PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
04/18/24
01:24 PM
R1105005

April 18, 2024

Agenda ID #22526
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 11-05-005:

This is the proposed decision of Administrative Law Judge Nilgun Atamturk Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 30, 2024 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

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

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC: hma
Attachment

Decision ___ **PROPOSED DECISION OF ALJ ATAMTURK (Mailed 4/18/2024)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005

DECISION DENYING JOINT PETITION FOR MODIFICATION OF DECISION 13-05-034

Summary

This decision denies the February 11, 2021, petition for modification of Decision (D.) 13-05-034, *Decision Adopting Joint Standard Contract for Section 399.20 Feed-In Tariff Program and Granting, In Part, Petitions for Modification of Decision 12-05-035*, jointly filed by Pacific Gas and Electric Company and Southern California Edison Company. The Commission finds that it is inequitable to modify the Renewable Market Adjusting Tariff (ReMAT) program cost allocation method as requested. Ensuring consistency with the Bioenergy Market Adjusting Tariff (BioMAT) program would necessitate allowing community choice aggregators to participate in ReMAT or redesigning the program so that all resource adequacy and renewables portfolio standard benefits of the program are equitably distributed among retail sellers, which is administratively burdensome.

Consistent with the cost allocation approach adopted in D.13-05-034, the ReMAT procurement contract costs will continue to be included in bundled sales customers' generation rates. The above-market costs of the ReMAT procurement

contracts are included in the power charge indifference adjustment for those departing load customers that were bundled sales customers at the time the ReMAT contracts were signed.

This proceeding remains open due to a pending application for rehearing.

1. Procedural Background

On February 11, 2021, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) (collectively, Petitioners) filed a joint petition to modify Decision (D.) 13-05-034 (PFM or Petition). On March 15, 2021, the following parties filed responses: Shell Energy North America (US), L.P., and Alliance for Retail Energy Markets (Shell/AREM); San Diego Gas & Electric Company (SDG&E); Public Advocates Office of the Public Utilities Commission (Cal Advocates); and the California Community Choice Association (CalCCA). On March 25, 2021, PG&E, SDG&E, and SCE filed a joint reply to responses.

2. ReMAT Program, Relief Requested, and Party Positions

This section briefly describes the Renewable Market Adjusting Tariff (ReMAT) program and the relief requested by the Petitioners, and summarizes the party responses.

2.1. ReMAT Program

ReMAT is a feed-in tariff program for small renewable generators not more than three megawatts (MW) in size. The ReMAT program is implemented pursuant to Public Utilities (Pub. Util.) Code Section 399.20 and the Public Utility Regulatory Policies Act of 1978 (PURPA). D.12-05-035, D.13-01-041, and D.13-05-034 established the ReMAT program. Accordingly, through the ReMAT program, up to 493.6 MW of capacity have been available to eligible projects through a fixed-price 10, 15 or 20-year standard contract to export electricity to three large investor-owned utilities (IOUs). The IOUs may close the program

when all allocated MW are contracted. Electricity generated as part of the ReMAT program counts towards the utilities' renewables portfolio standard (RPS) compliance targets.

In D.13-05-034, the Commission ordered PG&E, SCE, and SDG&E to revise their Feed-in-Tariff (FiT) programs to include a streamlined joint standard contract and revised tariffs. The streamlined joint standard contract and tariffs incorporate the FiT program requirements adopted in D.12-05-035, as modified. The decision also authorized recovery of ReMAT procurement contract costs.[1]

Consistent with the cost allocation approach adopted in D.13-05-034, the IOUs' ReMAT procurement contract costs are included in bundled sales customers' generation rates. The above-market costs of the IOUs' ReMAT procurement contracts are included in the power charge indifference adjustment (PCIA) for those departing load customers that were bundled sales customers at the time the ReMAT contracts were signed.

Out of the 493.6 MW allocated between PG&E, SCE, and SDG&E, 282.5 MW are contracted, and 211.1 MW are remaining.[2]

2.2. Relief Requested

The Petitioners request modification of D.13-05-034 to update the cost allocation of ReMAT contracts, so that the costs of all existing and future ReMAT contracts going forward be recovered through the Public Policy Program charge (PPPC) for two reasons: (1) to avoid continued cost shifts to bundled service

[1] D.13-05-034 at Conclusion of Law (COL) 15.

[2] Procurement and remaining capacity values are based off of values taken directly from PG&E's, SCE's, and SDG&E's ReMAT program most recent ReMAT 10-Day Reports, which are updated after ReMAT executions (as of 3/1/2024).

customers in violation of Pub. Util. Code Sections 365.2, 366.2, and 366.3;[3] and (2) to establish consistency in cost recovery for mandated investor-owned electric utility-only procurement programs, such as the same statutory feed-in tariff program for Bioenergy Market Adjusting Tariff (BioMAT) contracts, and the PURPA Standard Offer Contract (SOC) authorized by D.20-05-006.[4]

The Petitioners state that ReMAT contract costs are allocated to bundled service customers only, with customers that depart bundled service paying the above market costs of the ReMAT contracts signed before their departure through the PCIA. Petitioners add that departing load customers do not pay for any ReMAT contracts signed after their departure, even though the IOUs procure these small distributed generation resources to serve California's broader public policy goals and irrespective of the Utilities' customers' needs.[5] Furthermore, the Petitioners suggest that modifying D.13-05-034 to require

[3] Pub. Util. Code § 365.2 states: "The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load."

Public Utilities Code § 366.2 states: "(4) The implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation. (5) A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute."

Public Utilities Code § 366.3 states: "Bundled retail customers of an electrical corporation shall not experience any cost increase as a result of the implementation of a community choice aggregator program. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load."

[4] Petition at 2.

[5] Petition at 1.

ReMAT procurement cost recovery through the PPPC would align the ReMAT program with the BioMAT program and the recently modified PURPA SOC. The two utilities argue that this modification would allocate ReMAT program costs to "all benefiting customers per the Commission's direction in D.18-10-019 and consistent with D.18-12-003 and D.20-05-006."[6]

In the PFM, SCE and PG&E note that they expect their bundled customers to face costs of $149 million and $96 million, respectively, over their existing ReMAT contracts' full terms.[7] Petitioners anticipate that future incremental ReMAT contracts pose a greater risk of cost shift to bundled customers due to a larger procurement cost exposure based on the remaining amount of capacity that SCE and PG&E are required to procure as well as the decline in bundled service customer sales.[8] The Petitioners note that the largest remaining procurement category is for baseload generators, which has the highest contract price offered.[9]

2.3. Party Responses

SDG&E filed a response in support of SCE and PG&E's PFM, stating that similar issues related to ReMAT costs are adversely impacting their bundled customers.[10] Cal Advocates also supported the PFM's request, arguing that the ReMAT program benefits all California bundled and unbundled customers.[11] Both supporting parties argued that it is reasonable to authorize the IOUs to

[6] Petition at 2.

[7] Petition at 6.

[8] Petition at 7.

[9] Petition at 7.

[10] SDG&E reply to SCE and PG&E's PFM, dated March 15, 2021, at 2-3.

[11] Cal Advocates' reply to SCE and PG&E's PFM, dated March 15, 2021, at 1-2.

develop accounting and cost recovery mechanisms for ReMAT that align with costs related to the BioMAT program, which are recovered through a non-bypassable charge on all customers.

CalCCA opposed SCE and PG&E's PFM, arguing that the PCIA was developed to help offset these specific costs and that the PFM's request lacks clarity related to what costs the utilities seek to recover through the PPPC or other non-bypassable charge. CalCCA argued that "ReMAT contracts are simply above-market RPS resources and thus are well suited to PCIA recovery."[12]

CalCCA also noted that bundled customers are prime beneficiaries of ReMAT contracts. Thus, CalCCA suggested that if the Commission permits PPPC recovery, it must modify the PFM's proposed methodology to allow community choice aggregator (CCA) customers to receive their share of direct resource adequacy (RA) and RPS benefits of the resources they fund, and their CCAs must be able to participate in the ReMAT program.

Shell/AREM argued that departing load customers do not benefit from the IOUs' procurement of RPS energy under the ReMAT program as the IOUs are not solely responsible for meeting the State's RPS procurement goals, and RPS energy procured under ReMAT does not satisfy any RPS procurement obligations of CCAs and electric service providers (ESPs). They also note that the public policy goals of the ReMAT program are not the same as the public policy goals of PURPA or BioMAT, and the Commission should not apply a one-size-fits-all cost allocation approach to all IOU mandatory procurement programs.

[12] CalCCA reply to SCE and PG&E's PFM, dated March 15, 2021, at 2-3.

3. Discussion

3.1. Timeliness of the Petition

Rule 16.4 of the California Public Utilities Commission's Rules of Practice and Procedure (Rules) requires petitions for modification to be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must explain why the petition could not have been presented within one year of the date of the decision.

The Petition was not filed within one year of the effective date of D.13-05-034. The Utilities noted that this PFM could not have been presented within the first year of the effective date of D.13-05-034, because the magnitude of load departure and cost shifts were not apparent at that time. The Petitioners stated that they experienced substantial load departures and corresponding increased cost shifts to bundled service customers as a result of the ReMAT cost recovery established in D.13-05-03. The Petitioners note that they proposed solutions to address this cost shifting matter in R.17-06-026[13] and R.18-07-003, but the Commission did not consider the merits of the issue.[14] Subsequently, the Petitioners filed the PFM to establish broad cost allocation of the ReMAT contracts in D.13-05-034.

The Commission finds the Petitioners' reasoning for having filed this PFM after the first year of the effective date of D.13-04-055 reasonable and concludes that the PFM meets the requirements of Rule 16.4.

[13] D.18-10-019 at 153.

[14] D.20-10-005 at 52-53.

3.2. Discussion

After considering the Petition and party comments, the Commission concludes that it is inequitable to modify the ReMAT cost allocation method as requested. Ensuring consistency with the BioMAT program would necessitate allowing CCAs to participate in ReMAT or redesigning the program so that all RA and RPS benefits of the program are equitably distributed among retail sellers. However, it is currently contrary to the statute to expand the ReMAT program to CCAs. Furthermore, it would be administratively burdensome to redesign the program to reallocate RA and RPS benefits of the future contracts among retail sellers and may cause delays in reaching the program goals. The Commission notes that more than half of the program target MWs have already been contracted.[15]

There are two reasons for which Petitioners seek to modify the cost allocation methodology for all existing and future ReMAT contracts through the PPPC. First, Petitioners argue that they seek to avoid continued cost shifts to bundled service customers. Public Utilities Code §§ 365.2, 366.2 and 366.3 require the Commission to ensure that (1) bundled service customers do not experience cost increases as a result of customer departures to direct access (DA) and CCA service, and (2) departing load customers are not allocated costs that were not incurred on their behalf. Petitioners assert that the current vintaged PCIA cost recovery mechanism does not satisfy these statutory requirements for ReMAT. The Commission disagrees. The PCIA mechanism is designed to allow the IOUs to recover the above market costs of ReMAT contracts. On the other hand, the

[15] Out of the 493.6 MW allocated between PG&E, SCE, and SDG&E, 282.5 MW have been contracted and 211.1 MW are remaining. Capacity amounts are based off of values taken directly from PG&E's, SCE's, and SDG&E's ReMAT Program webpages (of 3/1/2024).

Commission agrees with the Petitioners that departing load customers do not pay for any ReMAT contracts signed after their departure, even though the program serves a common policy goal which is to provide support to small-scale renewable generation resources. However, modifying the cost allocation methodology as requested without allocating the RPS and RA benefits of the ReMAT contracts would not satisfy the statutory requirements and would be inequitable. Under the Petitioners' proposed allocation method, departing load customers now would bear the costs of the broad policy goal without receiving the full benefits of each contract. Therefore, the Commission does not find the proposed allocation method equitable; the IOUs should and can manage their RPS portfolio by taking into account the mandated procurement of ReMAT-eligible contracts while recovering the above market costs through the PCIA mechanism for the remainder of this program.

Second, Petitioners seek to establish consistency in cost recovery for mandated IOU-only procurement programs, such as the same statutory feed-in tariff program for BioMAT contracts, and the PURPA SOC authorized by D.20-05-006.[16] The Petitioners claim that the requested relief would align the cost recovery methods of two similar feed-in tariff programs, ReMAT and BioMAT. In D.20-08-043, the Commission authorized the IOU BioMAT procurement cost allocation through a non-bypassable charge to all customers in each IOU's territory. When the Commission modified the cost allocation methodology for BioMAT, the Commission focused on the program's statewide air quality, climate, waste diversion, and public safety goals and concluded that because the benefits of BioMAT program are shared by all Californians, it is equitable that

[16] Petition at 2.

the cost of the program is shared by all Californians.[17] Moreover, in D.20-08-043, pursuant to provisions of Section 399.20 and concerns expressed by several parties regarding the Commission's limited jurisdiction over non-IOU retail sellers procurement and contract administration, the Commission did not expand the program to allow non-IOU retail sellers to enter into BioMAT contracts. However, subsequently, per the legislative directives, the Commission established rules to enable CCAs to participate in the BioMAT program, as authorized by Assembly Bill (AB) 843 (Stats.2021, Ch. 234). AB 843 authorized CCAs to submit eligible bioenergy projects for cost recovery if unsubscribed capacity exists.[18] AB 843 also authorized CCAs to count BioMAT procurement towards CCA RPS procurement requirements and satisfy IOU BioMAT procurement requirements where CCA provide service and count the physical generating capacity of CCA BioMAT projects towards CCA RA requirements.[19]

Ensuring consistency with the BioMAT program would necessitate modifying the cost allocation methodology as well as allowing CCAs to participate in ReMAT and redesigning the program so that all RA and RPS benefits are equally distributed. However, pursuant to Pub. Util. Code Section 399.20, ReMAT is a mandated procurement program for IOUs, only. In D.21-12-032, *Decision Modifying the Renewable Market Adjusting Tariff Program and Directing Implementation*, issued in R.18-07-003, the Commission declined to expand the ReMAT program beyond the IOUs, because it is contrary to the statute to expand

[17] D.20-08-043 at 13.

[18] D. 23-11-084 Finding of Fact (FoF) 1.

[19] D.23-11-084 at FoF 2.

the ReMAT program to CCAs.[20] Section 399.20 requires electrical corporations to offer a standard tariff for the ReMAT program, and specifically requires each eligible facility to enroll in that tariff to be within the service territory of, and sell electricity to, an electrical corporation. Under § 399.20, utilities have certain "must-take" obligations to electric generators seeking procurement contracts, and every kilowatt hour of electricity a utility purchases from these electric generators counts toward meeting an electrical corporation's RPS procurement quantity requirements, as determined by statute. Accordingly, resources procured under the ReMAT program do not satisfy any portion of the RPS procurement obligation of an ESP or a CCA.

In conclusion, the Commission does not find it equitable to modify the ReMAT program as requested. In case of new legislation expanding the program to allow CCA participation, the cost allocation issue may be revisited.

4. Comments on Proposed Decision

The proposed decision of ALJ Nilgun Atamturk in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Nilgun Atamturk is the assigned Administrative Law Judge in this proceeding.

[20] D.21-12-032 at 40-41 and COL 20.

Findings of Fact

1. The Petition was not filed within one year of the effective date of D.13-05-034.
2. SCE and PG&E expect their bundled customers to face costs of $149 million and $96 million, respectively, over their existing ReMAT contracts' full terms.
3. It is currently contrary to the statute to expand the ReMAT program to CCAs.
4. Resources procured under the ReMAT program do not satisfy any portion of the RPS procurement obligation of an ESP or a CCA.
5. More than half of the program target has already been contracted.

Conclusions of Law

1. The Petition meets the requirements of Rule 16.4.
2. Ensuring consistency with the BioMAT program would necessitate allowing CCAs to participate in ReMAT or redesigning the program so that all RA and RPS benefits of the program are equitably distributed among retail sellers.
3. It is administratively burdensome to redesign the program to reallocate RA and RPS benefits of the future contracts among retail sellers and may cause delays in reaching the program goals.
4. The IOUs should manage their RPS portfolio by taking into account the mandated procurement of ReMAT-eligible contracts while recovering the above market costs through the PCIA mechanism for the remainder of this program.
5. The Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The February 11, 2021, Petition for Modification of Decision 13-05-034 filed by Pacific Gas and Electric Company and Southern California Edison Company is denied.

2. Rulemaking 11-05-005 remains open due to a pending application for rehearing.

This order is effective today.

Dated _____, at Sacramento, California.