because they are not consistent with the requirements of D.13-11-024, two definitions presented in Appendix A of the BioMAT standard contract submitted on February 9, 2105 should be modified to be consistent with D.13-11-024. As so modified, they should read:

> "Energy" means three-phase, 60-cycle alternating current electric energy measure in MWh, net of Station Use and, in the case of Excess Sales arrangements, any Site Host Load.
>
> "Product" means all electric energy produced by the Facility throughout the Delivery Term, net of Station Use, electrical losses from the Facility to the Delivery Point, and, in the case of Excess Sale arrangements, any Site Host Load; all Renewable Energy Credits; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the Facility throughout the Delivery Term.

69. Appendix A to the BioMAT standard contract should be approved as modified and included in the final BioMAT standard contract.

70. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Appendices B and C to the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

71. Because it is consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Appendix D to the BioMAT standard contract for SCE and SDG&E should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

72. Because it is generally consistent with the analogous provisions of the ReMAT standard contract, and because PG&E's one proposed modification does not have a negative impact on generators eligible for BioMAT, Appendix D to the BioMAT standard contract for PG&E should be approved as submitted on February 9, 2015, with one modification, which reads:

> During the Delivery Term, Seller shall notify Buyer of any changes in Expected Generation Output of one (1) MW (AC) or more through the method preferred by Buyer, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer is required to submit Hour-Ahead schedules to the CAISO.

Appendix D for PG&E should be approved as so modified and included in the final BioMAT standard contract.

73. Because they are consistent with the analogous provisions of the ReMAT standard contract, and because revisions to accommodate the circumstances of generators eligible for BioMAT are not necessary, Appendices E, G, H, I, J, K-1, K-2, L, and M to the BioMAT standard contract should be approved as submitted on February 9, 2015 and included in the final BioMAT standard contract.

74. In order to conform to the provisions on guaranteed energy production that apply to all three IOUs, Appendix F should be modified to apply to all three IOUs. Appendix F should be approved as so modified and included in the final BioMAT standard contract.

75. In order to conform to the requirements of D.14-12-081, the Initial Fuel Attestation form submitted on February 9, 2015 as Appendix B2 to the BioMAT standard contract should be modified to include a line to report the use of "other" fuel for all technology categories other than dairy bioenergy. The Initial Fuel Attestation Form should be approved as so modified and included in the final BioMAT standard contract.

76. In order to implement the BioMAT program efficiently, the schedule for actions taken by the IOUs to comply with this decision and prepare for the initial program period should provide for expeditious action, without undue delays.

77. In order to accommodate unexpected changes while ensuring the expeditious implementation of the BioMAT program, the Director of Energy Division should be authorized to alter the schedule for the submission of advice letters and program participation requests, and the commencement of the initial BioMAT program period.

78. In order to implement the BioMAT program as soon as possible, 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 the tariff, standard contract, and all ancillary documents necessary to implement the Bioenergy Market Adjusting Tariff program that conform to this decision. The Advice Letter must include both a clean, fully revised final copy of each document, as well as a copy

of each document filed on February 9, 2015, redlined to show the changes made to conform to the requirements of this decision.

2. Not later than the first business day of the month after the Advice Letters including the tariff, standard contract, and all ancillary documents necessary to implement the Bioenegy Market Adjusting Tariff (BioMAT) program are final for each of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each begin accepting program participation requests under the BioMAT tariff.

3. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must initiate the first bi-monthly program period for the the bioenergy feed-in tariff program on the first business day of the second month after the month in which program participation requests are first accepted.

4. The Director of Energy Division is authorized to alter the schedule for the submission of advice letters and program participation requests, and the commencement of the initial Bioenergy Market Adjusting Tariff program period, so long as the program commences expeditiously.

5. Rulemaking 15-02-020 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

INFORMATIONAL TABLE OF STATUS OF PROVISIONS OF PROPOSED TARIFF AND STANDARD CONTRACT ADDRESSED IN THIS DECISION

APPENDIX A

INFORMATIONAL TABLE: STATUS OF PROVISIONS OF PROPOSED TARIFF AND STANDARD CONTRACT ADDRESSED IN THIS DECISION[1]

Tariff Section	Content as submitted by IOUs	PD Result
A	Applicability	Accept
B	Effective Date	Accept
C	Territory	Accept
D.1 to D.4	Subsections of Section D: Eligibility	Accept
D.5	Interconnection Study/Strategically Located: An Applicant must have passed the Fast Track screens, passed Supplemental Review, completed an [PG&E; SCE; SDG&E] System Impact Study in the Independent Study Process, completed an [PG&E; SCE; SDG&E] Distribution Group Study Phase 1 Interconnection Study in the Distribution Group Study Process, or completed an [PG&E; SCE; SDG&E] Phase 1 Study in the Cluster Study Process for its Project (Interconnection Study), or make use of an existing interconnection Agreement to the extent permitted by [PG&E's; SCE's; SDG&E's] tariffs.	Modify as shown
D.5.a	The Project must be interconnected to [PG&E's; SCE's; SDG&E's] distribution system, and the Project's most recent Interconnection Study or Interconnection Agreement must affirmatively support the Project's ability to interconnect within twenty four (24) months of the execution of the Bio-MAT power purchase agreement (PPA) Form # XXX-XXXX. To the extent the cost of transmission system Network Upgrades incurred in connection with the Project exceed $300,000, the Applicant will bear ~~such additional~~ the actual costs in accordance with the Bio-MAT PPA.	Modify as shown
D.5.b-D.7	Subsections of Section D: Eligibility	Accept
D.8	The Applicant must provide to [PG&E; SCE; SDG&E] an	Modify as

[1] This table is provided for ease of reference only. It is not intended to, and does not, replace, change, or supplement the requirements set out in the Conclusions of Law and Ordering Paragraphs of this Decision.

	attestation that either the Project is the only exporting project being developed or owned or controlled by the Applicant on any single or contiguous pieces of property or, if more than one exporting project is being developed or owned or controlled by the Applicant on any single or contiguous pieces of property, the total aggregated installed capacity of the projects does not exceed 3 MW. [PG&E; SCE; SDG&E] may, in its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of an installation in the same general location that has been or is being developed by the Applicant or the Applicant's Affiliates and the total aggregated installed capacity of the installation is greater than 3 MW.	shown
D.9-D.10	Subsections of Section D: Eligibility	Accept
D.11	An Applicant may not submit a PPR or maintain a position in the queue for the same Project in both the Renewable Market Adjusting Tariff (Re-MAT) program and the Bio-MAT program. For the purposes of this Section D.11 only, projects that are eligible for ReMAT or BioMAT and that share, utilize, or are based on the same interconnection request, study, or agreement will be considered the same Project.	Modify as shown
D.12-D.13	Subsections of Section D: Eligibility	Accept
E.1	As set forth in Section H of this Schedule, Bio-MAT Contract Prices are determined on a statewide basis among Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (each, an investor owned utility (IOU), and collectively the IOUs); however, each IOU administers its own queues to award Bio-MAT PPAs in its service territory according to Section I of this Schedule. The Applicant will submit a PPR for a Project to the IOU in whose territory the Project is located, and execution of a Bio-MAT PPA will result in the capacity of that Project being attributed to the capacity target for the IOU with which the Bio-MAT PPA was executed, subject to Section G.4 of this schedule. Category 2 (Dairy) and Category 2 (Other Agriculture) are maintained in the same Category 2 queue. However, an Applicant with a Category 2 Project must indicate in its PPR whether its Project is (i) Category 2 (Dairy) or (ii) Category 2 (Other	Modify as shown

	Agriculture), for the purposes of establishing a Contract Price as set forth in Section H of this Schedule and establishing the Project's fuel resource requirements as set forth in the Bio-MAT PPA and Section D.12 of this Schedule.	
E.2-E.4	Subsections of Section E: Queue Management and PPR	Accept
F	Dates and Program Periods	Accept
G.1-G.3.	Capacity Allocation	Accept
G.4	Any capacity associated with Bio-MAT PPAs that are terminated prior to the delivery of any electricity to [PG&E; SCE; SDG&E] will be allocated by [PG&E; SCE; SDG&E] to the Fuel Resource Category corresponding to the Fuel Resource Category of the terminated Bio-MAT PPA <u>and will not be attributed to the total capacity target for [PG&E; SCE; SDG&E].</u> Any capacity associated with Bio-MAT PPAs that are terminated after the delivery of any electricity to [PG&E; SCE; SDG&E] will not be re-allocated <u>and will result in the capacity of that project being attributed to the capacity target for [PG&E; SCE; SDG&E]</u>.	Modify as shown
H	Price	Accept
I.1.-I.2	Subsections of Section I: Subscription	Accept
I.3	[PG&E; SCE; SDG&E] will award Bio-MAT PPAs to Applicants that meet the Eligibility Criteria in Bio-MAT Queue Number order until the Available Allocation for the Fuel Resource Category is met or Deemed Fully Subscribed. [PG&E; SCE; SDG&E] will input information from the PPR into the Bio-MAT PPA for execution. [PG&E; SCE; SDG&E] will provide written notice to Applicants that are awarded a Bio-MAT PPA within ten (10) business days following the deadline for Applicants to accept or reject the Contract Price. If the Contract Capacity of the next Project that has provided notice to [PG&E; SCE; SDG&E] within ten (10) business days after the first business day of a Period indicating a willingness to execute a Bio-MAT PPA, in Bio-MAT Queue Number order, for a Fuel Resource Category is larger than the remaining Available Allocation for that Fuel Resource Category, that next Applicant will not be awarded a Bio-MAT PPA and [PG&E; SCE; SDG&E] will deem the Available Allocation to be fully subscribed (Deemed Fully Subscribed). Any portion of the Available Allocation	Modify as shown

	Deemed Fully Subscribed shall be counted toward the Statewide Subscription for that Period, but shall not be counted against either the total statewide program cap or [PG&E's; SCE's; SDG&E's] allocated share of that cap, as provided in Section A.	
I.4-I.7.	Subsections of Section I: Subscription	Accept
J	BioMAT PPA	Accept
K	Metering	Accept
L	Special Conditions	Accept
M.1-M.5	Subsections of Section M: Denial of BioMAT Program Participation	Accept
M.6	. . . There exist any outstanding obligations owed to [PG&E; SCE; SDG&E] by the Applicant under a previously executed Bio-MAT PPA or other agreement Subsection(s) of the sale of energy, capacity, ~~green attributes~~, renewable energy credits, or other related products, in each case, that relates to either any portion of the site or the interconnection queue position to be utilized by the Project seeking Bio-MAT program participation.	Modify in relevant part as shown
M.7	Subsection of Section M: Denial of BioMAT Program Participation	Accept
N	Definitions	Accept

PPA Section	Content	PD Result
1.	Commercial Operation Date	Accept
2.1	Subsections of Section 2: Contract Capacity and Quantity; Term; Contract Price; Billing	Accept
2.2.	Contract Quantity. The "Contract Quantity" during each Contract Year is the amount set forth in the applicable Contract Year in the "Delivery Term Contract Quantity Schedule", set forth in the Cover Sheet, which amount is net of Station Use, and, for Excess Sale arrangements, Site Host Load. Seller shall have the option to decrease the Contract Quantity for any or all Contract Years of the Delivery Term Contract Quantity Schedule one (1) time if the Contract Capacity is adjusted based on the	Modify as shown

	Demonstrated Contract Capacity within ten (10) Business Days of Buyer's Notice of such adjustment to the Contract Capacity or the date of the Engineer Report, as applicable. Additionally, Seller may provide Notice to Buyer during Contract Year 1 or Contract Year 2 of the Delivery Term to request a one (1) time decrease to the Contract Quantity for any or all Contract Years in the Delivery Term Contract Quantity Schedule. Upon Buyer's approval, the adjusted amounts shall thereafter be the applicable Delivery Term Contract Quantity Schedule.	
2.3, 2.4, 2.5	Subsections of Section 2: Contract Capacity and Quantity; Term; Contract Price; Billing	Accept
2.6.1	Subsections of Section 2.6: Contract Price	Accept
2.6.2.	In no event shall Buyer be obligated to receive or pay for, in any hour, any Delivered Energy that exceeds one hundred ten percent (110%) of Contract Capacity, and the Contract Price for such Delivered Energy in excess of such one hundred and ten percent (110%) of Contract Capacity shall be adjusted to be Zero dollars ($0) per kWh.	Modify as shown (ReMAT)
2.6.3	In any Contract Year, if the amount of Delivered Energy exceeds one hundred ~~fifteen~~ twenty percent (~~115~~120%) of the annual Contract Quantity the Contract Price for such Delivered Energy in excess of such one hundred ~~fifteen~~ twenty percent (~~115~~ 120%) shall be adjusted to be ~~the lesser of (I) or (II) where (I)~~ is seventy-five percent (75%) of the applicable Contract Price ~~and (II) is the hourly DA Price at the Delivery Point~~.	Modify as shown (ReMAT)
2.7.1 to 2.7.3	Subsections of Section 2.7: Billing	Accept
2.7.4.	In any Contract Year, if the sum of the Monthly TOD Payments ("Annual TOD Payment") exceeds the product of (A) Delivered Energy (exclusive of Surplus Delivered Energy) and Paid Curtailed Product in such Contract Year multiplied by (B) one hundred and five percent (105%) of the Contract Price ("Annual Maximum TOD Payment"), Seller shall pay Buyer the Excess Payment Amount, as defined below within fifteen (15) days of receipt of Buyer's invoice for such amounts; provided that if Seller fails to pay such amount Buyer may net the Excess Payment Amount from the next following payment that would be due from Buyer to Seller and all	Remove

	subsequent payments until Buyer has recouped the entire Excess Payment Amount. If Annual TOD Payment > Annual Maximum TOD Payment, Seller refunds the amount resulting from subtracting the Annual TOD Payment from the Annual Maximum TOD Payment which amount shall be the "Excess Payment Amount." Where Annual TOD Payment = sum of Monthly TOD Payment for each month of the applicable Contract Year, and Where Annual Maximum TOD Payment = ([Contract Price $] × 1.05 × [Delivered Energy MWhhour + Paid Curtailed Product MWhhour]) For the avoidance of doubt, "Delivered Energy" as used in the formula above excludes Surplus Delivered Energy	
2.7.5 to 2.7.10	Subsections of Section 2.7: Billing	Accept
2.8	Title and Risk of Loss	Accept
3.1	Green Attributes	Remove
3.1.1	Biomethane Transactions	Accept
3.2	Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the ~~Green Attributes~~ Renewable Energy Credits, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer's benefit throughout the Delivery Term.	Modify as shown
3.3 to 3.7	Subsections of Section 3: Green Attributes; Resource Adequacy Benefits; ERR Requirements; Qualifying Facility Status	Accept
4.1	Representations and Warranties.	Accept
4.2	General Covenants	Accept

4.3.1.	Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073) and/or other similar California ratepayer subsidized program relating to energy production (other than grants from the Electric Program Investment Charge) or rebated capacity costs with respect to the Facility and Seller does not maintain a Program Participation Request for the Project in the Renewable Market Adjusting Tariff program (as established by CPUC Decision 13-05-034).	Modify as shown
4.3.2 to 4.3.13	Subsections of Section 4.3: Seller's Representations, Warranties and Covenants	Accept
4.4.1	Seller hereby represents, warrants and covenants to Buyer that the fuel used to generate electricity and if applicable, Useful Thermal Energy Output ~~at~~ from the Facility to serve Site Host Load, Station Use and generate Energy for sale to Buyer ("Fuel Use") conforms and, throughout the Delivery Term, will conform to the definition of the Fuel Resource Category selected in Section A(i) of the Cover Sheet, subject to the Fuel Resource Requirements outlined in Section 4.4.2.	Modify as shown
4.4.2 to 4.4.4	Subsections of Section 4.4: Seller's Fuel Resource Category Representations, Warranties and Covenants	Accept
5.1 to 5.7	Subsections of Section 5: General Conditions	Accept
5.8.1 to 5.8.3	Subsections of Section 5.8: Seller Curtailment	Accept
5.8.4.	Buyer shall estimate the amount of Product the Facility would have been able to deliver under Sections 5.8.3 by reference to the most recent Day-Ahead Availability notice Buyer has received from Seller at the time of the Curtailment Order. In the event this forecast is not representative of past performance of the Facility,. Buyer shall apply accepted industry standards in making such an estimate and take into consideration past performance of the Facility and any other relevant information. Seller shall cooperate with Buyer's requests for information associated with any estimate made hereunder. ~~Buyer's estimates under this Section 5.8.4 for the amount of Product that the Facility would have been able to deliver but for Buyer's issuance of a Curtailment Order will be determined in Buyer's reasonable discretion.~~	Modify as shown
5.8.5.	Seller shall acquire, install, and maintain such facilities,	Remove

	communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer and/or the CAISO, including to implement curtailments as set forth in Section 5.8.1 and in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take all steps necessary to become compliant as soon as commercially reasonably possible.	
5.9 to 5.14	Subsections of Section 5: General Conditions	Accept
5.15.	No Additional Incentives. Seller agrees that during the Term of this Agreement it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, Buyer's net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility (other than grants from the Electric Program Investment Charge).	Modify as shown
5.16 to 5.17	Subsections of Section 5: General Conditions	Accept
6	Indemnity	Accept
7	Limitation of Damages	Accept
8	Notices	Accept
9	Insurance	Accept
10	Force Majeure	Accept
11.1	General. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Delivered Energy (including, for purposes of this Section 11, Paid Curtailed Product), as measured in MWh, equal to the product of (x) and (y), where (x) is [one hundred eighty percent (180%)] ~~*[for PG&E and SDG&E]* [zero percent (0%) *[for SCE]*~~]of the average of the Contract Quantity over the Performance Measurement Period and (y) is the	Modify as shown

	difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula: *Guaranteed Energy Production = ~~[180%] [PG&E; SDG&E] [0%][SCE]~~ * average of the Contract Quantity over the Performance Measurement Period in MWh) * [(Hrs in Performance Measurement Period - Seller Excuse Hrs) / Hrs in Performance Measurement Period]*	
11.2	GEP Failures. If Seller has a GEP Failure, then within ninety (90) days after the last day of the last month of such Performance Measurement Period, Buyer shall notify Seller of such failure. Seller shall cure the GEP Failure by delivering to Buyer GEP Damages, calculated pursuant to Appendix F, within thirty (30) days of receipt of the Notice. ~~[Delete for SCE]~~	Modify as shown
11.3	The Parties agree that the damages sustained by Buyer associated with Seller's failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages. ~~*[Delete for SCE]*~~	Modify as shown
12	Credit and Collateral Requirements	Accept
13.1	Subsection of Section 13: Events of Default and Termination	Accept
13.2.2.1 to 13.2.2.15	Subsection of Section 13: Events of Default	Accept
13.2.2.16.	Seller uses, ~~for any purpose~~, a fuel resource <u>to generate electricity and if applicable, Useful Thermal Energy Output</u> ~~at~~ from the Facility that is not one of the Fuel Resource Categories.	Modify as shown
13.3 to 13.7	Subsection of Section 13: Events of Default and Termination	Accept

13.8.1	If Seller terminates this Agreement, as provided in Sections 13.10 or 10.4 (based on a Force Majeure as to which Seller is the Claiming Party), or if Buyer terminates this Agreement as provided in Sections 13.2.2.2 and 12.3.1, or due to an Event of Default of Seller prior to the Guaranteed Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, or enter into a contract to sell, Energy, ~~Green Attributes,~~ Renewable Energy Credits, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination ("Restricted Period").	Modify as shown
13.8.2	This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller's Affiliate provides Buyer with a written offer to sell the Energy, ~~Green Attributes,~~ Renewable Energy Credits, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer's receipt thereof	Modify as shown
13.8.3 and 13.8.4	Subsections of Section 13.8: Right of First Refusal	Accept
13.9.1	Subject to Section 13.9.2, Buyer has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on ~~or before the later of (i) the Execution Date and (ii)~~ the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study or the interconnection agreement tendered to Seller by the CAISO or the Transmission/Distribution Owner if:	Modify as shown (ReMAT)
13.9.1.1 and 13.9. 1.2	Subsections of Section 13.9: Transmission Costs Termination Right	Accept
13.9.2	Subsections of Section 13.9: Transmission Costs Termination Right	Accept
13.10	Permit Termination Right	Accept
14.1	Scheduling Coordinator	Accept

14.2.1.	Determining Seller's Liability for Forecasting Penalties. If in any hour of any month in the Delivery Term Seller fails to comply with the requirements in Appendix D of this Agreement with respect to Seller's Available Capacity or Expected Generation Output forecasting [choice of one by [PG&E; SCE; SDG&E]; must conform to [PG&E; SCE; SDG&E] Appendix D], and~~/or~~ the sum of Energy Deviations for each of the Settlement Intervals in that hour exceed the Performance Tolerance Band described in Section 14.2.2, then Seller is liable for a forecasting penalty ("Forecasting Penalty") equal to one hundred fifty percent (150%) of the Contract Price for each MWh of electric Energy Deviation, or any portion thereof, in that hour.	Modify as shown
14.2.2 and 14.2.3	Subsections of Section 14.2: Forecasting Penalties and CAISO Penalties	Accept
14.3 and 14.4	Subsections of Section 14: Scheduling Coordinator; Forecasting Penalties; CAISO Charges; Governmental Charges	Accept
15	Release of Information and recording Conversation	Accept
16	Assignment	Accept
17	Governing Law	Accept
18	Dispute Resolution	Accept
19	Miscellaneous	Accept
Appendix A	"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere1; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights.	Remove

	Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.	
Appendix A	"Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh, net of Station Use and, in the case of Excess Sales arrangements, any Site Host Load. ~~For purposes of the definition of "Green Attributes," the word "energy" shall have the meaning set forth in this definition.~~	Modify as shown
Appendix A	"Product" means all electric energy produced by the Facility throughout the Delivery Term, net of Station Use, electrical losses from the Facility to the Delivery	Modify as shown

	Point, and, in the case of Excess Sale arrangements, any Site Host Load; all ~~Green Attributes~~; Renewable Energy Credits; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the Facility throughout the Delivery Term.	
Appendix C	Time of Delivery Periods and Payment Allocation Factors	Accept
Appendix D SCE and SDG&E	Forecast and Outage Notification	Accept
Appendix D PG&E	Forecast and Outage Notification requirements During the Delivery Term, Seller shall notify Buyer of any changes in ~~Available Capacity~~ and Expected Generation Output of one (1) MW (AC) or more through the method preferred by Buyer, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour before Buyer is required to submit Hour-Ahead schedules to the CAISO.	Modify as shown
Appendix E	Telemetry Requirements	Accept
Appendix F	Guaranteed Energy Production Damages	Modify to apply to all three IOUs
Appendix G	Form of Letter of Credit	Accept
Appendix H	Form of General Consent to Assignment	Accept
Appendix I	Form of Financing Consent to Assignment	Accept
Appendix J	Procedure for Demonstration of Contract Capacity	Accept
Appendix K-1	Cogeneration Data Reporting Form	Accept
Appendix K-2	Fuel Use Standards	Accept
Appendix L	Form of Annual Fuel Attestation	Accept
Appendix M	Fuel Resource Failure Cure Requirements	Accept
Appendix B-2	Proposed Joint Initial Fuel Resource Attestation Add line for "other" fuel use for all technology categories except Dairy	Modify as described

(End of Appendix A)