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OF THE STATE OF CALIFORNIA

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REPLY COMMENTS OF THE JOINT COMMUNITY CHOICE AGGREGATORS ON THE BIOENERGY MARKET ADJUSTING TARIFF STAFF PROPOSAL

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REPLY COMMENTS OF THE JOINT COMMUNITY CHOICE AGGREGATORS ON THE BIOENERGY MARKET ADJUSTING TARIFF STAFF PROPOSAL

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission") and the *Administrative Law Judge's Ruling Requesting Comments on the Bioenergy Market Adjusting Tariff Staff Proposal,* dated March 10, 2020 ("ALJ Ruling"), the Joint Community Choice Aggregators ("Joint CCAs") submit these reply comments on matters raised by other parties in opening comments.[1] The ALJ Ruling requests comments on the *Bioenergy Market Adjusting Tariff (BioMAT) Staff Proposal*, dated March 5, 2020 ("Second Staff Proposal"). As requested in the Second Staff Proposal, the Joint CCAs specify that their reply comments relate to proposal number 2, "BioMAT Program Cost Allocation."

I. INTRODUCTION AND SUMMARY

As described in the Second Staff Proposal and ALJ Ruling, Energy Division staff ("Staff") issued and requested comments on a previous staff proposal, *Bioenergy Market Adjusting Tariff (BioMAT) Program Review and Staff Proposal,* dated October 30, 2018 ("First Staff Proposal").[2] Under both proposals, Staff proposes cost-recovery for the BioMAT program

[1] The Joint CCAs consist of California Choice Energy Authority, Marin Clean Energy, Peninsula Clean Energy Authority, Pioneer Community Energy, and Sonoma Clean Power Authority.

[2] *See, e.g.,* Second Staff Proposal at 1 (describing the First Staff Proposal).

from all customers, including customers served by Community Choice Aggregators ("CCAs"). However, unlike the Second Staff Proposal, the First Staff Proposal did not provide an opportunity for CCAs to participate in the underlying generation resource program from which costs are derived. Because the First Staff Proposal lacked this element, and because universal cost-recovery from all customers for BioMAT program costs is not supported by specific legislative authority, the Joint CCAs previously joined with the Alliance for Retail Energy Markets and Direct Access Customer Coalition (collectively, "AReM-DACC") in opposing Staff's cost-recovery proposal.[3]

The Second Staff Proposal makes a material change to cost-recovery of BioMAT program costs. The Second Staff Proposal now includes an element whereby CCAs, in addition to the investor-owned utilities ("IOUs"), would be allowed to collect BioMAT procurement expenses if a CCA submits a Tier 2 advice letter demonstrating compliance with specified requirements of the BioMAT program.[4] This is a fundamental element of the Second Staff Proposal – an element that provides a rational basis for cost-recovery from customers served by CCAs. Moreover, if adopted, this element would align cost-recovery under the BioMAT program with other programs for which the Commission allows cost-recovery from CCA customers on the condition that CCAs are allowed to participate in the underlying generation program.

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[3] *See Informal Comments of the Alliance for Retail Energy Markets, Direct Access Customer Coalition, and Joint Community Choice Aggregators on Energy Division's BioMAT Program Review and Proposal,* dated December 7, 2018 (filed in R.18-07-003).

[4] Electric Service Providers ("ESPs") are also entitled to similar treatment. *See* Second Staff Proposal at 2 ("[A]ll LSEs [should] be able enter into BioMAT contracts at the BioMAT offer price. Procurement expenses incurred by any contracting LSE would be collectible through the non-bypassable charge if the LSE submits a Tier 2 Advice Letter to the Commission demonstrating that the contract is executed at no more than the current program category offer price at the time of contract execution and conforms to all BioMAT program rules and prior Commission decisions, including program end date.").

In its opening comments, Pacific Gas and Electric Company ("PG&E") questions this fundamental element of the Second Staff Proposal. Specifically, PG&E requests that this element of the Second Staff Proposal "not be evaluated until additional details are provided."[5] The Joint CCAs agree that additional ***implementation*** details should be provided as to ***how*** CCAs may participate in the cost-recovery process. As with other programs, the Joint CCAs fully expect that such implementation details will be provided in the normal course of activity. However, the Joint CCAs disagree that additional details are needed as to ***whether*** CCAs may participate in the cost-recovery process. Stated differently, the Second Staff Proposal contains sufficient details to support the policy rationale and legal principles for including CCAs in the cost-recovery process. The Joint CCAs are concerned that PG&E's comments may cause Staff to remove this fundamental element from the Second Staff Proposal. Removal of this fundamental element would result in a cost-recovery approach that is not legally sustainable, for many of the reasons listed by AReM-DACC in their opening comments. To be clear, if the Commission wishes to recover BioMAT costs from ***all*** CCA customers, the Commission must provide a meaningful opportunity for CCAs to participate in the cost-recovery process.

II. REPLY OMMENTS

A. Universal Cost-Recovery For Generation Costs Must Be Accompanied By An Opportunity For CCA Participation.

In considering non-bypassable charges ("NBCs") for ***generation***-related costs, key principles have been established by the Legislature and Commission. Two principles are particularly relevant in the Commission's consideration of the Second Staff Proposal. First, in imposing NBCs, the Commission should not unduly displace or impinge on CCAs' right to

[5] PG&E Opening Comments at 3.

procure generation on behalf of their customers. In this regard, the Legislature has made clear that "[CCAs] shall be solely responsible for all generation procurement activities on behalf of the [CCA's] customers, except where other generation procurement arrangements are expressly authorized by statute."[6] Moreover, even in the context of statutorily authorized procurement arrangements, the Legislature has directed the Commission to "[m]aximize the ability of [CCAs] to determine the generation resources used to serve their customers."[7] This directive is seen most clearly in the Legislature's preference for self-procurement options for CCAs.[8]

Second, "[t]he Commission has repeatedly affirmed the policy that costs should be allocated to those customers on whose behalf the costs were incurred."[9] With respect to CCA customers, this policy is enforced by statutory directive, as most clearly seen in Section 366.2(k)(1) (added by Senate Bill ("SB") 790 (2011)), which expressly states that that CCA customers should not pay NBCs for "goods, services, or programs that do not benefit either, or where applicable, both, the [CCA] customer and the [CCA] serving the customer."[10] This principle has been consistently applied by the Commission, particularly in situations where costs are allocated through distribution (not generation) rates, as is the case in the Second Staff

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6 Public Utility Code Section 366.2(a)(5). Unless otherwise noted, all subsequent statutory references are to the Public Utilities Code.

7 Section 380(a)(5) (defining legislative objectives with respect to the Commission's Resource Adequacy ("RA") program).

8 *See* Section 454.51(d) (expressly providing a self-procurement option for CCAs with respect to renewable integration requirements).

9 Decision ("D.")19-09-004 at 9 (citing D.99-06-058 at 7; D.02-11-022 at 61; and D.12-12-004 at 52-53).

10 *See also* SB 790; Section 5 (amending Section 366.2(g) [requiring that CCA customers receive a "fair and equitable share" of benefits from the IOUs' electricity costs, or otherwise requiring that such costs be offset]); SB 350 (2015); Sections 14 and 15 (adding Sections 365.2 and 366.3 to ensure, among other things, that CCA customers are not allocated costs that were not incurred on behalf of the CCA customers).

Proposal. In this regard, the Commission has determined that broad allocation of costs to all customers through distribution rates is only appropriate where all customers are offered a fair and equitable share of benefits from the program. Where a program benefits only bundled customers or is available only to bundled customers, the costs of such program should be recovered in the IOUs' generation rates.[11]

The First Staff Proposal failed to balance and apply these principles, since it did ***not*** include an opportunity for CCAs to self-procure and it also did not properly value RA and Renewable Energy Credits ("RECs") retained by the IOUs. The Second Staff Proposal corrects these deficiencies. Self-procurement is now expressly allowed, recognizing the fact that CCA customers would be paying for BioMAT procurement.[12] Moreover, costs and benefits now appear to be aligned, since only the "net" costs of BioMAT procurement would be recovered, with RA and RECs being valued under a model similar to "the tree mortality non-bypassable charge, established in D.18-12-003…."[13] To be clear, however, if either of these elements were removed from the Second Staff Proposal (as proposed by PG&E with respect to CCA self-procurement), the cost-recovery proposal would not be legally sustainable.

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[11] *See, e.g.,* D.12-12-004 at 52-53 ("requiring the customers of CCAs and ESPs, who cannot enroll in SDG&E's dynamic pricing tariffs, to pay the costs of implementing those tariffs, is not consistent with cost causation principles, and would not be reasonable. . . For these reasons, we require that the costs of SDG&E's dynamic pricing decision be recovered from all bundled customers through generation rather than distribution rates."). *See also* D.13-03-032 at 70-71 (agreeing that distribution projects should be recovered through distribution rates, but requiring costs of a pilot that solely benefits bundled customers to be recovered through generation rates).

[12] *See* Second Staff Proposal at 2; emphasis added ("***[B]ecause*** all load-serving entities (LSE) [customers] would pay for BioMAT procurement, staff recommends that all LSEs be able enter into BioMAT contracts at the BioMAT offer price.").

[13] Second Staff Proposal at 2.

B. Key Commission Decisions Underscore The Need To Accommodate CCA Participation.

As noted above, particularly in the context of universal cost-recovery from ***all*** customers, the Commission is charged with maximizing the ability of CCAs to procure for their own customers and with accommodating self-procurement options for CCAs.[14] The tree mortality NBC decision (D.18-12-003), on which the Second Staff Proposal relies for authority,[15] provides a helpful point of reference. In comments on Resolution E-4977 (which further addressed the tree mortality NBC and contracting under the BioEnergy Renewable Auction Mechanism ("BioRAM") program), the Commission observed as follows: "Since the Tree Mortality non-bypassable charge will be collected from all customers, including CCA customers, [the California Community Choice Association] argues that it is appropriate for CCAs to be available as potential counterparties under these contracts."[16] The Commission agreed, and allowed CCAs to seek cost-recovery under a process similar to the one identified in the Second Staff Proposal.[17]

Another particularly relevant decision relates to solar distributed generation in disadvantaged communities ("DACs"). In D.18-06-027 (and the resolution implementing D.18-06-027, Resolution E-4999), the Commission considered many of the same cost-recovery issues that are addressed in the Second Staff Proposal. For example, in D.18-06-027 the Commission addressed a potential inequity between IOUs and CCAs with respect to DAC green tariff programs, and in doing so expressly "allow[ed] CCAs to create DAC-Green Tariff programs

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14 *See* notes 7 and 8, above.

15 *See* Second Staff Proposal at 2.

16 Resolution E-4977 at 31.

17 *See* Resolution E-4977 at 13 ("If an IOU is unable to execute a new or amended contract with an eligible seller pursuant to this section, we find that a CCA may enter into a contract with that seller, and the procurement expenses incurred therein may be collectible through the Tree Mortality non-bypassable charge, if such contracts conform to all of the terms and conditions of BioRAM 2, including the rules and conditions established through this Resolution.").

funded by [greenhouse-gas] allowance revenues."[18] Comparable to the description in the Second Staff Proposal, the Commission stated that "both groups of customers pay for the program" and "the potential benefits of the program should not be limited based on the retail energy choice of customers."[19] The Commission also addressed the practical challenges of allowing CCAs the option to offer mandated programs under a universal cost-recovery approach. To ensure comparability and provide Commission oversight with respect to the distribution of funds to CCAs, D.18-06-027 established an advice letter process whereby program terms and conditions could be applied in a manner that best ensured CCAs would abide by all "rules and requirements adopted by [the] decision."[20] This requirement (as further described below) is comparable to the process identified in the Second Staff Proposal for providing oversight and accountability with respect to BioMAT costs.[21]

C. Sufficient Details Exist To Support The Second Staff Proposal's Cost-Recovery Recommendation.

As noted above, PG&E argues against the cost-recovery approach in the Second Staff Proposal because PG&E believes that additional clarifying details must be provided. PG&E asks the Commission to suspend consideration of the cost-recovery approach "until additional details are provided."[22] Notably, however, each of the details that PG&E lists as needing clarification,[23]

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18 D.18-06-027 at 90.

19 D.18-06-027 at 87.

20 *See* D.18-06-027 at 104; Ordering Paragraph 17.

21 *See* Second Staff Proposal at 2 ("Procurement expenses incurred by any contracting [CCA] would be collectible through the non-bypassable charge if the [CCA] submits a Tier 2 Advice Letter to the Commission demonstrating that the contract is executed at no more than the current program category offer price at the time of contract execution and conforms to all BioMAT program rules and prior Commission decisions, including program end date.").

22 PG&E Opening Comments at 3.

23 *See* PG&E Opening Comments at 3.

is answered in the Second Staff Proposal or with reference to comparable cost-recovery approaches implemented by the Commission.

The first three clarifying details that PG&E seeks ("(1) if LSEs would be *required* to procure; (2) which LSEs would be covered under this requirement; (3) how procurement capacity would be allocated amongst LSEs")[24] are provided in the Second Staff Proposal. With respect to the first clarifying detail, "staff recommends that all LSEs ***be able [to]*** enter into BioMAT contracts,"[25] thereby making clear that procurement on the part of LSEs is discretionary. With respect to the second clarifying detail, the previously quoted portion of the Second Staff Proposal makes clear that "***all*** LSEs" are eligible to participate, and further that an LSE would be covered under the program and authorized to receive cost-recovery "***if*** the LSE submits a Tier 2 Advice Letter to the Commission…."[26] Finally, with respect to the third clarifying detail, the Second Staff Proposal makes clear that capacity would be allocated based on how many non-IOUs choose to participate, and then would be further allocated in relation to the IOUs' respective capacity allocation.[27]

PG&E's final request for a clarifying detail ("how cost allocation would work") can be provided satisfactorily by referring to the Second Staff Proposal and implementing activity associated with the tree mortality NBC and the DAC green tariff program. As a preliminary matter, the Second Staff Proposal makes clear that cost-recovery would address "***net*** costs" of BioMAT energy procurement, and that the determination and administration of such costs would

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24 PG&E Opening Comments at 3.

25 Second Staff Proposal at 2 (emphasis added).

26 Second Staff Proposal at 2 (emphasis added).

27 *See* Second Staff Proposal at 3 ("If non-IOUs choose to enter into BioMAT contracts and pursue cost allocation, the amount of contracted capacity should count toward the IOU capacity allocations for the service territory in which the project is located.").

"be modeled off the tree mortality non-bypassable charge, established in D.18-12-003, and be collected through each utility's public purpose program charge."[28] This description provides significant detail, particularly in reference to the detailed framework and implementation processes established for the tree mortality NBC. These details are provided in D.18-12-003, Resolution E-4977, and most notably in PG&E's Advice Letter 5478-E. PG&E's Advice Letter 5478-E includes nearly fifty pages and its title describes the details contained in the advice letter: *Establish a Tree Mortality Non-bypassable Charge Balancing Account, Review Tree Mortality Costs Recorded to the Memorandum Accounts, Describe Tree Mortality Non-bypassable Rate Design and Implementation Plan, and Detail Resource Adequacy Sales Framework and Protocols for Tree Mortality Contracts in Compliance with Decision 18-12-003.*

Suffice to say, sufficient details exist with reference to the tree mortality NBC to support the cost-recovery approach in the Second Staff Proposal. However, if additional details or examples are needed, implementation activity with respect to the DAC green tariff program provides another detailed point of reference. As noted above, the Commission expressly allowed CCAs to participate in DAC green tariff programs on terms comparable to the IOUs.[29] In response to the IOUs' respective advice letters seeking to implement D.18-06-027, CCA parties provided extensive comments, which eventually led to the issuance of Resolution E-4999. Resolution E-4999 contains seventy pages of detailed guidance on how to implement D.18-06-027 in a manner that allows CCA participation. Importantly, on December 27, 2019, the Clean Power Alliance of Southern California ("CPA") submitted the first implementing advice letter under Resolution E-4999. In sum, contrary to PG&E's claim that insufficient details exist for

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[28] Second Staff Proposal at 2.

[29] *See* note 18, citing D.18-06-027 at 90.

implementation of the Second Staff Proposal's cost-recovery recommendation, the Commission has more than enough implementation details and examples.

III. CONCLUSION

The Joint CCAs thank the Commission for its consideration of the matters discussed herein.

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Respectfully submitted,

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