BEFORE THE PUBLIC UTILITIES COMMISSION

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BIOENERGY ASSOCIATION OF CALIFORNIA AND CALIFORNIA ASSOCIATION OF SANITATION AGENCIES JOINT COMMENTS ON THE PROPOSED DECISION DENYING PETITION TO MODIFY DECISION 20-08-043 AND MOTION FOR STAY

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I. INTRODUCTION

The Bioenergy Association of California (BAC) and California Association of Sanitation Agencies (CASA) submit these comments on the Proposed Decision Denying Petition to Modify Decision 20-08-043 in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure.[1] As described more fully below, BAC and CASA urge the Commission to modify the Proposed Decision by staying the provision of Decision 20-08-043 that would end the BioMAT program before the legally required megawatts have been procured. Both the Proposed Decision denying BAC's Petition for Modification and the current program end date violate Public Utilities Code section 399.20(f)(2), which the Commission does not have discretion to override or ignore. BAC and CASA's comments focus on legal and factual errors in the Proposed Decision. BAC and CASA urge the Commission to modify the Proposed Decision and move for a stay of Decision 20-08-043, Conclusion of Law Number One, since it violates state law by illegally ending the BioMAT program before the required megawatts have been procured.

BAC represents almost 100 members that are converting organic waste to energy to meet the state's clean energy, climate change, wildfire reduction, landfill reduction, and circular economy goals. BAC's public sector members include cities and counties, Tribes, air quality and environmental agencies, waste and wastewater agencies, public research institutions, environmental and community groups, and publicly owned utilities. BAC's private sector members include energy and technology companies, waste haulers, agriculture, investors, consulting firms, and an investor-owned utility.

CASA has served as the leading voice for clean water agencies on regulatory, legislative, and legal issues for over 70 years. CASA represents more than 140 local public agencies (over 90 percent of the sewered population) engaged in wastewater collection, treatment, and recycling to protect public health and the environment. Its mission is to provide trusted information and advocacy on behalf of California clean water agencies, and to be a leader in sustainability and utilization of renewable

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[1] Proposed Decision Denying Petition to Modify Decision 20-08-043, issued September 18, 2025 in R.18-07-003. [hereinafter, "Proposed Decision"]

resources. CASA's vision is to advance public policy and programs that promote the clean water community's efforts in achieving environmental sustainability and the protection of public health. CASA is the leading California association dedicated to advancing municipal wastewater interests, including the recycling of wastewater into usable water, renewable energy/fuel, biosolids, nutrients, and other valuable resources. CASA's efforts help to create a clean and sustainable environment for Californians.

BAC and CASA submit the comments below on the Proposed Decision.

II. THE PROPOSED DECISION VIOLATES STATE LAW.

The Proposed Decision commits legal error by claiming that the Commission has discretion to end BioMAT even though Public Utilities Code section 399.20(f)(2) is an explicit mandate that gives the Commission no basis for ending BioMAT at the end of this year.

A. SB 1122 is a Statutory Mandate, not an "Authorization" as the Proposed Decision Claims.

The Proposed Decision mischaracterizes SB 1122[2] stating that "Pub. Util. Code Section 399.20(f)(2) <u>authorizes</u> the Commission to direct the IOUs to procure at least 250 MW of bioenergy capacity . . ."[3] (emphasis added). SB 1122 did not give the Commission the *authority* to require procurement of 250 megawatts of bioenergy – the Commission already had that authority under Public Utilities Code section 399.20(f) and other state laws. Rather, SB 1122 mandated the procurement of 250 megawatts of new small-scale bioenergy. As Public Utilities Code section 399.20(f)(2) states:

> "By June 1, 2013, the commission <u>**shall**</u>, 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 <u>**shall,**</u> for each electrical corporation, allocate shares of the additional 250 megawatts

[2] Senate Bill 1122 (Rubio), Statutes of 2012, Chapter 612, now codified in Public Utilities Code section 399.20(f)(2).
[3] Proposed Decision at page 12.

based on the ratio of each electrical corporation's peak demand . . ."[4] (emphasis added)

There is a notable difference between "authorizing" the agency to take certain actions and requiring the agency to do so. When the Legislature uses the term "shall" as it did twice in SB 1122, it creates a binding mandate, not simply the authority to take action. When the Legislature only intends to authorize an action and leave to the Commission's discretion whether to take that action, it uses quite different language than the language in SB 1122. For example, Senate Bill 1440 (Hueso, 2018) authorized, but did not require, the Commission to adopt a pipeline biomethane procurement program.[5] In SB 1440, the Legislature used the following language to make clear that the decision to adopt a pipeline biomethane procurement program was up to the Commission's discretion:

> "The commission . . . shall consider adopting specific biomethane procurement targets or goals for each gas corporation . . . If the commission adopts specific biomethane procurement targets or goals . . . "[6] (emphasis added)

The difference between these two authorizing statutes makes quite clear that when the Legislature merely wants to authorize the Commission to take certain actions, it uses language like "shall consider adopting" and "if the commission adopts," making clear that it leaves the final decision to the Commission's discretion. In SB 1122, by contrast, the Legislature said "shall" in more than one place, giving the Commission no discretion about whether to require procurement of 250 megawatts of new small-scale bioenergy.

B. The Commission Does Not Have the Authority to Override an Explicit Statutory Mandate.

In ending BioMAT without fulfilling the explicit requirements of SB 1122, the Commission is ignoring the plain language of the statute. The Proposed Decision cites the Commission's broad discretion,[7] but the Commission does not have the discretion to

[4] Public Utilities Code section 399.20(f)(2).

[5] Senate Bill 1440 (Hueso), Statutes of 2018 Chapter 739, now codified in Public Utilities Code sections 650-651.

[6] Public Utilities Code section 651(a)(and (b).

[7] Proposed Decision at page 11.

ignore the plain language of a statute or an explicit statutory mandate.[8] While Article XII of the Constitution authorizes the Commission to regulate private utilities, Section 2 provides the Commission's authority is "subject to statute and due process." California Courts have held repeatedly that the Commission cannot read past the Legislature's express language to exercise power it has not been granted.[9] As the Court of Appeals recently reiterated:

> "A fundamental principle of statutory construction is that, "[i]f there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' [Citation.] 'Where the statute is clear, courts will not "interpret away clear language in favor of an ambiguity that does not exist."[10]

Under California law, the Commission must start with the plain language of SB 1122. As the California Court of Appeals has explained, "The key to statutory interpretation is applying the rules of statutory construction in their proper sequence as follows: we first look to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction."[11]

California courts also distinguish between quasi-legislative actions, where the Legislature has granted discretion to the Commission, versus statutory mandates. The California Supreme Court reiterated this distinction recently in *Center for Biological Diversity, Inc. v. Public Utilities Commission*, distinguishing quasi-legislative decisions by the Commission, where the Legislature has "confided" the power to make law, versus the Commission interpreting statutory direction.[12] On the latter, the Commission must start with the plain language of SB 1122, which does not allow the Commission to end the program before the required megawatts are procured.

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[8] *Bd. of Trustees of Cal. State Univ. v. Public Employment Relations Bd*. (2007) 155 Cal.App.4th 866, 876; *Southern Cal. Gas Co. v. P.U.C.* (1979) 24 Cal.3d 653, 657-660.

[9] See, eg, *Southern Cal. Gas Co. v. P.U.C.* (1979) 24 Cal.3d 653, 657-60.

[10] *Coble v. Ventura County Health Agency* (2022) Cal.App.2nd, citing *Lennane v. Franchise Tax Board* (1994) 9 Cal.4th 263, 268.

[11] *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1396.

[12] *Center for Biological Diversity, Inc. v. Public Utilities Commission,* (2025) 18 Cal.5th 293, 11-12, citing *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1.

C. SB 1122 Did Not Include an End Date, Cost Cap, or Other Offramps to Justify Ending BioMAT.

Nothing in SB 1122 or the four bills passed to revise BioMAT provides a legal basis for ending BioMAT. The additional four bills related to BioMAT are: SB 840 (Budget, 2016), AB1979 (Bigelow, 2016), AB 1923 (Wood, 2016) and AB 843 (Aguiar-Curry, 2021). None of these five laws contains an end date, cost cap, or offramp of any kind that would justify terminating BioMAT at the end of this year. If the Legislature had wanted to set an end date for BioMAT, it would have done so as it has with other statutorily created energy programs. For example, the Legislature established a sunset date for the Self-Generation Incentive Program ("SGIP") in Public Utilities Code section 379.6. The Legislature also established an end date for the regulation of VoIP service carriers in Public Utilities Code section 710. Neither SB 1122 nor any of the subsequent bills related to BioMAT included a program end date or other sunset provision.

SB 1122 and the subsequent BioMAT bills also did not establish cost caps or other offramps, even though the Legislature has done so with other energy programs. For example, when California enacted its first renewable electricity standard, the Renewables Portfolio Standard (RPS), it included a number of offramps, including the availability of funding to cover above-market costs and a determination that the procuring utility is credit-worthy.[13]

SB 1122 did not include an end date, cost cap or other offramps because its goal was to create a small pilot program to launch the next generation of distributed generation bioenergy projects.[14] It would have made no sense to establish a cost cap or other offramp when the entire mandate in SB 1122 is only 250 megawatts, equivalent to half of a single, large natural gas power plant or less than one quarter of one percent of California's total electricity use.

[13] Senate Bill 1078 (Sher) Statutes of 2022, Chapter 516. Offramps in SB 1078 are codified in Public Utilities code sections 399.14(a)(1) and 399.15(b) and (c).

[14] Author's Statement included in the SB 1122 Bill Analysis, prepared by the Assembly Committee on Utilities and Commerce (June 22, 2012).

It also made no sense to adopt cost caps or end dates for a program that was explicitly intended to jump start a new sector. As the author of SB 1122, Senator Michael Rubio, stated "The intent of SB 1122 is to unleash a growth spurt in California's biopower market, like what has been experienced in leading biopower markets around the world."[15]

SB 1122 contains a clear statutory mandate with no end date, cost cap or other basis for ending the program before the required megawatts are procured. To end the program on December 31, as Decision 20-08-043 and the Proposed Decision would do, violates the plain language and intent of SB 1122.

D. The Proposed Decision Would Also Violate AB 843.

The Proposed Decision would also violate the intent of AB 843 (Aguiar-Curry, 2021)[16] by failing to give Community Choice Aggregators (CCAs) sufficient time to participate in BioMAT. AB 843 was enacted to allow CCAs to participate in BioMAT. It took the Commission more than two years from the enactment of AB 843 to finalize the rules that enabled CCAs to participate, in effect giving the CCAs less than two years to develop projects and execute Power Purchase Agreements before the current program end date. In other words, the Commission gave CCAs less time to develop and execute new BioMAT projects than the Commission itself took to adopt the BioMAT program rules for CCAs.

The Joint CCAs, in their response to BAC's Petition for Modification, addressed the need to extend the BioMAT program:

> "the current end date unnecessarily truncates the contracting period for CCAs, particularly when compared to the contracting period for the IOUs when they launched their respective BioMAT programs. Instead of having five years to implement the BioMAT program, Participating CCAs have had less than two years. For the IOUs, the Commission determined in D.14-12-081 that it is "reasonable to set the ending date for the bioenergy [feed-in tariff] as being 60 months from the program starting date . . . As such, the IOUs have received the

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[15] Id.

[16] Assembly Bill 843 (Aguiar-Curry), Statutes of 2021 Chapter 234.

> benefit of successive five-year terms to contract for BioMAT projects. In contrast, Participating CCAs have had less than two years to contract for BioMAT projects."

In other words, the Commission determined that the IOUs would need five years (and then another five years) to develop projects in compliance with SB 1122, but has given CCAs less than two years to comply with the intent of AB 843. Since less than two years is not enough time for CCAs to develop and execute BioMAT contracts, ending BioMAT on December 31 of this year effectively ignores the intent of AB 843, which was to allow CCAs to participate in BioMAT. Adopting program rules without giving CCAs sufficient time to participate in BioMAT violates the intent of AB 843.

E. The Governor's Executive Order Does Not Supersede Statutory Mandates.

The Proposed Decision points to Governor Newsom's Executive Order N-5-24 as one of the justifications for ending BioMAT.[17] This is not a valid reason for ignoring state law, especially when the Commission did not fully address the Executive Order, which also called on the Commission to consider the benefits of different energy programs.

Under California law, an executive order cannot override state law except during a very limited state of emergency when overriding state law is necessary to protect the public under the California Emergency Services Act.[18] The Governor's Executive Order N-5-24 did not address a state of emergency and, therefore, did not give the Commission a legal basis for overriding an explicit statutory mandate.

Moreover, the Commission is required to act pursuant to its authority under the California Constitution, and its authority is subject to state laws and due process under Article II of the Constitution. The Executive Order is not a state law. It is an order issued by the executive branch to administer programs in a cost-effective manner but that order does not create an independent authority for the Commission to terminate a state law. Only the Legislature or the Judicial branch have authority under a system of

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[17] Proposed Decision at pages 1, 16, 17, 18.

[18] California Constitution Art. III, § 3; Government Code §§ 8565 *et seq*.

checks and balances to terminate State laws enacted by the Legislature under the California Constitution.

In addition, the Commission's response to the Executive Order actually ignored an important part of the Order by failing to consider the benefits of BioMAT or other energy programs. Executive Order N-5-24 directed the Commission to "examine the benefits and costs to electric ratepayers of programs it oversees and rules and orders it has promulgated pursuant to statutory mandates . . ."[19] (emphasis added). Neither the Commission's response to the Governor's Executive Order nor the Proposed Decision considers the benefits that BioMAT projects provide to ratepayers or the general public.[20] BAC's Petition for Modification detailed those benefits, including wildfire mitigation (the biggest cause of increasing rates), greenhouse gas reductions, benefits to water quality and supply, and the generation of firm and dispatchable power.[21] Ironically, the Commission actually acknowledged these benefits in past reports and rulings,[22] but chose to ignore them both in its response to the Governor's Executive Order (which directed the Commission to consider benefits as well as costs) and its Proposed Decision denying BAC's Petition for Modification.

III. THE PROPOSED DECISION MISTAKENLY ASSUMES THAT COSTS JUSTIFY ENDING BIOMAT AND MAKES FALSE COST COMPARISONS.

The Proposed Decision's cost arguments are flawed for several reasons.

A. The Proposed Decision's Cost Analysis Ignores State and Federal Law.

The Proposed Decision relies heavily on costs as the basis for ending BioMAT, but its cost arguments ignore the requirements of state and federal law.

[19] Governor Newsom's Executive Order N-5-24, at page 2 (Order paragraph 2).
[20] *CPUC Response to Executive Order N-5-24*, issued February 18, 2025.
[21] BAC's Petition for Modification, filed in R.18-07-003 on March 6, 2025, at pages 6-10.
[22] See, eg, CPUC's "Bioenergy Market Adjusting Tariff (BioMAT) Program Review and Staff Proposal," October 2018, at page 6 and CPUC Resolution E-4922, at page 5.

First, the Legislature did not impose a cost-effectiveness test when it enacted SB 1122. When the Legislature wants to condition the adoption or continuation of a program on whether it is a cost-effective means of achieving certain ends, it includes that requirement in statute. The Legislature did exactly that when it enacted SB 1440 (Hueso, 2018), requiring that before the Commission could adopt a pipeline biomethane procurement program, it had to find that the "targets or goals are cost-effective means of achieving the forecast reduction in the emissions of short-lived climate pollutants."[23] The Legislature included no such requirement in SB 1122.

Second, state law requires a distinction between the costs of firm resources and intermittent resources. Public Utilities Code section 399.20(d)(2)(C) requires the Commission to treat the market costs of baseload (firm), peaking (dispatchable) and as-available (intermittent) power differently.[24] BioMAT projects provide baseload and/or peaking power, but the Proposed Decision compared BioMAT prices to as-available power, violating the requirement of section 399.20(d)(2)(C) to treat the prices of these different power types differently. BAC's Petition for Modification also presented extensive data and studies showing that as California moves toward 100 percent RPS compliance, a large portfolio of firm resources will actually save ratepayers considerable costs compared to a grid that is mostly intermittent renewables and storage.[25]

Third, the Federal Energy Regulatory Commission has determined that above-market costs should be assessed in comparison to other resources that comply with the statute requiring those resources.[26] As FERC stated, "where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement."[27] In other

[23] Public Utilities Code section 651(a)(1).
[24] Public Utilities Code section 399.20(d)(2)(C).
[25] E. Baik, et al, "What is different about different net-zero carbon electricity systems?" published in *Energy and Climate Change* 2 (2021) 100046, July 2021.
[26] 133 FERC 61,059, UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION, issued October 21, 2010, at pages 12-13.
[27] Id. at pages 13-14.

words, since BioMAT projects are required by state law, the only valid price comparison is to other projects that meet the requirements of SB 1122. Comparing BioMAT costs to projects that would not comply with SB 1122 is not a valid price comparison.

B. The Proposed Decision's Cost Data and Analysis are Incomplete and Flawed.

The Commission's Response to Executive Order N-5-24 (the "Commission's Response") does not provide sufficient data to assess BioMAT costs and provides no analysis or data about the benefits of BioMAT projects, as required by the Executive Order. The Commission's Response does not present any data specific to BioMAT. Rather, every reference to bioenergy in the Commission's Response lumps the BioMAT and BioRAM programs together so it is impossible to know what share of the costs presented is specific to BioMAT.[28] The Response also fails to present any explanation for the costs presented so that it is impossible to know:

- Whether the cost data assumes full build-out of BioMAT (procurement of all 250 MW);
- Whether the cost comparisons are to all RPS power or only to other baseload or dispatchable (firm) renewables;
- Whether the cost comparisons are limited to other distributed generation (small scale) resources or utility-scale resources as well; and
- What the Response assumes about the availability of federal tax incentives (which are being phased out for solar and wind power).

Despite all the flaws and gaps in the Commission's Response to the Executive Order (the "Commission's Response"), it still makes clear that BioMAT – even if fully built out – would cost ratepayers only a few pennies per household per month.[29] By contrast, wildfire costs ratepayers in California more than $10 per household per month now and

[28] CPUC Response to Executive Order N-5-24 at: footnote 5 on page 7, pages 14-15, Table A-2 on pages 31-32.
[29] BAC's Petition for Modification at pages 11-12 and spreadsheets attached to three Ex Parte Notices BAC filed in this Rulemaking in May and July.

the Commission has noted on several occasions that BioMAT projects can help to mitigate those costs.[30]

The Commission has also not evaluated the ratepayer and societal benefits of BioMAT, which is an essential part of a cost-benefit analysis. Had the Commission's Response complied with the Governor's Executive Order by considering both costs and benefits, BioMAT would look like a bargain in comparison to wildfire costs, which the Commission's Response makes clear are the biggest cause of increasing electricity rates.[31] A recent study by UCLA found that recent wildfires have cost California more than $400 billion dollars and more than 50,000 premature deaths.[32] The connection between wildfire costs and BioMAT was underscored recently in letters to the Commission from the Sierra Nevada Alliance, which works to restore Sierra Nevada ecosystems,[33] and the Yosemite Sequoia Resource Conservation and Development District, which represents numerous local governments, Tribes, fire safe councils, community groups and others across Fresno, Madera, Mariposa and Tulare Counties.[34] Those letters are attached in Appendix One to these comments.

If BioMAT projects help to mitigate just one large wildfire, the program would more than pay for itself, yet the Commission's Response did not even consider a cost-benefit analysis of BioMAT projects or even their benefits for wildfire mitigation.

The Proposed Decision also errs in comparing BioMAT costs to intermittent resources (solar and wind), energy storage, and existing generation. In addition to violating Public Utilities Code section 399.20(d)(2)(C), the Commission itself has recognized that firm resources that are available when needed for as long as needed are more valuable to the grid even if they cost more on a per megawatt basis.[35] The Commission recognized

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[30] See, eg, CPUC's "Bioenergy Market Adjusting Tariff (BioMAT) Program Review and Staff Proposal," October 2018, at page 6 and CPUC Resolution E-4922, at page 5.
[31] CPUC Response to Executive Order N-5-25 at page 4.
[32] https://newsroom.ucla.edu/releases/the-death-toll-from-wildfire-smoke?utm_medium=email&utm_s.
[33] https://sierranevadaalliance.org/mission-vision/.
[34] https://www.ysrcandd.org/about.
[35] See, ie, Decision 21-06-035, issued in Rulemaking 20-05-003 on June 30, 2021, at pages 35-38.

this when it adopted an integration adder and again when it required 1,000 MW of new, firm resources in the Integrated Resources Planning rulemaking.[36]

Comparing the costs of BioMAT to battery storage[37] is also not a valid comparison since storage is not the same as power generation. Batteries do not generate power, they only store power that is created by other resources. In other words, you cannot look at the costs of battery storage in isolation, but must consider the costs of intermittent generation (wind or solar) plus sufficient battery storage to be equivalent to firm resources. The Commission acknowledged this difference in value to the grid when it adopted its Decision on Mid-Term Reliability, creating two separate procurement requirements for firm power and for battery storage.[38]

Comparing BioMAT costs to utility scale biomass and existing, rather than new, projects is also not a reasonable comparison. The Legislature created both ReMAT and BioMAT to increase production of distributed generation for the advantages that distributed generation provides to the grid and because distributed generation projects of all types are more expensive than utility-scale projects. Rooftop solar or other distributed generation solar also cannot compete on cost alone with utility-scale solar projects, but the state has long recognized the value of distributed generation and adopted numerous programs to incentivize distributed generation, including the Million Solar Roofs initiative, Net Energy Metering, the Self-Generation Incentive Program, ReMAT, BioMAT, and others.

Comparing BioMAT to BioRAM costs is also not a valid comparison since BioRAM projects were built decades ago. Current BioRAM contract prices do not need to include the costs of project construction, interconnection, permitting or financing. BioMAT projects, by contrast, must by law be new and therefore BioMAT contract prices must include the costs of construction, interconnection and other startup costs. Since SB 1122 requires new, distributed generation projects, comparing the price of those

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[36] Id.
[37] See Proposed Decision at page 16.
[38] Decision 21-06-035, issued in Rulemaking 20-05-003 on June 30, 2021, at pages 35-38.

projects to utility-scale facilities that were built several decades ago is not a legitimate price comparison.

The Commission errs in relying on BioMAT costs to end the program when state law does not give it that discretion. In addition, the Commission's cost comparisons do not comply with state or federal law or the direction in the Governor's Executive Order.

IV. THE PROPOSED DECISION ERRS IN CLAIMING THAT THE RPS DOES NOT DISTINGUISH BY TECHNOLOGY OR OUTPUT.

The Proposed Decision mistakenly claims that the Renewables Portfolio Standard (RPS) does not distinguish between different resource types[39] to justify its cost argument against BioMAT. The Proposed Decision states:

> "From an RPS-compliance standpoint, the distinction between intermittent and firm resources is not relevant; therefore, it is appropriate to compare BioMAT resource prices to overall RPS procurement costs. . . There are no program compliance rules that consider eligible technology types or deliverability profiles (intermittent vs. firm) when counting renewable energy credits (RECS).[40]

In claiming that the RPS does not distinguish between firm resources and other resource types, the Proposed Decision ignores the explicit language of Public Utilities Code sections 399.20(d)(2)(C) and 399.20(f)(2), both of which are within the RPS section of code. The first section requires the Commission to determine the market price of BioMAT and ReMAT power in consideration of "the value of different electricity products including baseload, peaking, and as-available electricity." By distinguishing between baseload, peaking, and as-available resources, state law is directing the Commission to consider the different values that these resource types provide. In other words, the Commission must consider baseload and peaking (firm and dispatchable resources) differently from as-available (intermittent) resources for cost analyses. Neither the Commission's Response to the Governor's Executive Order nor the

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[39] Proposed Decision at page 16.
[40] Proposed Decision at page 16.

Proposed Decision compare BioMAT to other firm (baseload or peaking) resources as required by section 399.20(d)(2)(C).

The Proposed Decision also errs in claiming that the RPS does not require specific technology types or deliverability profiles. SB 1122, by requiring 250 MW from new bioenergy projects, very much requires specific technology types that can convert organic waste into biopower, which provides firm power (either baseload or peaking). SB 1122 effectively excludes most other RPS generation technologies, including solar, wind, geothermal, hydropower and other technology types. BioMAT feedstock category 1 is even more specific because it requires the production of biogas, which excludes combustion as the conversion technology since combustion of organic waste does not generate biogas. Public Utilities Code section 399.20(d)(2)(B) also requires that ReMAT and BioMAT power be generated from new facilities, further distinguishing these projects.

In claiming that the RPS does not distinguish between technology or deliverability types, the Proposed Decision also ignores its own decisions in the Integrated Resources Planning proceeding. Those Decisions require utilities to procure 1,000 MW from firm resources and an additional 1,000 MW from long duration energy storage resources.[41]

For all of these reasons, the Proposed Decision errs in claiming that the RPS does not distinguish between different technologies or deliverability profiles.

V. THE PROPOSED DECISION ERRS IN CLAIMING THAT PROGRAM COMPLEXITY (CREATED BY THE COMMISSION, NOT STATE LAW) OR PROGRAM UNDERUTILIZATION JUSTIFIES ENDING BIOMAT.

Administrative complexity is not a valid reason to end BioMAT, especially when it is the Commission, not the legislation, that created the complexity. Neither SB 1122 nor subsequent BioMAT laws required the Commission to create such complicated program rules. SB 1122 created a simple requirement for a feed-in tariff to procure 250 MW

[41] Decision 21-06-035, issued in Rulemaking 20-05-003 on June 30, 2021, at pages 35-38.

from new, small-scale bioenergy facilities. It is the Commission who adopted unnecessarily complex rules to govern the program that have slowed participation. Southern California Edison noted this in its comments on BAC's Petition for Modification, saying that the program structure, including the complex pricing mechanism, "deters participation, limits transparency, and increases administrative costs. . . These structural challenges undermine the program's ability to achieve its intended goals."[42]

State law does not authorize the Commission to end BioMAT based on the program complexity that the Commission itself created. If this were allowed, then any state agency could subvert legislative direction by creating unworkable rules to avoid fulfilling legislative direction.

The Proposed Decision also points to the high administrative costs of BioMAT,[43] but provides zero data about its own or the utilities' administrative costs to justify this point. BioMAT program administration is largely automated by the utilities and ratepayers only incur costs once projects are in operation and generating power. In the absence of providing any actual data about administrative costs, this assertion cannot justify ending BioMAT, which is required by state law.

The Proposed Decision also points to low program participation as justification for ending the program,[44] but ignores the data that BAC presented in its Petition for Modification and in Responses to its Petition. That data showed that participation is increasing,[45] meaning that the Proposed Decision would end BioMAT just when program participation is beginning to accelerate. Responses to BAC's Petition showed that there are more than a dozen BioMAT projects in development now and many of those will not be able to execute a Power Purchase Agreement by December 31,

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[42] RESPONSE OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) TO BIOENERGY ASSOCIATION OF CALIFORNIA'S PETITION TO MODIFY DECISION 20-08-043, filed April 7, 2025 in R.18-07-003, at page 2.

[43] Proposed Decision at page 17.

[44] Proposed Decision at page 14.

[45] BIOENERGY ASSOCIATION OF CALIFORNIA REPLY TO RESPONSES TO THE BIOENERGY ASSOCIATION OF CALIFORNIA'S PETITION TO MODIFY DECISION 20-08-043, filed April 17, 2025 in R.18-07-003, at pages 16-17.

2025.[46] More recently, BAC and CASA have learned of additional BioMAT projects in development, including several being developed for local governments to help them meet their landfill diversion requirements pursuant to SB 1383 (Lara, 2016), the state's Short-Lived Climate Pollutant reduction law.[47] An updated list of BioMAT projects in development is attached as Appendix Two to these comments.

Program complexity and administrative costs that are imposed by the Commission do not justify ending BioMAT, especially when program participation is now accelerating.

VI. THE EXISTENCE OF OTHER PROCUREMENT PROGRAMS DOES NOT JUSTIFY ENDING BIOMAT.

The Proposed Decision points to several other procurement programs to justify ending BioMAT,[48] but none of those programs is a substitute for complying with the specific requirements of SB 1122. In fact, SB 1122 was adopted precisely because those other programs were not working for new, small-scale bioenergy projects. As the author of SB 1122 stated in explaining the need for the legislation:

> "The PUC's Decision revising the Feed-in Tariff Program [ReMAT] ignores market considerations for small renewable biomass or biogas projects and fails to promote diversity in resource technologies. Without differentiating small renewable biomass and biogas projects from other renewable distributed generation technologies, opportunities for methane pollution reduction and clean energy generation will not be realized. Unless and until the PUC accounts for benefits to ratepayers and the environment from reducing air pollution and global warming emissions by generating electricity from small renewable biomass and biogas, a separate procurement requirement for these technologies is necessary."[49]

Since the CPUC still doesn't account for the benefits to ratepayers and the environment of small-scale bioenergy projects – as the author's statement noted in 2012 – the

[46] BIOENERGY ASSOCIATION OF CALIFORNIA REPLY TO RESPONSES TO THE BIOENERGY ASSOCIATION OF CALIFORNIA'S PETITION TO MODIFY DECISION 20-08-043, filed April 17, 2025 in R.18-07-003, at page 17.
[47] Health and Safety Code section 39730.5 et seq.
[48] Proposed Decision at pages 14-15.
[49] Author's statement on SB 1122, contained in Assembly Utilities and Commerce Committee analysis of SB 1122 at pages 1-2.

BioMAT program is still needed and its requirements are not met by other procurement programs.

The Proposed Decision points to other procurement programs that are not viable substitutes for BioMAT, including:

- The RPS and Standard Offer/Qualifying Facilities – these are least cost programs that have resulted almost entirely in new utility-scale solar and wind procurement; no distributed generation bioenergy has been procured under the general RPS procurement program since SB 1122 was enacted.
- ReMAT – as the SB 1122 author's statement above notes, ReMAT does not work for bioenergy projects, which is precisely why SB 1122 was needed.
- BioRAM – this program is for utility-scale, existing facilities so new, distributed generation bioenergy cannot compete economically with larger facilities that were built decades ago.

The fact that other procurement programs exist does not justify ending BioMAT, especially when the Legislature's intention with SB 1122 was to promote the development of new, small-scale bioenergy projects and the author's statement justifying the bill said explicitly that other procurement programs were not working for bioenergy.

VII. MOTION FOR STAY OF DECISION 20-08-043 AND PROPOSED DECISION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), BAC and CASA hereby move for a Stay of Conclusion of Law number one in Decision 20-08-043 and the Proposed Decision in full since both would violate SB 1122 and AB 843 by ending the BioMAT program before the required megawatts are procured and CCAs have sufficient time to participate in BioMAT. None of the reasons presented in the Proposed Decision for ending BioMAT are justified or allowed under state law. While the Commission has significant discretion to regulate private utilities, it does not have the discretion to disregard the plain language of a statute that mandates procurement of a specific type of energy, namely 250 MW of new, small-scale bioenergy.

BAC and CASA hereby move for a Stay of the Proposed Decision and Conclusion of Law Number One in Decision 20-08-043 that established a BioMAT end date of December 31, 2025.

DATED: October 8, 2025

Respectfully submitted,

/s/ Julia A. Levin

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<u>VERIFICATION</u>

I am a representative of the non-profit organization herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of October, 2025, in Kensington, California.

/s/ Julia A. Levin

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APPENDIX ONE –

LETTERS IN SUPPORT OF BIOMAT FROM THE YOSEMITE SEQUOIA RESOURCE CONSERVATION AND DEVELOPMENT DISTRICT AND THE SIERRA NEVADA ALLIANCE

YOSEMITE SEQUOIA RC & D COUNCIL

The Honorable Alice Busching Reynolds
President, California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

On behalf of the Yosemite Sequoia Resource Conservation & Development Council (Y/S RC&DC), I write in strong support of extending the BioMAT program. This program is one of the most effective tools we have for linking wildfire risk reduction, renewable energy development, and rural economic revitalization across California's most vulnerable regions.

The Southern Sierra Nevada faces extreme wildfire hazards and heavy fuel accumulation from years of drought, tree mortality, and deferred forest management. Extending BioMAT for at least five more years will sustain investment in community-scale 3–5 MW renewable waste-wood gasification plants, creating a critical outlet for woody biomass generated through ongoing fuel-reduction and restoration work.

A leading example is the North Fork Community Power Project in North Fork, California, one of the first modern woody biomass gasification facilities in the state. Developed through collaboration among the North Fork Community Development Council, Phoenix Energy, and regional partners including Y/S RC&DC, this facility converts hazardous forest fuels into roughly 2–3 MW of clean power for the local grid. It demonstrates how BioMAT can:

-Reduce wildfire risk by processing hazardous fuels and slash from forest-health projects, avoiding open-pile burning and air-quality impacts.
S-upport local economies by creating skilled, year-round jobs and stable markets for low-value biomass.
-Advance climate goals by cutting methane and black-carbon emissions while providing distributed, wildfire-resilient energy in areas prone to Public Safety Power Shutoffs.

Established in response to Senate Bill 1122, the BioMAT program directs investor-owned utilities to purchase renewable electricity from small-scale bioenergy facilities at predictable rates that enable private financing and long-term operation. Despite its impact, BioMAT accounts for less than one dollar per household annually, a minimal cost compared to the over $120 per household PG&E charges each year for wildfire mitigation and grid hardening.

The program's benefits far exceed its costs. It strengthens local capacity to manage hazardous fuels, improves forest health, and keeps project dollars circulating within rural economies. As Californians demonstrated by approving the $10 billion Climate Bond, there is clear public support for pragmatic, community-driven solutions that turn forest waste into renewable power and climate resilience.

The North Fork Biomass Facility proves this model works. With continued CPUC support, BioMAT can replicate this success across other fire-prone regions, helping communities transform wildfire risk into clean energy and stable employment.

We urge you to continue and expand this program as a vital investment in California's forest resilience, energy security, and rural livelihoods.

Sincerely,

Erin Capuchino

Erin Capuchino, Executive Director
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Oakhurst, CA 93644
ysrcandd.org

To whom it may concern,

The BioMAT program is crucial for addressing wildfire risks and developing renewable energy in California. Its extension for 5 more years is pivotal for the financing and creation of modern minimal impact community-scale 3 to 5 MW renewable waste wood gasification power plants in high-hazard wildfire zones in California. Sierra Nevada communities generate waste wood from fire prevention efforts, which can supply local gasification power plants.

CPUC created the BioMAT program in response to Senate Bill 1122 to incentivize and encourage the development of small-scale bioenergy projects (5 MW or less) that use biogas, agricultural waste, and sustainable forest waste by requiring IOUs to purchase electricity at financially attractive rates that enable the securing of private sector financing for construction and operation of these power plants in high risk communities with cost-effective grid interconnection potential. In addition to wildfire risk reduction, the program improves forest health by reducing trees and shrub biomass density.

PG&E adds more than $120 in yearly utility charges per household for Wildfire Fund and Hardening efforts. Less than $1 of that yearly household cost is due to BioMAT (1) , an insignificant amount for California utility rate payers who recently passed the $10B Climate Bond by a wide margin, demonstrating overwhelming public support for wildfire mitigation and resiliency efforts.

The significant economic and social impact of ever-increasing number of large-scale wildfires across California highlight the continued need for such initiatives. Sierra Nevada Alliance supports conservation efforts in twenty-three communities in the fire prone Sierra Nevada. Your support for the BioMAT extension is vital to realizing the cost-effective wildfire mitigation and resiliency benefits of the community-scale waste wood gasification power plants.

Sincerely,

Jenny Hatch

Jenny Hatch,
Executive Director
Sierra Nevada Alliance
jenny@sierranevadaalliance.org

(1) https://bioenergyca.org/2025/03/cpuc-affordability-report-shows-that-wildfires-not-bioenergy-are-driving-rate-increases/

APPENDIX TWO –

BIOMAT PROJECTS IN DEVELOPMENT

AS OF OCTOBER 1, 2025

Project Developed For	Project Name	County	Project Developer	Size	Feedstock / BioMAT Category	Status	Jobs - Construction	Jobs - Permanent	Fed. Funds Received	State Funds Received
Tribe: Scotts Valley Band of Pomo Indians	Red Hills Plant	Lake	Scotts Valley Energy Corp	250 KW	Forest Material	Shovel ready	12 FTE	10 FTE		$1 million from Governor's Jobs First Initiative - Tribal
	Yuba City Bioenergy	Yuba	Scotts Valley Energy Corp	330 KW	Nut shells	Need to secure feedstocks and permits				
Resource Conservation Districts:										
	Auberry	Fresno	Sierra RCD	TBD	forest waste					
	Burney Bright Bioenergy	Shasta	Fall River RCD	TBD	forest waste					
	Mariposa	Mariposa	Mariposa RCD/West Biofuels	3MW	forest waste	PPA in queue; in process of securing permits and feedstock				
Community Groups & Non-Profits:										
Camptonville Community Partnership	Engeman Camptonville Green Energy	Yuba	Engeman Camptonville Green Energy	5MW	Forest Biomass	Final stages to construct. Need a Generator Interconnection Agreement from CAISO to secure final financiang for contruction.	15 to 20	8 to 13	$288,645.00	$6,999,830.00 in state funding *and $15,000,000 in Yuba Water Agency (Yuba County funding)*

Whitebark Institute	Mammoth Lakes Bioenergy	Mono	West Biofuels	3.6MW	Forest Biomass	final engineering in progress, construction expected to begin in 2026			$30 million from US DOE	Highlighted in Governor's Jobs First Report (p. 92)
Supply Chains for Good	There's Cash in that Trash - CalDoor	Monterey County	Supply Chains for Good	TBD	Pure wood, little, or no adhesives, or finishes.	This is in the bidding/specificing process now.	This is a small system and does not require construction on site.	CalDoor employes 500 people.		
Supply Chains for Good	There's Cash in that Trash - West Wood Products	Los Angeles County	Supply Chains for Good	TBD	MDF with significant amounts of adhesives, finishes and laminates	This is in the bidding/specificing process now.		West Wood employes about 50 people at this site.		
Supply Chains for Good	There's Cash in that Trash - RREDCO	Shasta County	Supply Chains for Good	TBD	Forestry waste/fire abatement	Securing equipment for forest fuel removal and energy production	TBD within 6 months or less	TBD within 6 months or less		
Supply Chains for Good	There's Cash in that Trash - Pilot project	Orange County CA	Supply Chains for Good, C.J. Nord	0.3 MW initially (using 3000 tons of wood waste annually),growing to 1 MW to process up to 9000 tons a year	70% composite woodwaste and 30% pure wood.	Company owner is ready to purchase equipment once feedstock and financing obtained, likely within 6 months. Additional 6-8 months needed to enter BioMAT queue.	Initial installation is a small construction project. This also requires engineers for site studies, permitting, design.	Several part-time employees. This company employes people in addiction recovery programs, and is an excellent community parnter		
Community Choice Aggregators:										

	Pioneer	Grass Valley. CA	West Biofuels	3MW	Forest Biomass					
	Redwood Coast	Humboldt County	??	3 MW	Forest Biomass, Dairy	Seeking project developers for one or more BioMAT projects	TBD	TBD	TBD	TBD
Waste Hauler:	Marin Sanitary Service Biomass Gasification Plant	Marin	Marin Sanitary Service	2 MW	Biomass (urban wood debris)	Early Stage Development	TBD	TBD	TBD	TBD
Private Sector:										
	Blue Mountain Electric Company	Calaveras	Phoenix Biomass Energy, Inc.	3MW	Forest wood	In Construction	20	14	$1 million	$1.4 million from Governor's Jobs First Initiative
		Kings	Aligned Digesters	3MW	Dairy	COD 2027	2	2		
		Kings	Aligned Digesters	1MW	Dairy	COD 2028	2	2		
		Kings	Aligned Digesters	1MW	Swine	COD 2028	2	2		
	Ventura	Ventura	Sierra Energy	5Mw/3Mw Biomat	Forest Feedstocks	In Development	125	22		
	Fort Bragg	Mendocino	Sierra Energy	5Mw/3Mw Biomat	Forest Feedstocks	In Development	125	22		
	Oakdale	Stanislaus	Sierra Energy	5Mw/3Mw Biomat	Forest Feedstocks	In Development	125	22		
	SacPort	Yolo	Sierra Energy	5Mw/3Mw Biomat	Forest Feedstocks	In Development	125	22		
	Yosemite Junction	Tuolumne	Sierra Energy	5Mw/3Mw Biomat	Forest Feedstocks	In Development	125	22		

	Arnold Power & Water	Calaveras	Phoenix Biomass Energy, Inc.	3MW	Forest wood	Permitting / Planning	20	14	$ -	$439,000
	Burney Hat Creek	Shasta	West Biofuels	3MW	forest	Operating			$30 million from US DOE	Highlighted in Governor's Jobs First Report (p. 92)
	Quincy Bioenergy	Plumas	West Biofuels	3MW	Forest Biomass	In Development	20	15		
	NorCal Bioenergy	Yuba	West Biofuels	3MW	Forest Biomass	In Development	20	15		
	Biggs Bioenergy	Butte	West Biofuels	3MW	Forest Biomass	In Development	20	15		
	Kompogas SLO	San Luis Obispo	Kanadevia Inova / Mainspring	.25 MW	mixed					
	Mendocino Forest Products	Mendocino	Brad Thompson Company/MFP	5Mw/3Mw Biomat	Forest Feedstocks	In Development				
		Yuba	Engeman	3MW	forest	Has PPA; PG&E estimates 3-4 yrs for interconnection				
		Butte	anonymous	1MW	mixed					
		Yolo	anonymous	3.5MW	mixed					
		Los Angeles	anonymous	1MW	mixed					