

Decision 16-10-025 October 27, 2016

**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 IMPLEMENTING PROVISIONS OF GOVERNOR'S  
PROCLAMATION OF A STATE OF EMERGENCY RELATED TO  
TREE MORTALITY AND SENATE BILL 840 RELATED TO THE  
BIOENERGY FEED-IN TARIFF IN THE RENEWABLES  
PORTFOLIO STANDARD PROGRAM**

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**Summary**

This decision adds specific new features to the bioenergy feed-in tariff, or market adjusting tariff (BioMAT), for the California renewables portfolio standard established by Senate Bill (SB) 1122 (Rubio), Stats. 2012, ch. 612, as implemented by the Commission in Decision (D.) 14-12-081 and D.15-09-004.<sup>1</sup> The additional provisions for the BioMAT program set out in this decision respond to the tree mortality emergency identified in the Governor's Proclamation of a State of Emergency (October 30, 2015) (Emergency Proclamation) and to amendments made to Pub. Util. Code § 399.20 by SB 840, Stats. 2016, ch. 341.

This decision:

- Clarifies that the BioMAT category of "bioenergy using byproducts of sustainable forest management" (Category 3) includes fuel obtained from high hazard zones (HHZ) designated in accordance with the Emergency Proclamation by the California Department of Forestry and Fire Protection;
- Temporarily accelerates the program periods for BioMAT Category 3 from bimonthly to monthly;
- Implements SB 840 by allowing developers of Category 3 generation facilities to maintain their eligibility to bid in the BioMAT process once they have met the initial interconnection study requirements, even if they do not hold an active position in the interconnection queue;

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<sup>1</sup> The provisions of SB 1122 are codified at Pub. Util. Code § 399.20(f).

- Requires a developer that exits the interconnection queue to make a deposit of three times the fee for an initial interconnection study (currently \$30,000), with the investor-owned utility (IOU) for each project that the developer wishes to remain in the BioMAT bidding queue, with the deposit to be refunded upon the developer's execution of a BioMAT standard contract with the IOU;
- Requires Category 3 generation facilities to provide both quarterly and annual informational reports to the IOU with which they contract on the proportion of fuel from HHZ used at the facility in the reporting year, and the IOU promptly to send each HHZ fuel use report to the Director of Energy Division;
- Updates the requirement set in D.14-12-081 that Energy Division staff hold a workshop on third-party verification of fuel use by Category 3 generation facilities to include third-party verification of HHZ fuel-use informational reports provided to IOUs by generation facilities in Category 3; and
- Requires each IOU to file a Tier 2 advice letter incorporating the changes made by this decision into its BioMAT tariff, standard contract, and ancillary documents within 30 days of the effective date of this decision.

## **1. Procedural History**

Senate Bill (SB) 1122 (Rubio), Stats. 2012, ch. 612, created a new bioenergy feed-in tariff within the procurement programs of the renewables portfolio standard (RPS) program.<sup>2</sup> The Commission began its implementation of SB 1122 with Decision (D.) 14-12-081, which, among other things, allocated the capacity targets for each investor-owned utility (IOU) set by SB 1122, defined the categories of bioenergy sources set out in the legislation, and set the tariff price and mandated a process for periodically adjusting the price. Pursuant to

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<sup>2</sup> The provisions of SB 1122 are codified at Pub. Util. Code § 399.20(f). All further references to sections are to the Public Utilities Code unless otherwise specified.

direction in D.14-12-081, in February 2015 the IOUs filed and served their Joint Submission of Proposed Tariffs and Standard Forms to Implement SB 1122.<sup>3</sup> The Commission approved modified versions of the proposed tariffs and forms in D.15-09-004. The first program period for the BioMAT program opened February 1, 2016.

After the Commission approved the BioMAT standard tariff and contracts<sup>4</sup>, the Governor issued a Proclamation of a State of Emergency (October 30, 2015) (Emergency Proclamation) to address the impacts of extensive tree mortality due to the extended drought in California and resulting epidemic infestation of mountain forests by bark beetles. The Emergency Proclamation includes direction to this Commission to take action to increase the use of fuel from high hazard zones (HHZ) in bioenergy facilities, “including . . . consideration of adjustments to the BioMAT program.”<sup>5</sup>

In response to the Emergency Proclamation, Energy Division staff developed a Staff Proposal to Implement Governor’s Emergency Proclamation on Tree Mortality by Making Targeted Changes to the Bioenergy Market Adjusting Tariff (BioMAT) Program to Facilitate Contracts with Facilities Using Fuel from High Hazard Zones (February 12, 2016) (Staff Proposal). The Staff Proposal was accepted into the record of this proceeding and parties were asked to comment on it by the Administrative Law Judge’s (ALJ) Ruling: (1) Accepting into the Record the Energy Division Staff Proposal to Implement Governor’s Emergency Proclamation on Tree Mortality by Making Targeted Changes to the

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<sup>3</sup> The IOUs named the tariff BioMAT, a designation that the Commission adopted.

<sup>4</sup> The standard contract is often referred to as a power purchase agreement (PPA), and both terms are used in this decision.

<sup>5</sup> The Emergency Proclamation may be found at [www.gov.ca.gov/docs/10.30.15\\_Tree\\_Mortality\\_State\\_of\\_Emergency.pdf](http://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf).

Bioenergy Market Adjusting Tariff (BioMAT) Program to Facilitate Contracts with Facilities Using Fuel from High Hazard Zones and (2) Seeking Comment on Staff Proposal (February 12, 2016). Comments were filed on February 26, 2016; reply comments were filed on March 7, 2016.<sup>6</sup>

In its comments on the Staff Proposal, BAC made a proposal for significant changes to the interconnection process for BioMAT projects.<sup>7</sup> The Administrative Law Judge's Ruling Requesting Supplemental Comment on Interconnection Issues Related to the Bioenergy Feed-In Tariff under the California Renewables Portfolio Standard and Stating Intention to Take Official Notice of Documents (May 6, 2016) (Interconnection Ruling) asked parties to comment specifically on the BAC interconnection proposal, as well as to present any objections to documents proposed for official notice pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure.<sup>8</sup> Comments were filed on May 25, 2016; reply comments were filed on June 3, 2016.<sup>9</sup>

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<sup>6</sup> Comments were filed by Bioenergy Association of California (BAC), Center for Biological Diversity (CBD), Office of Ratepayer Advocates (ORA), Pacific Gas and Electric Company (PG&E), Phoenix Energy, Placer County Air Pollution Control District (Placer APCD), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).

Reply comments were filed by BAC; CBD; Green Power Institute (GPI); ORA; PG&E; Placer APCD; SCE; SDG&E; Shell Energy North America (US), L.P., City of Lancaster, Marin Clean Energy, Sonoma Clean Power Authority, Direct Access Customer Coalition, and Alliance for Retail Energy Markets (jointly) (collectively, DA/CCA Parties); and the Watershed Research and Training Center (March 8, 2016, by permission of the ALJ).

<sup>7</sup> BAC Comments on Administrative Law Judge's Ruling on the Staff Proposal to Implement the Governor's Emergency Proclamation on Tree Mortality and Seeking Comment on the Staff Proposal, at 11-16 (BAC interconnection proposal).

<sup>8</sup> All further references to Rules are to the Rules of Practice and Procedure, unless otherwise specified.

<sup>9</sup> Comments were filed by Agricultural Energy Consumers Association; BAC; Clean Coalition; PG&E; SCE; and SDG&E.

Reply comments were filed by BAC; ORA; PG&E; Placer APCD; SCE; and SDG&E.

As part of the state budget process for 2016-2017, in August 2016 the Legislature enacted SB 840, Stats. 2016, ch. 341 which, among other things, amended Section 399.20(f) to revise the eligibility requirements for participation in BioMAT.<sup>10</sup> While SB 840 was under consideration in the Legislature, the ALJ requested comments on the then-current provisions of the bill in the Administrative Law Judge's Ruling Requesting Comment on Implementation of Potential Legislative Changes related to the Bioenergy Feed-in Tariff under the California Renewables Portfolio Standard and Taking Official Notice of Documents (SB 840 Ruling) (August 17, 2016).<sup>11</sup> Comments were filed on August 24, 2016. Reply comments were filed on August 31, 2016.<sup>12</sup>

## **2. Discussion**

### **2.1. Introduction**

This decision is responsive to the Emergency Proclamation's direction in its Paragraph 9 to undertake "consideration of adjustments to the BioMAT program," and to "evaluate the need for revisions to the [BioMAT] program to facilitate contracts for forest bioenergy facilities."<sup>13</sup> This decision implements

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<sup>10</sup> Governor Brown signed SB 840 on September 13, 2016. Section 399.20(f), with the amendments made by Section 9 of SB 840 shown as underlined, is reproduced in Appendix A of this decision.

<sup>11</sup> The legislation did not change between the version current on August 17, 2016 and the version enacted on August 24, 2016. Assembly Bill 1612, the other proposed bill covered by the SB 840 Ruling, was not enacted.

<sup>12</sup> Comments were filed by BAC, Clean Coalition, PG&E, L. Jan Reid (Reid), SDG&E, and SCE. Reply comments were filed by BAC, ORA, PG&E, and SDG&E.

<sup>13</sup> In full, Paragraph 9 of the Emergency Proclamation provides:

The California Public Utilities Commission shall take expedited action to ensure that contracts for new forest bioenergy facilities that receive feedstock from high hazard zones can be executed within six months, including initiation of a targeted renewable auction mechanism and consideration of adjustments to the BioMAT Program defined pursuant to Public Utilities Code section 399.20. No later than six months after the

changes to the BioMAT program in response both to the Emergency Proclamation and to SB 840. This decision addresses changes that are most closely connected to the Emergency Proclamation and most narrowly focused on the aspects of the BioMAT program that relate to procurement from RPS-eligible generation facilities<sup>14</sup> that obtain their fuel from “byproducts of sustainable forest management.” (Section 399.20(f)(2)(A)(iii).) Other legislatively authorized changes that affect the entire BioMAT program, including biogas from various sources (Category 1) and dairy and other agricultural bioenergy (Category 2), will be the subjects of further development of the record and subsequent Commission decisions. We do not believe it to be efficient or prudent to delay implementation of changes to the forest bioenergy component of the BioMAT program while we develop the record for implementation of any additional changes to the entire program.

## **2.2. Staff Proposal for Adjustments to BioMAT Program**

In the Staff Proposal to implement the Emergency Proclamation, Energy Division staff identified several possible changes to the BioMAT program. Briefly summarized, the Staff Proposal:

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BioMAT program begins, the California Public Utilities Commission shall evaluate the need for revisions to the program to facilitate contracts for forest bioenergy facilities.

BAC asserts in its comments on the PD that the Commission has somehow failed to meet a claimed "requirement that new contracts be executed within six months" (BAC Comments on Proposed Decision at 2-3.) This claim is negated by the clear direction in the second sentence of Paragraph 9 that the Commission must "evaluate the need for revisions" to the BioMAT program, with no particular outcome mandated.

<sup>14</sup> The RPS program is codified at Pub. Util. Code. §§ 399.11-399.32.

- Identifies a method for defining HHZ for purposes of the BioMAT program;<sup>15</sup>
- Proposes that fuel from HHZ be expressly included in the eligible fuels for Category 3 facilities;
- Develops two options for imposing a surcharge or premium on the BioMAT contract price for generation facilities that use fuel from HHZ:
  - 1) 40% surcharge on BioMAT starting price of \$127.72/megawatt-hour (MWh) (*i.e.*, \$167.72/MWh) for generation using at least 80% fuel from HHZ, for the duration of the use of at least 80% HHZ fuel; if 80% HHZ fuel no longer used, price reverts to \$127.72.
  - 2) Fixed price of \$160/MWh for full contract term for facilities using at least 80% HHZ fuel for at least the first half of the contract term;
- Clarifies that, in order to maintain a position in the queue for a BioMAT contract, a project must maintain an active position in the relevant interconnection queue after having taken the first step in the applicable interconnection process (Fast Track, system impact study, phase one study).

### **2.2.1. High Hazard Zones**

Paragraph 1 of the Emergency Proclamation provides:

The Department of Forestry and Fire Protection, the California Natural Resources Agency, the California Department of Transportation, and the California Energy Commission shall immediately identify areas of the State that represent high hazard zones for wildfire and falling trees using best available science and geospatial data.

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<sup>15</sup> As noted above, this recommendation was implemented by taking official notice of documents that graphically depict the high hazard zones designated in accordance with the Emergency Proclamation.

Official notice was taken in this proceeding of the online map viewer that identifies HHZ as required by the Emergency Proclamation.<sup>16</sup>

### **2.2.2. Byproducts of Sustainable Forest Management**

Section 399.20(f)(2)(A)(iii) identifies “bioenergy using byproducts of sustainable forest management” as an eligible fuel source for generation facilities seeking to participate in the BioMAT program.<sup>17</sup> In D.14-12-081, the Commission implemented this eligibility criterion. (D.14-12-081, Ordering Paragraph (OP) 1.) Although the source of authority for designating HHZ is the Emergency Proclamation, the use of fuel from these forested areas is congruent with BioMAT requirements for forest bioenergy projects. In order to avoid creating unnecessary ambiguities in fuel eligibility requirements, it is reasonable to make explicit the eligibility of HHZ fuel in the BioMAT program. No party opposes the eligibility of HHZ fuel for Category 3 BioMAT facilities.<sup>18</sup> Therefore, the

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<sup>16</sup> Administrative Law Judge’s Ruling Requesting Comment on Implementation of Potential Legislative Changes related to the Bioenergy Feed-in Tariff under the California Renewables Portfolio Standard and Taking Official Notice of Documents (August 17, 2016).

The documents of which official notice was taken are:

- a. Letter from Ken Pimlott, Director of California Department of Forestry and Fire Protection to Michael Picker, President of the California Public Utilities Commission, dated April 6, 2016. The letter may be found at: [http://www.fire.ca.gov/treetaskforce/downloads/HHZ\\_1tr\\_toCPUC-President\\_Picker.pdf](http://www.fire.ca.gov/treetaskforce/downloads/HHZ_1tr_toCPUC-President_Picker.pdf).
- b. The mapped geospatial data defining high hazard zones available in GIS Map Viewer, as referred to the Pimlott letter. The current map viewer may be found at <Http://egis.fire.ca.gov/TreeMortalityViewer/>. The map is updated periodically as new information becomes available.

<sup>17</sup> This category of eligibility is often called “forest bioenergy” or “Category 3,” usages that will be followed in this decision.

<sup>18</sup> In its comments on the PD, CBD suggests that HHZ fuel should also independently meet one of the criteria for Category 3 fuel set out in D.14-12-081. (CBD's Opening Comments on

eligible fuel sources under Section 399.20(f)(2)(A)(iii) include fuel taken from HHZ identified by the Department of Forestry and Fire Protection (CALFIRE) and the other designated agencies, in accordance with the Emergency Proclamation.<sup>19</sup>

In their advice letters implementing the changes to the BioMAT tariff and standard contract made by this decision, the IOUs must include fuel from HHZ as an eligible fuel source under Category 3 of the BioMAT program.

### **2.2.3 Pricing Adjustments in the Staff Proposal**

The Staff Proposal presents two plans for increasing the price offered in a BioMAT contract if the generator uses a high proportion of HHZ fuel for a specified period of time. Neither plan garnered significant support from the parties. Only SCE and ORA find merit in the first option that would pay a premium as long as the generator met the requirements for HHZ fuel use. ORA suggests a variant, in which the surcharge would vary from \$10/MWh for using 20% fuel from HHZ to \$40/MWh for using at least 80% fuel from HHZ. The three IOUs support the concept of a sliding-scale incentive.

In their comments on the Staff Proposal, BAC, CBD, Phoenix Energy, and Placer APCD object to any scheme that creates the potential for significant

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Proposed Decision at 2-4.) This proposal would, in most circumstances, be duplicative, adding expense and complexity to a program meant for small generation facilities. To the extent that CBD is suggesting that the HHZ designations made by CALFIRE and the other agencies are not connected to sustainable forest management, evaluating the merits of that claim is beyond the scope of this decision.

<sup>19</sup> The most current HHZ are identified in the map viewer referenced in footnote 16, above. New Section 399.20.3(a) identifies and defines “Tier 1 high hazard zone[s]” and “Tier 2 high hazard zone[s]” for purposes of new Section 399.20.3, which was added by SB 859, Stats. 2016, ch. 368. Both tiers of HHZ are shown on the map viewer.

variability in the price over the course of the contract.<sup>20</sup> SCE asserts that the second option, which would make the surcharge permanent after half the contract term, could lead to excessive payment if the tree mortality emergency ends before the BioMAT contract.<sup>21</sup>

Several parties urge that the Commission should rely on the existing BioMAT market adjusting price mechanism to manage the pricing of contracts during the tree mortality emergency. (See D.14-12-081, OPs 5, 8, 9 for the pricing mechanism.)<sup>22</sup> Several parties make proposals for different ways of dealing with the price structure for Category 3 projects. BAC suggests that either an annual inflation adjustment should be created, or the surcharge for the first option in the Staff Proposal should be \$60/MWh (\$187.72/MWh total price).

Alternatively, if the price for contracts using HHZ fuel is not augmented, BAC suggests that the Commission change the BioMAT price adjustment process in two ways:

1. Allow the price to adjust monthly, rather than bimonthly;
2. Reduce the minimum number of statewide bidders required to trigger a price adjustment from three to two as long as the Emergency Proclamation remains in effect.<sup>23</sup>

Placer APCD supports an inflation adjustment but not a premium for using HHZ fuels. Instead, Placer APCD and GPI support changing the program periods

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<sup>20</sup> BAC Comments on Staff Proposal at 6-7; CBD Comments on Staff Proposal at 8-9; Phoenix Energy Comments on Staff Proposal at 6-7; Placer APCD Comments on Staff Proposal at 4-5.

<sup>21</sup> SCE Comments on Staff Proposal at 6.

<sup>22</sup> Parties taking this view include CBD (Comments on Staff Proposal at 11); PG&E (Comments on Staff Proposal at 6-7), and SDG&E (Reply Comments on Staff Proposal at 5-6). GPI points out that, at the time comments were filed, the BioMAT program was so new that it is not possible to determine whether any adjustment to the BioMAT pricing mechanism would be necessary to respond to the tree mortality emergency. (GPI Reply Comments on Staff Proposal at 2.)

<sup>23</sup> BAC Comments on Staff Proposal at 10.

from bimonthly to monthly. Placer APCD also proposes that the minimum number of statewide bids in Category 3 be kept at three bidders, without the adjustment to five bidders after a contract is accepted. (D.14-12-081, Conclusions of Law 36, 37.)<sup>24</sup>

The surcharge plans in the Staff Proposal do not have support from very many parties. The concerns raised about the difficulties of administering a variable price for one segment (Category 3) of a feed-in tariff program are significant. ORA's sliding-scale concept has the same difficulties, compounded by allowing variation in the percentage of HHZ fuel used.

In deciding what, if any, adjustments to make to the BioMAT pricing structure, it is important to remember that BioMAT is a relatively new program, directed to new construction of small bioenergy generation facilities using fuels identified in Section 399.20(f), as implemented by D.14-12-081. Adding a surcharge for using HHZ fuel to the program would require complex accounting for the percentage of HHZ fuel used, as well as for the actual surcharges justified by the generation facilities' operations. It would also require more emphasis on the task of fuel use verification, since both eligibility and compensation of the generator would be linked to accurate accounting for fuel usage.<sup>25</sup>

In making adjustments to BioMAT pricing for Category 3 projects, the Commission must balance a number of factors, including: addressing the tree mortality emergency; ensuring that the BioMAT program is effective in developing new bioenergy generation resources; protecting ratepayers' interests; and minimizing unnecessary administrative burdens. Although the BioMAT

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<sup>24</sup> Placer APCD Reply Comments on Staff Proposal at 7; GPI Reply Comments on Staff Proposal at 5.

<sup>25</sup> The fuel use verification issue was identified in D.14-12-081, but work to resolve the issue has not been concluded. See Next Steps, below.

program is too new to provide direct evidence of the possible effect of a more complex pricing system on the ability of projects to obtain financing, the comments suggesting that there could be such difficulties should be considered.<sup>26</sup> It is reasonable for the Commission to be wary of weighing down the Category 3 contracting process with contingencies and variability, when a major motivation for making changes in the BioMAT program is to increase the likelihood that Category 3 projects will come on line quickly to aid in meeting the goals of the Emergency Proclamation.

In light of these considerations, we take an approach consistent with the current BioMAT program elements. The BioMAT pricing structure should be maintained, without the complications attendant on incentives for the use of HHZ fuel. However, temporarily accelerating the price adjustment mechanism for Category 3 projects is an appropriate response to the Emergency Proclamation. We therefore change the program periods for Category 3 to monthly, rather than bimonthly, intervals. This will allow more opportunities for Category 3 projects to bid into the BioMAT program sooner rather than later, and allow a more granular reflection of market conditions for projects using byproducts of sustainable forest management as fuel.

This change is designed to meet the circumstances of the tree mortality emergency, not to change the fundamentals of the BioMAT program. Therefore, the monthly program periods for Category 3 will revert to the existing BioMAT bimonthly periods when the Emergency Proclamation is no longer in effect, or in the program period following the period in which the Category 3 BioMAT price

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<sup>26</sup> For concerns about the effect on financing of the lack of a guarantee of price certainty or adequacy for the duration of the contract, see BAC Comments on Staff Proposal at 6-7, 12-14, 16; Placer APCD Comments on Staff Proposal at 4-5; Phoenix Energy Comments on Staff Proposal at 6-7.

adjusts downward, due to 100% subscription of the MW offered, whichever first occurs.<sup>27</sup>

This approach also takes into account the efforts of state agencies, utilities, and local governments to meet the goals of Paragraph 2 of the Emergency Proclamation that these entities “shall undertake efforts to remove dead or dying trees in . . . high hazard zones that threaten power lines, roads and other evacuation corridors, critical community infrastructure, and other existing structures.” These efforts should make substantial amounts of HHZ fuel available for BioMAT facilities. Therefore, the Commission expects that Category 3 generation projects, which will receive the benefits of the revisions to the BioMAT program made by this decision, will make every reasonable effort to maximize the use of HHZ fuel as part of their contribution to the state's response to the tree mortality emergency. The Commission will monitor the use of HHZ fuel by BioMAT generation facilities, as set out in section 2.3, below, to determine whether our expectations that meaningful amounts of fuel from HHZ will be used by BioMAT facilities are being met.

BAC's proposal to reduce the number of required bidders to two is inconsistent with the market-based nature of the BioMAT tariff. Two bidders statewide is not a market, and is too easy a target for collusion. Placer APCD offers no justification for its suggestion that the number of required bidders to adjust the price remain at three indefinitely, rather than follow the process for reversion to a five-bidder minimum set out by D.14-12-081. There is no reason to adopt this change, since accelerating the program periods to monthly will allow more opportunities for bidding and for more bidders to participate.

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<sup>27</sup> The mechanics of the price adjustment mechanism are explained in Appendix C to D.14-12-081.

In their advice letters implementing the changes to the BioMAT tariff and standard contract made by this decision, the IOUs must include a change of the Category 3 program periods to monthly, for the duration of the Emergency Proclamation, or until the program period following the program period in which the Category 3 price first adjusts downward, whichever first occurs.

### **2.3. Fuel use Reports**

As required by D.14-12-081 and approved in D.15-09-004, in order to demonstrate that they are using the BioMAT fuel type for which they contracted, bioenergy generators with BioMAT contracts must file fuel use attestations with the IOU.<sup>28</sup> These attestations should be revised so that they can also be used to report use of fuel from HHZ by Category 3 BioMAT facilities. Because the use of HHZ fuel is not mandated (unlike the required fuel usage to maintain eligibility in the generator's fuel category), the generator's report on HHZ fuel use will be an informational report. In order to provide timely information about HHZ fuel use, generators should submit this informational report quarterly to the IOUs. The annual attestation on fuel use required by the BioMAT PPA should also contain an annual informational report on HHZ fuel use.<sup>29</sup>

Further, the IOUs should promptly forward to the Director of Energy Division the quarterly reports on HHZ fuel use. The Director of Energy Division is authorized to post on the Commission's web site, in suitably aggregated or otherwise nonconfidential form, summary reports of HHZ fuel use by Category 3 BioMAT facilities, not less often than once every six months. If the HHZ fuel use informational reports suggest that there is little meaningful use of

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<sup>28</sup> The fuel attestation form is an appendix to the BioMAT PPA.

<sup>29</sup> In their comments on the PD, both CBD and ORA noted the importance of regular and relatively frequent reporting on HHZ fuel use.

HHZ fuel by Category 3 generation facilities, the Commission may revisit the question of imposing HHZ fuel use requirements for BioMAT contracts as part of the response to the tree mortality emergency.

In their advice letters implementing the changes to the BioMAT tariff and standard contract made by this decision, the IOUs must also include a revised fuel use attestation form that will allow both quarterly and annual informational reporting of HHZ fuel use by Category 3 projects.

#### **2.4. New Interconnection Requirements Pursuant to SB 840**

SB 840 was signed by the Governor on September 13, 2016, and is effective immediately.<sup>30</sup> The BioMAT provisions are found in Section 9 of SB 840, which creates a new Section 399.20(f)(4) and renumbers the current Section 399.20(f)(4) as Section 399.20(f)(5).<sup>31</sup>

SB 840 is intended to address situations in which, for Category 3 projects only, there is a mismatch between the timing of a project's interconnection commitment and its execution of a BioMAT PPA. The statute creates a new package of provisions related to the interconnection process for Category 3 projects seeking a contract under the BioMAT tariff.<sup>32</sup> These provisions allow a

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<sup>30</sup> Section 17 of SB 840 provides:

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

<sup>31</sup> Section 399.20(f) as amended by SB 840 is set out in Appendix A.

<sup>32</sup> The prior criteria related to interconnection were not created by SB 1122, but are established in the BioMAT tariff. Section 5 of the tariff, approved by the Commission in D.15-09-044, provides:

An Applicant must have passed the Fast Track screens, passed Supplemental Review, completed an [IOU's] System Impact Study in the Independent Study Process, completed an [IOU's] Distribution Group

Category 3 project proponent to align its participation in the interconnection queue with its participation in the BioMAT bidding queue. The project could temporarily abandon its interconnection queue position while maintaining its place in the BioMAT bidding queue, restarting the interconnection process after it advances in the BioMAT contracting process to a signed contract.

The new statutory provisions override any prior proposals on interconnection in the BioMAT program in the Staff Proposal and in party comments, including the BAC interconnection proposal that was the subject of the ALJ's Interconnection Ruling.<sup>33</sup> However, to the extent that comments on the Staff Proposal and the BAC interconnection proposal may be helpful in determining how to implement SB 840, they have been considered.

The first element of the new relationship between a project's interconnection status and its status in the BioMAT bidding process is the provision that a project that has a completed initial interconnection study “is not required to have a pending, active interconnection application to be eligible” to participate in bidding for a BioMAT contract. (Section 399.20(f)(4)(A).)<sup>34</sup> In practical effect, this means that a project may obtain an initial study and then

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Study Phase 1 Interconnection Study in the Distribution Group Study Process, or completed an [IOU] 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 [IOU's] tariff.

<sup>33</sup> The Staff Proposal put forward a position opposite to that enacted in SB 840: a project could not remain in the BioMAT queue unless it had an active current position in the interconnection queue. (Staff Proposal at 4-5.) The BAC interconnection proposal is similar to the new requirements of SB 840.

<sup>34</sup> A number of types of interconnection studies are listed in the BioMAT tariff. For convenience, the studies relevant to this decision will be called “initial studies,” though it should be remembered that all types of initial interconnection studies listed in the BioMAT tariff are encompassed by this phrase.

drop out of the interconnection queue, while retaining its place in the BioMAT bidding queue.

If a project enters into a PPA but is not in the interconnection queue at the time the PPA is signed, the statute provides a 30-day time limit for submitting a new interconnection application. SB 840 also revises the time period for the project to achieve commercial operation, so that it runs from the date of completion of the new interconnection study, rather than from the date the PPA is executed. (Section 399.20(f)(4)(B).)

#### **2.4.1. Risk of Change to Interconnection Requirements or Costs**

It is important at the outset of implementing these statutory changes to note that a project proponent using the option of dropping out of the interconnection queue after an initial study does so entirely at its own risk. Dropping out of the interconnection queue means starting over, as though the project had never received an initial study, when reentering the interconnection queue. The project cannot resume its prior position in the interconnection queue, but starts at the back, just like any other new applicant for interconnection.<sup>35</sup>

Although SB 840 does not state this explicitly, it is implicit in the requirement to submit “a new application for interconnection.” Moreover, the interconnection process could not be administered properly if potential projects could leave the queue for an indefinite period of time, and then claim a priority for interconnection as though they had never left. As PG&E explains:

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<sup>35</sup> SDG&E initially expressed doubts about this outcome, but the consensus of the parties is that SB 840 does not create a privilege to re-enter the interconnection queue in the spot a project would have held if it did not drop out. See, e.g., Clean Coalition SB 840 Comments at 4; Reid SB 840 Comments at 5-6; SCE SB 840 Comments at 4. We agree.

This type of seller behavior could disrupt the interconnection process generally, since that process relies upon an assumption that projects in the queue at any given time actually intend to interconnect following the development of the applicable studies.<sup>36</sup>

If the interconnection requirements or costs have changed while the project was out of the queue, the project will be responsible for dealing with any difference revealed by the new interconnection study it will have to undertake.

This allocation of risk and the responsibility to start from “square one” when reentering the interconnection queue resolve the concerns expressed by ORA, PG&E, and SDG&E that projects could distort the interconnection process. If a project is in the interconnection queue, it is in, and should be taken into account in interconnection studies for projects behind it in the queue. If the project has dropped out of the queue, it is out, and has no impact on later studies.

#### **2.4.2. Multiple Entries into the Interconnection queue**

The ALJ’s SB 840 Ruling asked parties to consider whether any limits should be placed on the number of times a project could leave and reenter the interconnection queue while remaining in the BioMAT bidding queue. The majority view is that no such limitation is needed, since the process of seeking repeated initial studies is self-limiting.<sup>37</sup> Each study must be requested and paid for separately, so repeated requests will incur repeated expenses. As Clean Coalition puts it, initial studies are “performed by the utility on a fee for service

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<sup>36</sup> PG&E SB 840 Comments at 5.

<sup>37</sup> Reid disagrees with this view, asserting that only one drop-out and return should be allowed. (Reid SB 840 Comments at 5-6.) Since the parties that would have to participate in and manage the new interconnection process think that such a rule is not necessary, we see no reason to adopt it.

basis, and this provides a clear incentive for the applicant to avoid excessive, repetitive studies.”<sup>38</sup> Since the studies will study the interconnection situation at the time each study is done, and the project proponent cannot rely on any earlier studies, there is little risk that repeated studies will lead to problems in the interconnection process, other than wasted effort on studies that do not lead to interconnection. There is thus no reason to impose a numerical limitation on the number of times a project may leave and reenter the interconnection queue while remaining in the BioMAT bidding queue.

In their advice letters implementing the changes to the BioMAT tariff and standard contract required by this decision, the IOUs should include any language necessary to make clear that a project may leave and reenter the interconnection queue while remaining in the BioMAT queue, so long as all requirements established by this decision are met.

#### **2.4.3. Deposit while Maintaining BioMAT Queue position**

The SB 840 Ruling asked whether some type of financial security or deposit should be required of projects that have left the interconnection queue after their initial study, but remain in the BioMAT queue. Parties’ views span a large range, from Reid’s rejection of a deposit because it could deter small projects, to SCE’s proposal that a refundable deposit of up to 50% of the total projected interconnection costs be required of all projects.

BAC, supported by Placer APCD, proposes that a deposit of the sum of the Rule 21 interconnection application fee (currently \$800), system impact study fee (currently \$10,000), and the facilities study fee (currently \$15,000) would be

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<sup>38</sup> Clean Coalition SB 840 Comments at 3.

reasonable.<sup>39</sup> All but \$800 of the proposed fee would be refunded to the project applicant if the project left the BioMAT queue; the entire amount would be refunded upon signing a BioMAT PPA. BAC states that since the deposit is built out of fees that the developer will have to pay if the project goes forward, it is within the expected costs of the project.<sup>40</sup> Clean Coalition supports the BAC proposal, and advocates the deposit should be refundable only if the project leaves the BioMAT process without having signed a contract; a successful BioMAT bidder would have the deposit applied to interconnection costs. SCE advocates a nonrefundable deposit of a small percentage of interconnection costs, but a high percentage (30-50%) if the deposit is refundable. PG&E and SDG&E also support nonrefundable deposits.

Some of the difference in parties' positions is attributable to differing views about the function of any proposed deposit. PG&E, supported by the other IOUs, argues that ability to meet interconnection requirements is a crucial element of project viability. It is therefore necessary to find a signal to show that a project that has dropped out of the interconnection queue will be able to pay its interconnection costs. To this end, requiring a large deposit from projects that have dropped out of the interconnection queue provides a proxy measure of viability, at least with respect to interconnection. PG&E's proposal for increasing the BioMAT application fee from \$2/kW to \$5/kW, and SCE's proposal for a deposit of up to 50 % of projected interconnection costs, are examples of this approach.<sup>41</sup>

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<sup>39</sup> These fees are set in the IOUs' Rule 21 tariffs, and are the same for all three IOUs.

<sup>40</sup> BAC, SB 840 Reply Comments at 5-6.

<sup>41</sup> PG&E proposes, supported by SDG&E, increasing the BioMAT application fee from \$2/kW to \$5/kW for any Category 3 project that leaves the interconnection queue while remaining in

BAC asserts that the IOUs place too much emphasis on interconnection as an element of project viability. As an example, BAC hypothesizes a project that may have limited interconnection costs, but large viability issues with respect to other elements, such as “access roads, fire suppression infrastructure, truck scales, properly graded fuel storage, and conveyors on site.”<sup>42</sup>

It is not necessary to trace the nuances of assessing project viability here, because the purpose of any deposit for projects leaving the interconnection queue should not be to provide an independent standard for project viability. The changes made by SB 840 are directed to providing more flexibility and more information in the BioMAT contracting process. Consistent with that direction, a deposit should not be so large or onerous as to prevent potential BioMAT projects from using the new process provided by SB 840. To that end, a deposit only needs to be sufficient to:

- 1) Demonstrate at least some financial commitment to continuing in the BioMAT bidding process; and
- 2) Show that, if the project reenters the interconnection queue, it will have funds for a new initial study.

An approach like that of BAC is appropriate to implement these aims. BAC’s proposal sums existing costs, but this method is subject to change as the costs change. A simpler approach using a multiplier, like that proposed in the ALJ’s questions in the SB 840 ruling, would not require recalculation every time one of three elements of the Rule 21 costs change. We therefore conclude that a deposit equal to three times the Rule 21 system impact study fee should be

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the BioMAT queue. Making changes to the basic application fee for BioMAT participation, however, is beyond the scope of this decision.

<sup>42</sup> BAC SB 840 Reply Comments at 5.

implemented for any potential BioMAT project that leaves the interconnection queue while remaining in the BioMAT bidding queue.

This deposit should be almost fully refundable. BAC suggests withholding a small part of the deposit, equal to the interconnection application fee, to cover the IOU's administrative costs. PG&E argues that, if a deposit were to be refundable, a larger proportion should be withheld for administrative costs.<sup>43</sup> Because the changes made by SB 840 are intended to reduce barriers to successful execution of PPAs by Category 3 projects, it is reasonable to require that some portion of the deposit be retained by the IOU for administrative costs if the project both leaves the interconnection queue and fails to execute a BioMAT PPA. This amount should be set at 10% of the system impact study fee (an amount that would currently be \$1000). PG&E points out that undue complexity in either the deposit or the refund plan could cause administrative headaches for the IOUs and potentially run afoul of existing tariff provisions. PG&E proposes that, if a deposit is to be refundable, it should be collected from the project proponent when it withdraws from the interconnection queue, and refunded either when the project signs a BioMAT contract, or withdraws from the BioMAT bidding queue.

These proposals are reasonable, easy to understand, and will reduce administrative costs. The deposit amount--equal to three times the then-current fee under Rule 21 for a system impact study--should be collected from a Category 3 project at the time it leaves the interconnection queue while remaining in the BioMAT queue. Using the current system impact study fee of \$10,000, the deposit today would be  $3 * \$10,000 = \$30,000$ . The deposit should be refunded in full to the project proponent when the project signs a BioMAT PPA.

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<sup>43</sup> BAC SB 840 Comments at 5; PG&E SB 840 Reply Comments at 3, 4.

The deposit should be refunded less the administrative fee of 10% of the system impact study fee when the project both drops out of the interconnection queue and leaves the BioMAT bidding queue. Using the current system impact study fee of \$10,000, the administrative fee withheld today would be  $0.1 * \$10,000 = \$1000$ .

This system, as PG&E notes, imposes an obligation on the project proponent to notify the IOU promptly of its decision to leave the interconnection queue but remain in the BioMAT queue, as well as to notify the IOU promptly of any decision to leave both queues.

In their advice letters implementing this decision, the IOUs must include all necessary changes to the BioMAT tariff and standard contract to implement the refundable deposit, the administrative fee where appropriate, and the notification requirement. If additional documents are needed to implement the deposit plan, they must be provided as attachments to the proposed tariff changes.

#### **2.4.4. Completing the Interconnection Process**

The second part of the SB 840 revisions sets the course for projects that drop out of the interconnection queue to return and complete the interconnection process. (Section 399.20(f)(4)(B).) The statute first declares that a project taking advantage of the new procedures is “deemed to be able to interconnect within the required time limits.” This declaration functions to preempt any possible ambiguity or conflicts arising from the Commission's decisions implementing SB 1122 and/or the existing BioMAT tariff. Although the parties have not identified any concrete conflicts needing resolution, the IOUs must carefully review their BioMAT tariff and standard contract for language that states or implies that a project that conforms to the new SB 840 requirements might not be

in compliance with BioMAT interconnection timing requirements, and revise any such language to conform to the statutory directive.

New Section 399.20(f)(4)(B)(ii) prescribes a new process for completing the interconnection application, and sets a new time to achieve commercial operation for those Category 3 projects using the SB 840 procedures.<sup>44</sup> A project that has dropped out of the interconnection queue and has not returned by the time it executes a BioMAT PPA must submit a new interconnection application within 30 days of signing the PPA. Since SB 840 in practical effect allows projects with no currently valid initial study to execute BioMAT PPAs, the statute resets the clock for attaining commercial operation to start from the completion of the new interconnection study, rather than the prior clock-starting time of execution of the BioMAT PPA. (See D.14-12-081 at 18-19.) As SDG&E notes, the new provisions leave intact the current BioMAT requirement that projects must achieve commercial operation within 24 months of the clock-start date, with one possible six-month extension for regulatory delay.<sup>45</sup>

While these new requirements must be reflected in the IOUs' revised tariff and standard contract, they are largely self-explanatory. The SB 840 requirement for submitting a new application for interconnection within 30 days of signing the PPA, however, warrants more specific discussion. Filing the new

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<sup>44</sup> Section 399.20(f)(4)(B)(ii) provides:

- (ii) The project shall submit a new application for interconnection within 30 days of execution of a standard contract pursuant to the tariff if it does not have a pending, active interconnection application or a completed interconnection. For those projects, the time to achieve commercial operation shall begin to run from the date when the new system impact study or other interconnection study is completed rather than from the date of execution of the standard contract.

<sup>45</sup> SDG&E SB 840 Comments at 3.

interconnection application is the first step in the SB 840 timing sequence, which uses completion of the interconnection study, rather than execution of the PPA, to start the clock for the commercial operation deadline. Thus, significant delay in seeking the new interconnection study delays the deadline for commercial operation.

Because of the importance of the new interconnection application to the overall timeline under SB 840, it is reasonable to include an incentive to comply with the 30-day deadline in the BioMAT tariff. In order to allow for reasonable variations in circumstances, the BioMAT tariff should be revised to allow the IOU to have the option (but not the requirement) to terminate the PPA if the 30-day time limit on submitting a new interconnection application is not met.<sup>46</sup>

PG&E urges the Commission to add requirements that would, PG&E argues, prevent the timeline for projects from stretching out too long, as well as weed out any nonviable projects that made it through the process to execute a PPA.<sup>47</sup> PG&E advocates adding a requirement that the interconnection study must be completed within 15 months of the new request. PG&E further believes that projects not meeting that standard should lose their contracts and not be allowed to rebid the same project for 12 months.<sup>48</sup>

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<sup>46</sup> In comments on the PD, PG&E urges that a PPA should automatically terminate if the interconnection application is not filed within the 30-day period. This interpretation is both harsh and unnecessary, since there may be circumstances in which a longer period may be appropriate and should not be automatically foreclosed. (PG&E Comments on Proposed Decision at 5.)

<sup>47</sup> PG&E SB 840 Comments at 6-7.

<sup>48</sup> PG&E SB 840 Comments at 7-8. Clean Coalition also suggests prioritizing projects that already have a valid interconnection study, and/or requiring the new interconnection application to be deemed complete within 60 days. (Clean Coalition SB 840 Comments at 2, 5.)

Although not foreclosed by the statute, these suggestions for additional requirements or checkpoints are not consistent with the overall approach of removing what have been identified as barriers to participation of Category 3 projects in BioMAT. There is no base of experience from which to decide if PG&E's 15-month time limit is appropriate or would be effective. It is possible that, as presaged by the reply comments, such a limit might rather result in more opportunities for disputes between IOUs and potential projects about which entity is at fault if the deadline is missed. At this time, no necessity for additional interim requirements in the post-PPA interconnection study process has been demonstrated. No such requirements should be added to the BioMAT tariff or PPA.

In their advice letters implementing this decision, the IOUs must include all necessary changes to the BioMAT tariff and standard contract to implement the new time for starting the clock on the deadline for commercial operation, as well as an option for the IOU to terminate a BioMAT PPA if the generator does not apply for a new interconnection study within 30 days.

### **3. Other issues**

#### **3.1. Cost Allocation Mechanism**

The IOUs propose that “above market costs” of the changes to BioMAT to implement the Emergency Proclamation should be recovered from all customers in the IOU service territories through the Cost Allocation Mechanism (CAM).<sup>49</sup> This idea is opposed by the DA/CCA parties, who advance several arguments about why CAM is not an appropriate method to allocate these costs.

It is, however, unnecessary to address the details of the CAM proposal on the merits, because the premise of the IOUs' proposal is not consistent with the

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<sup>49</sup> For history of the CAM, *see* D.06-07-029, D.12-12-015.

basic structure of BioMAT. As discussed extensively in D.14-12-081, the bioenergy feed-in tariff is set at avoided cost for the statutorily-defined categories of small bioenergy facilities.<sup>50</sup> The treatment of BioMAT Category 3 procurement in this decision is consistent with the underlying BioMAT pricing structure. The Commission is not creating any incentives, surcharges, adders, or other additional costs for procurement from Category 3 facilities in the BioMAT program. Rather, we are allowing the BioMAT market-based mechanism to adjust as designed in D.14-12-081 (*see* D.14-12-081 at section 2.6.2). We are also temporarily using more frequent program periods for the price adjustment, but not changing any aspect of the pricing.

### **3.2. Implementation Timing**

In order to maximize the effectiveness of this decision in addressing the tree mortality emergency, the IOUs must implement the relatively few changes to the BioMAT program made by this decision as promptly as possible. Each IOU must file a Tier 2 Advice Letter (AL) for approval of the changes to the BioMAT tariff, the joint standard contract, and the reporting documents necessary for implementing the terms of this decision, not later than 30 days after the effective date of this decision.<sup>51</sup> Unless an AL is protested or suspended by Energy Division staff, the ALs (and the attached tariffs, standard contract, and reporting documents) will become effective 30 days after they were filed.

The BioMAT program is currently administered in bimonthly program periods. In order to reduce disruption and administrative complexity, the changes to the program made by this decision, including the move to monthly

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<sup>50</sup> *See* generally D.14-12-081, section 2.6, especially at 50-54.

<sup>51</sup> The Advice Letters must be served on the entire service list of this proceeding.

program periods, will begin with the February 1, 2017 program period (one year after the first BioMAT program period).

### **3.3. Evaluation**

The changes made to the BioMAT program by this decision are intended to reduce barriers to participation in the program and tap the potential of bioenergy from byproducts of sustainable forest management to aid in the response to the tree mortality emergency. Some changes, such as instituting monthly program periods and allowing the use of any byproducts of sustainable forest management without HHZ requirements, are directed toward speeding the processes up. Some changes, such as allowing Category 3 projects to leave the interconnection queue while remaining in the BioMAT queue, are directed toward providing more information earlier in the bidding process. Other changes, such as resetting the start of the clock for attaining commercial operation, are directed toward reducing risks of project failure.

These changes do not necessarily point naturally in the same direction, especially with respect to the timing of various steps in the BioMAT contracting process. The Commission intends to monitor whether these changes, separately and together, are moving the BioMAT program toward the desired contribution to responding to the tree mortality emergency. To this end, the Director of Energy Division is authorized to require IOUs to provide information about the implementation of the forest bioenergy segment of the BioMAT program that can aid in the evaluation of the effectiveness of the program in responding to the tree mortality emergency.

#### **4. Next Steps**

The most important next steps are the filing of Tier 2 advice letters by the IOUs to conform their BioMAT tariffs, standard contracts, and ancillary documents to the changes to the BioMAT program implemented by this decision.

In order to fully implement all the recent legislative changes to the BioMAT program, additional party comment on new legislation and a proposed decision implementing the directives in that legislation will be required.

A task identified in D.14-12-081 but held in abeyance while the Commission implemented a number of new requirements related to the Emergency Proclamation can now be undertaken by Energy Division staff. OP 7 of D.14-12-081 required further work on the issue of third-party verification that fuel used in a BioMAT generation facility met the requirements of the fuel category for which it was claimed. Now that a fuller range of needs, including verification of the quarterly and annual HHZ fuel use informational reports required by this decision, has been identified, Energy Division staff should conduct a workshop to solicit input and proposals for a third-party verification process for the entire BioMAT program as soon as reasonably possible.

#### **5. 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 October 17, 2016, by BAC, CBD, ORA, PG&E, Reid, and SCE and SDG&E (jointly). Reply comments were filed on October 24, 2016 by BAC, CBD, ORA, PG&E, Placer APCD, and Shell Energy North America (US) (for DA/CCA parties).

All comments and reply comments have been carefully considered. Changes have been made to the requirements for reporting and publication of information on HHZ fuel use; the implementation process for reapplying for an interconnection study; and the deadline for the IOUs to file their Tier 2 advice letters. Minor editorial changes to improve clarity and consistency and correct small errors have also been made.

## **6. Assignment of Proceeding**

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

### **Findings of Fact**

1. Governor Brown issued the Emergency Proclamation on October 30, 2015.
2. The Emergency Proclamation directs CALFIRE and other state agencies to identify HHZ for wildfire and falling trees.
3. The Emergency Proclamation directs state agencies, utilities and local governments to undertake efforts to remove dead or dying trees in HHZ that threaten certain types of infrastructure and existing structures.
4. The Emergency Proclamation directs the Commission to consider adjustments to the BioMAT program.
5. SB 840 became effective on September 13, 2016, the day it was signed by the Governor.
6. It is reasonable to include fuel from HHZ in the BioMAT category of “bioenergy from byproducts of sustainable forest management.”
7. It is reasonable to continue to use the BioMAT pricing structure established in D.14-12-081 without adjustments to the starting price or other price incentives for using fuel from HHZ for Category 3 projects because minimizing the administrative, financial, and reporting complexity in the

program will reduce burdens on the small generation facilities in the BioMAT program.

8. It is reasonable to institute monthly BioMAT program periods for Category 3 only that will allow more frequent opportunities for forest bioenergy projects to submit bids for BioMAT PPAs during the period that the Emergency Proclamation is in effect, or until the time that the Category 3 BioMAT price first adjusts downward, whichever first occurs.

9. It is reasonable to require a refundable deposit of three times the system impact study fee for a project that leaves the interconnection queue while remaining in the BioMAT bidding queue, in order to provide reasonable assurance that such a project will be able to continue the interconnection process if it executes a BioMAT PPA.

10. It is reasonable to allow the IOU to retain a portion of the refundable deposit for administrative costs if a project that leaves the interconnection queue also leaves the BioMAT bidding queue. A reasonable amount to be retained by the IOU is 10% of the system impact study fee.

11. It is reasonable to require forest bioenergy generation facilities in the BioMAT program to make both quarterly and annual informational reports to the IOU with which they contract on the use of HHZ fuel in those facilities.

### **Conclusions of Law**

1. In order to comply with the direction in the Emergency Proclamation for the Commission to consider adjustments to the BioMAT program, the Commission issues this decision.

2. In order to make resource definitions in the BioMAT program consistent with the Emergency Proclamation, "fuel from high hazard zones" should be

added to types of fuel that are in the BioMAT category of “bioenergy using byproducts of sustainable forest management.”

3. In order to allow more effective use of the BioMAT program in response to the tree mortality emergency, the BioMAT program periods should be temporarily accelerated to be monthly, rather than bimonthly, for Category 3 (forest bioenergy) for a period of time that should end when the Emergency Proclamation ends, or the BioMAT Category 3 price first adjusts downward, whichever first occurs.

4. In order to minimize administrative, financial, and reporting complexity, the BioMAT pricing structure adopted in D.14-12-081 should continue to be used without adjustments to the starting price or other incentives for using fuel from HHZ.

5. In order to provide reasonable assurance that a forest bioenergy project that leaves the interconnection queue while remaining in the BioMAT bidding queue will be able to continue the interconnection process if it executes a BioMAT PPA, such a project should be required to provide to the IOU a refundable deposit of three times the system impact study fee at the time the project leaves the interconnection queue.

6. In order to provide for administrative costs in the event that a forest bioenergy project both leaves the interconnection queue and leaves the BioMAT bidding queue without executing a contract, the IOU should be allowed to retain an amount equal to 10% of the system impact study fee prior to refunding the balance to the proposed forest bioenergy project.

7. In order to provide information on the effectiveness of the BioMAT program in addressing the tree mortality emergency, BioMAT forest bioenergy

generation facilities should be required to report both quarterly and annually to the IOU with which they contract on their use of HHZ fuel.

8. In order to develop reliable reporting methods for fuel use in the BioMAT program, including the use of HHZ fuel, the Director of Energy Division should, as soon as practicable, convene a workshop to begin work on third-party verification of fuel use.

9. In order to allow the Commission to evaluate the effectiveness of the BioMAT program in addressing the tree mortality emergency, the Director of Energy Division should be authorized to obtain from the IOUs the quarterly and annual informational reports on the use of HHZ fuel in BioMAT forest bioenergy generation facilities, and any other information necessary to evaluate the BioMAT program.

10. In order to provide information on the use of HHZ fuel to the public, the Director of Energy Division should be authorized to publish on the Commission's web site, not less often than once every six months, aggregated or otherwise nonconfidential information on the use of HHZ fuels in Category 3 BioMAT generation facilities.

11. In order to implement the changes to the BioMAT program made in response to the Emergency Proclamation and SB 840 as soon as possible, this decision should be effective immediately.

## **ORDER**

**IT IS ORDERED** that:

1. Not later than 30 days after the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each file with Energy Division and serve on the service list of this proceeding a Tier 2 advice letter with all the revisions to their tariffs, standard contracts, and all ancillary documents necessary to implement the adjustments to the BioMAT program made by 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, redlined to show the changes made to conform to the requirements of this decision.

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

3. The Director of Energy Division is authorized to take appropriate steps, including but not limited to requesting information and/or regular reports from Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, to collect information that will aid the

Commission in evaluating the effectiveness of the changes made to the bioenergy feed-in tariff by this decision in addressing the statewide tree mortality emergency declared in the Proclamation of a State of Emergency (October 30, 2015).

This order is effective today.

Dated October 27, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

LIANE M. RANDOLPH

Commissioners

Commissioner Carla J. Peterman, being necessarily absent, did not participate.

**APPENDIX A**  
**AMENDMENTS TO PUBLIC UTILITIES CODE SECTION 399.20(f) MADE**  
**BY SENATE BILL 840 (shown as underlined)**

399.20.

(f) (1) An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 387.6. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.

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

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

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

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

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

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

(C) Coordinate, to the maximum extent feasible, any incentive or subsidy programs for bioenergy with the agencies listed in subparagraph (A) of paragraph (3) in order to provide maximum benefits to ratepayers and to ensure that incentives are used to reduce contract prices.

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

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

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

(4) (A) A project identified in clause (iii) of subparagraph (A) of paragraph (2) is eligible, in regards to interconnection, for the tariff established to implement paragraph (2) or to participate in any program or auction established to implement paragraph (2), if it meets at least one of the following requirements:

(i) The project is already interconnected.

(ii) The project has been found to be eligible for interconnection pursuant to the fast track process under the relevant tariff.

(iii) A system impact study or other interconnection study has been completed for the project under the relevant tariff, and there was no determination in the study that, with the identified interconnection upgrades, if any, a condition specified in paragraph (2), (3), or (4) of subdivision (n) would exist. Such a project is not required to have a pending, active interconnection application to be eligible.

(B) For a project meeting the eligibility requirements pursuant to clause (iii) of subparagraph (A) of this paragraph, both of the following apply:

(i) The project is hereby deemed to be able to interconnect within the required time limits for the purpose of determining eligibility for the tariff.

(ii) The project shall submit a new application for interconnection within 30 days of execution of a standard contract pursuant to the tariff if it does not have a pending, active interconnection application or a completed interconnection. For those projects, the time to achieve commercial operation shall begin to run from the date when the new system impact study or other interconnection study is completed rather than from the date of execution of the standard contract.

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

**(END OF APPENDIX A)**