

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**  
05/26/26  
01:31 PM  
R1807003

Order Instituting Rulemaking To Continue )  
Implementation and Administration, and )  
Consider Further Development, of California )  
Renewables Portfolio Standard Program. )  
\_\_\_\_\_ )

Rulemaking 18-07-003  
(Filed July 12, 2018)

**BIOENERGY ASSOCIATION OF CALIFORNIA APPLICATION  
FOR REHEARING OF DECISION 26-05-008**

DATED: May 26, 2026

JULIA A. LEVIN  
Executive Director  
Bioenergy Association of California  
PO Box 6184  
Albany, CA 94706  
510-610-1733  
[jlevin@bioenergyca.org](mailto:jlevin@bioenergyca.org)

# TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THE DECISION’S CLAIM THAT BAC’S PETITION FOR MODIFICATION WAS UNTIMELY IS ARBITRARY AND CAPRICIOUS AND AN ABUSE OF DISCRETION .....	2
	A. The Commission Failed to Proceed in the Manner Required by Law by Refusing to Act on the September 18, 2025 Proposed Decision in Accordance with the Commission’s Rules of Practice and Procedure. ....	3
	B. The Decision’s Conclusion that BAC’s Petition Did Not Meet the Timeliness Requirement of Rule 16.4 is Factually and Legally Erroneous and Represents a Clear Abuse of Discretion .....	4
III.	DECISION 26-05-008 VIOLATES SENATE BILL 1122.....	8
	A. The Commission Does Not Have the Discretion to Ignore Statutory Requirements.....	8
	B. SB 1122 Did Not Include a Program End Date or Other Basis for Ending BioMAT Without Adopting a Successor Program.....	11
IV.	THE COMMISSION’S DECISION VIOLATES ASSEMBLY BILL 843 .....	13
V.	DECISION 26-05-008 CONTAINS FACTUAL ERRORS THAT SHOULD BE CORRECTED .....	14
	A. Decision 26-05-008 Mischaracterizes Public Comments.....	14
	B. Decision 26-05-008 Makes Other Factual Errors.....	16
VI.	CONCLUSION.....	18
VII.	EXHIBIT ONE	

## TABLE OF AUTHORITIES

### California Constitution

California Constitution Art. IV.....	10
California Constitution Art. XII, § 2 .....	10

### Statutes

Senate Bill 1122 (Rubio, 2012) .....	<i>passim</i>
Assembly Bill 843 (Aguiar-Curry, 2021) .....	<i>passim</i>
SB 840 (Budget, 2016) .....	11
AB1979 (Bigelow, 2016) .....	11, 12
AB 1923 (Wood, 2016).....	12
SB 1078 (Sher, 2002).....	12

### Regulations

Public Utilities Code section 399.20(f).....	<i>passim</i>
Public Utilities Code section 379.6.....	12
Public Utilities Code section 710.....	12
Public Utilities Code section 399.14(a)(1).....	12
Public Utilities Code sections 399.15(b) and (c).....	12
Public Utilities Code section 1757(a) .....	2
Public Utilities Code section 1751(a)(2) .....	3
Public Utilities Code section 1701.3(j) .....	4
Evidence Code section 664 .....	7

### California Court Cases

<i>Center for Biological Diversity, Incorporated v. Public Utilities Commission</i> (2025) 18 Cal.5th 293.....	11
<i>Bd. of Trustees of Cal. State Univ. v. Public Employment Relations Bd.</i> (2007) 155 Cal.App.4th 866, 876.....	10

<i>Southern Cal. Gas Co. v. P.U.C.</i> (1979) 24 Cal.3d 653, 657-660.....	10
<i>Coble v. Ventura County Health Agency</i> (2022) Cal.App.2 <sup>nd</sup> .....	10
<i>Lennane v. Franchise Tax Board</i> (1994) 9 Cal.4th 263, 268.....	10
<i>Mt. Hawley Ins. Co. v. Lopez</i> (2013) 215 Cal.App.4th 1385, 1396.....	10
<i>Yamaha Corp. of America v. State Bd. of Equalization</i> (1998) 19 Cal.4th 1.....	11

**Commission Decisions and Orders**

Decision 14-12-081 .....	11, 16
Decision 20-08-043 .....	<i>passim</i>
Decision 26-05-008.....	<i>passim</i>
Decision 15-09-004 .....	16
Assigned Commissioner’s Scoping Memo and Ruling in Rulemaking 22-10-010.....	5
Assigned Commissioner’s Scoping Memo and Ruling in Rulemaking 24-01-017.....	5, 6, 17

**Commission Rules of Practice and Procedure**

Rule 16.1.....	1, 2, 6
Rule 15.4 .....	4
Rule 16.4 .....	1, 2, 6, 8
Articles 14 and 15 .....	4

## I. INTRODUCTION

The Bioenergy Association of California (“BAC”) submits this Application for Rehearing of Decision 26-05-008 in accordance with Rule 16.1 of the Commission’s Rules of Practice and Procedure (“RPP”).<sup>1</sup> BAC submits this Application because the Decision abuses the Commission’s discretion by determining that BAC’s Petition for Modification was not timely, and by failing to consider the Petition on the merits. Further, the Decision commits legal error by denying BAC’s Petition for Modification to extend the BioMAT program end date to comply with Senate Bill 1122 (Rubio, 2012)<sup>2</sup> and Assembly Bill 843 (Aguiar-Curry, 2021).<sup>3</sup> Since the Commission adopted the BioMAT program as the means to implement SB 1122 and the requirements of SB 1122 are still far from satisfied, the Commission cannot legally end the program unless it implements a successor program to meet the remaining requirements of SB 1122 and AB 843. The Commission has the discretion to determine how best to implement the requirements of those laws, but it does not have the authority or the discretion to ignore the law. Decision 26-05-008 commits legal error by denying BAC’s petition to extend the BioMAT program to comply with SB 1122. The Decision also makes significant factual errors that must be corrected.

BAC submits this Application for Rehearing of Decision 26-05-008, requesting that the Commission:

1. Find that the timing of BAC’s Petition for Modification was “justified” and therefore the Petition was timely filed under RPP 16.4.
2. Grant BAC’s Petition for Modification to reinstate and extend the BioMAT program until it meets the requirements of SB 1122 or until the Commission adopts a successor program to meet those statutory requirements; and
3. Correct several significant factual errors in the Decision.

---

<sup>1</sup> CPUC Decision 26-05-008, issued May 15, 2026 in Rulemaking 18-07-003.

<sup>2</sup> Senate Bill 1122 (Rubio), Statutes of 2012, Chapter 612, codified in Public Utilities Code 399.20(f)(2).

<sup>3</sup> Assembly Bill 843 (Aguiar-Curry) Statutes of 2021, Chapter 234, codified in Public Utilities Code 399.20(f)(5).

BAC represents about 85 local governments, Tribes, public agencies, private companies, research institutions, utilities, and non-profit organizations. BAC's public sector members include cities and counties working to meet the landfill diversion requirements of SB 1383, air quality and environmental agencies, public research institutions, community and environmental groups. BAC's private sector members include project developers, energy technology firms, waste haulers, agriculture and food processing companies, investors, and more.

BAC files this Application for Rehearing to alert the Commission to the legal and factual errors in Decision 26-05-008 in accordance with Rule 16.1.

**II. THE DECISION'S CLAIM THAT BAC'S PETITION FOR MODIFICATION WAS UNTIMELY IS ARBITRARY AND CAPRICIOUS AND AN ABUSE OF DISCRETION.**

The Decision rests solely on the incorrect argument that BAC's Petition for Modification was not timely filed, and therefore does not consider the merits of the Petition. Even that procedural argument is flawed and misleading, for the reasons below.

The Decision proceeds from the premise that "[d]etermining whether the late submission has been sufficiently justified by the petitioner is entirely discretionary." This suggests an unreviewable fiat that the Commission does not, in fact, possess. The law is equally clear that even discretionary determinations, like "justificat[i]on" under RPP 16.4(d), will be set aside by the courts if that discretion is abused - and that such abuse exists if the Commission's decision is not supported by the findings or the findings are not supported by substantial evidence.<sup>4</sup> That is plainly the case here.

---

<sup>4</sup> Public Utilities Code section 1757, subdivisions (a)(3)-(5).

**A. The Commission Failed to Proceed in the Manner Required by Law by Refusing to Act on The September 18, 2025 Proposed Decision in Accordance With The Commission’s Rules of Practice and Procedure.**

As a threshold matter, adoption of the second (April 10, 2026) proposed decision, while the original (September 18, 2025) proposed decision remained pending, represented a failure to proceed in the manner required by law.<sup>5</sup> The Decision's efforts to avoid this conclusion contain multiple errors of both fact and law. Most obviously, the Decision repeatedly asserts that the September 18, 2025 proposed decision was "ultimately withdrawn," but this simply isn't true. It is clear from the minutes of the January 10, 2026 meeting that the Commission never voted to withdraw the September 18, 2025 proposed decision, and the Decision does not identify any other official with delegated authority to tamper with the Commission's decisionmaking process in this manner.

While proposed decisions are not the Commission’s final action, they *do* have procedural consequences under the RPP - namely, triggering a structured decisionmaking process with requirements and timelines for consideration by the full Commission.<sup>6</sup> The Decision's assertions that those requirements and timelines were suspended by due authority, such that the Commission was free to disregard them and ignore the September 18, 2025 proposed decision, is unsupported by substantial evidence.

More broadly, the Decision proceeds from the apparent premise that any deviation from process set forth in the RPP is permissible, so long as that *particular* procedural innovation is not *explicitly* prohibited by the RPP. That is legal error. The RPP (and the Public Utilities Code provisions upon which they are based) set forth a deliberate mechanism for CPUC decision-making, under which Proposed Decisions issued by assigned ALJ’s are considered and disposed of by the appointed Commissioners

---

<sup>5</sup> Public Utilities Code section 1751, subdivision (a)(2).

<sup>6</sup> To the extent that the Decision suggests that the boilerplate notice in the September 18, 2025 proposed decision that “[u]ntil and unless the Commission hears the item and votes on it, the proposed decision has no legal effect” was intended to evade those procedural consequences, that would simply represent another violation of the RPP, rather than a justification for the violations noted above.

through formal public process. Such Proposed Decisions are not binding on the Commission – the RPP specifically authorizes any Commissioner to issue an Alternate Proposed Decision on which the full Commission may vote (RPP 14.2(c) – but this is a public action, taken by the Commissioners, and for which they are accountable. The RPP do not contemplate or authorize CPUC staff to simply “disappear” Proposed Decisions with which they may disagree in a backroom, and then judge-shop for a more favorable outcome.

Finally, the Decision's findings on this point err grievously by omitting any mention of *the single most salient fact*: The highly irregular procedure adopted in this case was made possible *only* because of the *indisputable* violation of explicit provisions of the Public Utilities Code and the RPP - specifically, the 60-day deadline for action by the Commission on the September 18, 2025 proposed decision.<sup>7</sup> This tight timeline is plainly incompatible with the procedure here, in which (apparently disfavored) proposed decisions are suppressed (by unidentified Commission staff) without explanation, and new proposed decisions then circulated – a procedure that *cannot possibly be completed within 60 days*. The Decision cannot manufacture substantial evidence to support its actions, nor legal propriety, simply by ignoring the record.<sup>8</sup>

**B. The Decision's Conclusion that BAC's Petition Did Not Meet The Timeliness Requirement of Rule 16.4 Is Factually and Legally Erroneous, and Represents A Clear Abuse of Discretion.**

On this issue, as above, the Decision's findings omit crucial facts, and are unsupported by substantial evidence. The Decision states that “[t]he Commission affirmed that R.18-07-003 was the appropriate venue to consider changes to the BioMAT program sunset

---

<sup>7</sup> Public Utilities Code section 1701.3, subd. (j); RPP 15.4.

<sup>8</sup> The Decision's statement that “BAC fails to identify rules *in Article 14* that prevent the Commission from issuing a new proposed decision where a prior proposed decision was withdrawn” is thus either intentionally misleading or simply wrong. The 60-day deadline that affirmatively “prevent the Commission from issuing a new proposed decision” is contained in Article 15, and it was clearly identified in BAC's comments. To the extent that the Decision intends to imply that the Commission can unilaterally make the timelines in Article 15 (and the Public Utilities Code) meaningless by the simple expedient of repeatedly issuing and reissuing proposed decisions under Article 14, the legal defects in that proposition are self-evident.

date on April 6, 2023, which is almost two years before the Petition was filed." However, *this is not accurate.*

The April 6, 2023 Scoping Memo and Ruling, to which the Decision refers, actually said that "the Commission will monitor, review, and revise the BioMAT program in Rulemaking (R.) 18-07-003 *or its successor proceeding*" – hardly indicative of an intent to simply allow that program to expire.<sup>9</sup> More importantly, *subsequent to this ruling, the Commission changed course yet again.* On February 1, 2024, the Commission issued an Order Instituting Rulemaking 24-01-017 which plainly identified *that proceeding* as the appropriate place to consider revisions to the BioMAT program.<sup>10</sup> The Order advised interest parties, like BAC, that "this rulemaking will have three principal tasks," including, as relevant here "**Resolving Remaining Issues from R.18-07-003,**" and specifically, "Ongoing monitoring, reviewing and **revising, as needed,** all RPS procurement methods and tariffs, such as...**the Bioenergy Market Adjusting Tariff (BioMAT).**"<sup>11</sup> (emphasis added)

The Commission further extended this assurance in the May 9, 2024 Scoping Memo and Ruling in that proceeding:

"In comments on the OIR, some parties recommended that we include a "distinct" issue in the Scoping Memo related to the BioMAT end date or otherwise requested that we prioritize reassessing the current program end date. Other parties did not oppose scoping in this issue but rather recommended that we not prioritize it over other issues. The Commission may consider issuing an Amended Scoping Memo in early 2025 that includes a distinct and separate issue to reassess and consider extending the BioMAT program end date."<sup>12</sup>

---

<sup>9</sup> Assigned Commissioner's Scoping Memo and Ruling, issued April 6, 2023 in R.22-10-010, at page 2.

<sup>10</sup> Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program, issued February 1, 2024 in R.24-01-017, at page 7.

<sup>11</sup> Id.

<sup>12</sup> Assigned Commissioner's Scoping Memo and ruling, issued May 9, 2024 in R.24-01-017, at pages 5-6.

It was only when "early 2025" had come, without any indication of Commission follow-through on this issue - and with the stated "program end date" approaching - that the need for BAC to take action become apparent, and *BAC took that action promptly*, filing its Petition for Modification on March 6, 2025.

All of this is laid out in BAC's comments, but the Decision omits these facts, and thus abjures any consideration of whether they "justif[y]" the timing of BAC's petition. This is a gross abuse of discretion. Interested parties relied on the Commission's affirmative representations regarding *where* and *when* extension of the BioMAT program would be considered, but the Decision does not even acknowledge those representations or their effect on the determination required under RPP 16.4(d). Failure to even consider that the reasonableness and effects of that reliance is an error the courts will correct if the Commission itself does not.

Underlying all of this is a more fundamental error. The Decision faults BAC for not immediately challenging a determination that *Decision 20-08-043 did not actually make*. Supporters of the BioMAT program, including Bioenergy, had no reason to submit an Application for Rehearing of Decision 20-08-043 at the time it was issued. The Commission's Rules of Practice and Procedure state that the "purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."<sup>13</sup> However, Decision 20-08-043, on its face, indicated no such error.

In that decision, the Commission plainly stated that it was extending the BioMAT program end date because "the BioMAT program has not yet served to fulfill the general statutory requirement to procure 250 MW of bioenergy." The *only* reasonable conclusion based on this statement is that the Commission acknowledged its obligation to implement "the general statutory requirement" of Senate Bill 1122 until this requirement was satisfied – and that the Commission would extend the BioMAT end date again if

---

<sup>13</sup> CPUC Rule of Practice and Procedure, Rule 16.1(c).

needed (or adopt a successor program) to comply with statute. The interpretation of Decision 20-08-043 presently advanced by the Decision – i.e., that the Commission intended to cease implementing SB 1122 *in toto*, contrary to its plain language, on December 31, 2025 – was not reasonably foreseeable at the time that decision was adopted, nor within one year thereafter.

Since the BioMAT program extension granted in Decision 20-08-043 was explicitly intended to comply with statute, parties reasonably believed that future extensions would be granted for the same reason, meaning if the extension is needed to fulfil the requirements of section 399.20(f)(2). The law presumes that agencies will comply with the law, not break it, and the regulated public is likewise entitled to rely on this presumption.<sup>14</sup> Nothing in Decision 20-08-043 stated or indicated that it was intended to be the last word on the BioMAT program end date before the Commission complied with the law. Had Decision 20-08-043 stated explicitly that no additional extensions would be granted or considered, whether or not the statutory requirements were met, BAC would have filed an Application for Rehearing in 2020.

In sum, every indication from the Commission over the past several years was that the Commission would at some point before the program end date consider another extension. It was only after the Commission failed to do so in the first quarter of 2025, that it became clear to BAC and other parties that a Petition for Modification was needed to prompt the Commission to consider another program extension to meet the statutory requirements because the Commission had yet to meet SB 1122's directive to direct the utilities to procure at least 250 megawatts (MW) from new, small-scale bioenergy projects in compliance with SB 1122.

To claim now that the Commission's 2020 Decision was the final word on extending BioMAT is revisionist history and a mischaracterization of the 2020 Decision and subsequent Commission rulings that made clear the 2020 Decision was not intended or understood (even by the Commission) to be the final word on the BioMAT end date.

---

<sup>14</sup> Evidence Code section 664.

For all these reasons, the Commission cannot now claim that BAC's Petition for Modification was not timely because BAC did not file an Application for Rehearing in 2020; there was no legal error at the time that Decision 20-08-043 was adopted and the Commission itself has issued numerous statements since then indicating that it, too, did not consider the 2020 Decision to be the final word on the program end date. The Commission's legal error occurred in 2025 when it refused to extend BioMAT (or adopt a new program) when it had the opportunity to do so in order to comply with SB 1122.

For all of these reasons, Bioenergy was plainly "justified" under RPP 16.4(d) in filing its Petition for Modification only when the Commission, notwithstanding its prior statements (and repeated indications of intention to consider the matter in R.24-01-017), indicated that it would treat the stated "program end date" as the termination of all efforts to execute SB 1122's unambiguous statutory command. The Decision's conclusion to the contrary represents a clear abuse of discretion.

### **III. DECISION 26-05-008 VIOLATES SENATE BILL 1122.**

As set forth above, the Commission lacks discretion to avoid considering the merits of BAC's Petition for Modification – and on the merits, must grant the Petition. Decision 26-05-008 violates SB 1122 by ending BioMAT before the Commission complied with the law.

#### **A. The Commission Does Not Have the Discretion to Ignore Statutory Requirements.**

SB 1122, codified in Public Utilities Code section 399.20(f)(2), requires the Commission to direct the utilities to procure at least 250 megawatts (MW) from new, small-scale bioenergy projects.<sup>15</sup> Fewer than 20 megawatts – less than ten percent of the amount required by law - are actually being procured at this point. Even with the additional BioMAT projects in development, the total procurement of new small-scale bioenergy

---

<sup>15</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

will fall very far short of the 250 MW required by SB 1122. The Commission’s decision to terminate BioMAT without adopting a successor program or other decision directing the utilities to procure the remaining megawatts is a clear violation of section 399.20(f)(2).

The Commission previously recognized the need to extend the BioMAT program end date to comply with state law.<sup>16</sup> Its 2020 decision on BioMAT stated that it was extending the program end date since “the BioMAT program has not yet served to fulfill the general statutory requirement to procure 250 MW of bioenergy.”<sup>17</sup>

The Commission’s acknowledgement in 2020 that an extension was needed to fulfill the requirements of section 399.20(f)(2) is equally applicable now, unless the Commission decides to adopt a successor program “to fulfill the general statutory requirement to procure 250 MW of bioenergy,” as the 2020 Decision recognized the Commission is required to do.<sup>18</sup> Ending BioMAT without meeting the statutory requirement to procure *at least* 250 MW of bioenergy violates section 399.20(f)(2).

SB 1122 did not give the Commission the *authority* to require procurement of 250 megawatts of bioenergy, as the Commission claimed in its first Proposed Decision denying BAC’s Petition for Modification, issued in September 2025.<sup>19</sup> BAC understands that the first Proposed Decision does not have the force of law, but it does demonstrate that the Commission believes it has the authority to disregard and change explicit statutory requirements. Decision 26-05-008 continues that legal error by denying BAC’s Petition for Modification without adopting a successor program to meet the requirements of SB 1122.

SB 1122 did not “authorize” the Commission to require the procurement of new bioenergy. Rather, SB 1122 mandates the procurement of at least 250 megawatts of new small-scale bioenergy. Specifically, SB 1122 requires that:

---

<sup>16</sup> CPUC Decision 20-08-043, issued September 1, 2020 in R.18-07-003, at page 11.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

“The commission **shall** . . . 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.”<sup>20</sup> (emphasis added)

The Commission does not have the discretion to ignore the plain language of a statute or an explicit statutory mandate.<sup>21</sup> Article IV of the Constitution authorizes the Legislature to make laws. 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.” The Commission does not make the law; it implements it.

California Courts have held repeatedly that the Commission cannot read past the Legislature’s express language to exercise power it has not been granted.<sup>22</sup> As the Court of Appeal 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.”<sup>23</sup>

Under California law, the Commission must start with the plain language of SB 1122. As the Court of Appeal 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.”<sup>24</sup>

---

<sup>20</sup> Section 399.20(f)(2).

<sup>21</sup> *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.

<sup>22</sup> See, eg, *Southern Cal. Gas Co. v. P.U.C.* (1979) 24 Cal.3d 653, 657-60.

<sup>23</sup> *Coble v. Ventura County Health Agency* (2022) Cal.App.2nd, citing *Lennane v. Franchise Tax Board* (1994) 9 Cal.4th 263, 268.

<sup>24</sup> *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1396.

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.<sup>25</sup>

The Commission adopted the BioMAT program to implement the law and fulfill the requirements of SB 1122. In fact, the Decision itself, Decision 14-12-081, was titled “Decision Implementing Senate Bill 1122,”<sup>26</sup> When the Commission terminated BioMAT without adopting another program to continue implementing SB 1122, the Commission committed legal error because it changed the law by imposing an end date that the Legislature did not authorize. The Commission cannot legally end BioMAT until and unless it adopts another program to meet the remaining requirements of SB 1122. Ending BioMAT without adopting a successor program is in clear violation of section 399.20(f)(2). As the Rural County Representatives of California (RCRC) stated, “RCRC does not question the Commission’s discretion or authority with respect to program design and implementation; however, that discretion does not extend to ignoring, extinguishing, or indefinitely delaying compliance with a clear statutory procurement mandate.”<sup>27</sup>

### **B. SB 1122 Did Not Include a Program End Date or Other Basis for Ending BioMAT Without Adopting a Successor Program.**

SB 1122 did not include a program end date, nor did any of the five additional bills enacted to modify the BioMAT.<sup>28</sup> Those include SB 840 (Budget, 2016), AB1979

---

<sup>25</sup> *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.

<sup>26</sup> Decision 14-12-081, issued December 26, 2014 in Rulemaking 11-05-005.

<sup>27</sup> April 30, 2026 letter to CPUC President John Reynolds from RCRC Senior Policy Advocate John Kennedy, served on April 30, 2026 in both R.18-07-003 and R.24-01-017 and filed in the “public comments” tab of R.18-07-003, at page 5.

<sup>28</sup> Section 399.20(f)(2) and (f)(5).

(Bigelow, 2016), AB 1923 (Wood, 2016) and AB 843 (Aguiar-Curry, 2021). All of these bills were intended to facilitate BioMAT compliance and none of them included a program end date, cost cap, or other basis for ending BioMAT before the required megawatts have been procured.

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 (Voice Over Internet) service carriers in 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 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.<sup>29</sup> Section 399.20(f)(2) does not include any offramps.

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. Ending the BioMAT program without adopting a new program to meet the requirements of SB 1122 is a clear violation of section 399.20(f)(2).

This fundamental legal error must be corrected by extending BioMAT until either 1) the statutory requirements are met or 2) a substitute program is adopted to meet the requirements of section 399.20(f)(2).

---

<sup>29</sup> 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).

#### **IV. THE COMMISSION'S DECISION VIOLATES ASSEMBLY BILL 843.**

In addition to violating SB 1122, Decision 26-05-008 substantively violates Assembly Bill 843 since the Commission has not given Community Choice Aggregators (CCAs) sufficient time to participate in BioMAT, as required by AB 843 (Aguiar-Curry, 2021).<sup>30</sup> AB 843 was enacted to allow CCAs to participate in BioMAT, but adopting the program rules without giving CCAs sufficient time to participate is essentially ignoring the mandate created by AB 843.

The Commission spent 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, saying:

“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. . . the IOUs have received the benefit of [two] successive five-year terms to contract for BioMAT projects. In contrast, participating CCAs have had less than two years to contract for BioMAT projects.”

The Commission determined that the IOUs needed ten years to develop projects in compliance with SB 1122, but gave CCAs less than two years. Since that is not enough time for most CCAs to develop and execute BioMAT contracts, denying BAC's Petition to extend the BioMAT program effectively ignores the requirement of AB 843 to allow CCAs to participate in BioMAT.

---

<sup>30</sup> Assembly Bill 843 (Aguiar-Curry), Statutes of 2021 Chapter 234.

Three CCAs – Pioneer Community Energy, Redwood Coast Energy Authority, and Central Coast Community Energy – helped several new BioMAT projects enter the queue in late December, which demonstrates real and growing interest in BioMAT. These and other CCAs could develop many more BioMAT projects to help meet the requirements of SB 1122, but simply were not given enough time to do develop additional projects before the end of 2025, when the Commission ended the program.

**V. DECISION 26-05-008 CONTAINS ADDITIONAL FACTUAL ERRORS THAT SHOULD BE CORRECTED.**

Decision 26-05-008 contains several significant factual errors that should be corrected.

**A. Decision 26-05-008 Mischaracterizes Public Comments.**

Decision 26-05-008 states that there was no public comment on the second Proposed Decision issued April 10, 2026. This is incorrect and misleading for several reasons. First, the Rural County Representatives of California (RCRC), which represents 40 of California’s 58 counties and is led by elected officials across the state, submitted extensive comments. RCRC served its comments on the Service Lists for both R.18-07-003 and R.24-01-017.<sup>31</sup> Both RCRC’s comments and email service are attached to this Application as Exhibit One. RCRC also filed its comments in the docket for this Rulemaking. To ensure they were included in the record, BAC also included RCRC’s comments as an attachment to BAC’s comments on the second Proposed Decision issued in April,<sup>32</sup> but the Docket Office (upon advice from the Administrative Law Judge) rejected BAC’s initial filing and instructed BAC to re-file its comments without RCRC’s comments attached.<sup>33</sup>

---

<sup>31</sup> April 30, 2026 letter to CPUC President John Reynolds from RCRC Senior Policy Advocate John Kennedy, served on April 30, 2026 in both R.18-07-003 and R.24-01-017 and filed in the “public comments” tab of R.18-07-003.

<sup>32</sup> Bioenergy Association Of California Comments On The Second Proposed Decision Denying Petition To Modify Decision 20-08-043, filed April 30, 2026 in R.18-07-003, Exhibit One.

<sup>33</sup> Email from CPUC Docket Office to Julia Levin, dated May 5, 2026, saying “The assigned ALJ directed the removal of the attachment.”

RCRC filed and served its comments on all parties, the Presiding Commissioner and the ALJ, so it is simply not accurate to claim that there were no public comments. This is especially concerning since RCRC's comments are on behalf of 40 counties by the officials who are elected to represent the residents and interests of those counties. It is hard to imagine a better representation of "public" than the comments submitted on behalf of the vast majority of California's county governments. To claim that there were no public comments submitted is misleading and should be corrected.

Claiming that there were no public comments also ignores the oral testimony that both RCRC and the Nature Conservancy provided at the Commission's December 18, 2025 meeting. While not specifically on the second Proposed Decision – because the first Proposed Decision was still pending – the comments were in support of extending BioMAT, so directly related to both Proposed Decisions and to BAC's Petition for Modification. In addition, BAC has submitted numerous letters in support of extending BioMAT to the Commission over the past year.<sup>34</sup> Those public comments include letters and affidavits from state legislators, water and wastewater agencies, fire protection and resource conservation districts, Tribes, private companies, and others.<sup>35</sup> Those comments are part of the administrative record in this Rulemaking and relate directly to the need to extend the BioMAT program. While they were not submitted in direct response to the second Proposed Decision, they were submitted in response to the first Proposed Decision and should not be ignored simply because the Commission chose the unusual step of issuing a second Proposed Decision.

#### **B. Decision 26-05-008 Makes Other Factual Errors.**

In addition to correcting the statements about public comments, the Commission should correct several other factual errors in Decision 26-05-008. Those include:

---

<sup>34</sup> See, ie, public comments attached to the 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, filed October 8, 2025 in this Rulemaking; Ex Parte Notice of BAC and West Biofuels, filed June 4, 2025 in this Rulemaking.

<sup>35</sup> Id.

1. D.26-05-008 Incorrectly Claims that SB 1122 Established the BioMAT Program.

Decision 26-05-008 claims that SB 1122 established the BioMAT program. The Decision states, incorrectly, that the “BioMAT is a FiT program for small bioenergy renewable generators *established by Senate Bill* (SB) 1122 . . .”<sup>36</sup> (emphasis added) As noted in Section II above, SB 1122 requires procurement of at least 250 MW of new, small-scale bioenergy. That can be done through a far simpler feed-in tariff program. It is the Commission itself, in Decision 14-12-08 and subsequent decisions, that established the unnecessarily complex BioMAT program.<sup>37</sup> Southern California Edison stated as much in its comments on BAC’s Petition for Modification, stating that “BioMAT’s structure—featuring multiple feedstock categories and a complex pricing mechanism—adds unnecessary complexity. This design deters participation, limits transparency, and increases administrative costs. . . . These structural challenges undermine the program’s ability to achieve its intended goals.”<sup>38</sup>

Decision 26-05-008 should be corrected to say that the Commission adopted the BioMAT program to implement SB 1122, not that SB 1122 “established” the BioMAT program. This is a significant factual error and a misstatement of state law.

2. D.26-05-008 Provides a One-sided Summary of Parties’ Positions on BAC’s Petition for Modification.

Decision 26-05-008 notes that most parties submitting comments on BAC’s Petition for Modification were in support of the Petition,<sup>39</sup> but did not summarize those comments or the many letters that BAC provided in support of its Petition, including letters from State Legislators, Tribes, local governments, fire protection and resource conservation

---

<sup>36</sup> D.26-05-008 at page 2.

<sup>37</sup> See, D.14-12-081, footnote 2, above; D.15-09-004, issued September 22, 2015 in R.15-02-020, establishing the BioMAT tariff and standard contract; and D.20-08-043, issued September 1, 2020 in R.18-07-003.

<sup>38</sup> 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.

<sup>39</sup> D.26-05-008, Section 2 “Relief Requested and Party Positions,” pages 3-4.

districts, water and wastewater agencies, conservation groups, and more.<sup>40</sup> At the same time, the Decision points out that only a few parties submitted comments in opposition to BAC's Petition, but then provides a summary of those arguments.

This one-sided summary is misleading and inaccurate by including the opposition arguments and omitting any summary of comments in support of BAC's Petition. The Commission should correct the summary of parties' comments to reflect both supporting and opposing comments or not provide a summary at all.

3. D.26-05-008 Provides an Incomplete and Misleading Summary of Events Between the Adoption of D.20-08-043 and the Present.

Decision 26-05-008 also omits key facts in the BioMAT timeline, stating that passage of AB 843 in 2021 does not justify BAC filing its Petition for Modification in 2025. This ignores the fact that the Commission did not adopt the final rules and standard contract to implement AB 843 until early 2024, giving CCAs less than two years to participate in BioMAT after giving the investor-owned utilities ten years. Decision 26-05-008 also ignores the many comments and Rulings from the Commission itself – including the Scoping Memos and Rulings in the rulemakings to implement AB 843 and the new RPS rulemaking – that indicated that the Commission should and might consider extending BioMAT. BAC and others relied on those Rulings and statements until early 2025 when it became clear that the Commission did not intend to take up consideration of a program extension, as it said it may in the Scoping Memo for R.24-01-017.<sup>41</sup>

---

<sup>40</sup> See attachments to BAC's Petition for Modification of Decision 20-08-043, BAC's Response to Reply Comments to the Petition, and Comments on the Proposed Decision, which together included more than a dozen support letters.

<sup>41</sup> Assigned Commissioner's Scoping Memo and Ruling, issued May 9, 2024 in R.24-01-017, at pages 4 and 6.

## V. CONCLUSION

Decision 26-05-008 commits significant legal and factual errors that must be corrected. Above all, the Decision abuses the Commission's discretion by finding BAC's petition untimely and violates section 399.20(f) by ending the BioMAT program in violation of SB 1122 and AB 843. The Commission does not have the authority to change the law. That is the Legislature's job. The Commission ignored explicit statutory requirements, as contained in section 399.20(f) in violation of the Legislature's directive. The Commission should, therefore, grant BAC's petition to extend the BioMAT program until either the requirements of section 399.20(f) have been met or a successor program is implemented to meet them.

DATED: May 26, 2026

Respectfully submitted,

*/s/ Julia A. Levin*

---

JULIA A. LEVIN

Executive Director

Bioenergy Association of California

PO Box 6184, Albany, CA 94706

510-610-1733

[jlevin@bioenergyca.org](mailto:jlevin@bioenergyca.org)

**VERIFICATION**

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 26th day of May, 2026, in Kensington, California.

*/s/ Julia A. Levin*

---

JULIA A. LEVIN  
Executive Director  
Bioenergy Association of California  
PO Box 6184  
Albany, CA 94706  
510-610-1733  
jlevin@bioenergyca.org

**EXHIBIT ONE**

**APRIL 30, 2026 LETTER FROM RCRC TO THE CPUC  
AND PROOF OF SERVICE OF THE LETTER**



RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA

April 30, 2026

John Reynolds  
President, California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

**RE: Opposition to April 10, 2026 R.18-07-003 Proposed Decision**

Dear President Reynolds:

On behalf of the Rural County Representatives of California (RCRC), we write to oppose the California Public Utilities Commission's ("CPUC" or "Commission") April 10, 2026 Proposed Decision in Rulemaking 18-07-003, which would deny the Bioenergy Association of California's (Bioenergy) Petition for Modification. RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties.

The April 10, 2026 Proposed Decision relies exclusively on procedural grounds to deny the Petition for Modification, effectively allowing the BioMAT program to lapse and leaving unfulfilled a statutory procurement obligation that the Legislature has never repealed, sunset, or modified. In doing so, that Proposed Decision violates the Commission's own procedural rules and represents an abuse of discretion. Moreover, as a result of these procedural errors, the April 10, 2026 Proposed Decision ignores the substantive merits of the Petition and effectively nullifies Senate Bill 1122's (Ch. 612, Statutes of 2012) statutory procurement obligations. This result is inconsistent with California law, legislative intent, and the Commission's obligations as a regulatory agency.

***The April 10, 2026 Proposed Decision is Not Properly Before the Commission; The Only Proposed Decision Eligible for Commission Action is the September 18, 2025 Proposed Decision***

On September 18, 2025, the Administrative Law Judge then assigned to this proceeding (ALJ Atamturk) issued a Proposed Decision concluding that "that BAC's Petition satisfies the timeliness requirement of Rule 16.4," and proceeding to address the merits of the Petition for Modification. This Proposed Decision was duly presented to the Commission as provided in CPUC Rules of Practice and Procedure (RPP) Rule 14.2, but

1215 K Street, Suite 1650, Sacramento, CA 95814 | [www.rcrcnet.org](http://www.rcrcnet.org) | 916.447.4806 | Fax: 916.448.3154

ALPINE · AMADOR · BUTTE · CALAVERAS · COLUSA · DEL NORTE · EL DORADO · GLENN · HUMBOLDT · IMPERIAL · INYO · KINGS · LAKE · LASSEN  
MADERA · MARIPOSA · MENDOCINO · MERCED · MODOC · MONO · MONTEREY · NAPA · NEVADA · PLACER · PLUMAS · SAN BENITO · SAN LUIS OBISPO  
SANTA BARBARA · SHASTA · SIERRA · SISKIYOU · SOLANO · SONOMA · SUTTER · TEHAMA · TRINITY · TULARE · TUOLUMNE · YOLO · YUBA

the Commission did not thereafter proceed as provided in the RPP. Rather, the Proposed Decision was agendized five times without the Commission ever having taken action. The first four times, the matter was expressly postponed to a future meeting. However, the “hold list” distributed prior to the fifth meeting (Jan. 15, 2026) identified that item as “W/D,” and the minutes for the meeting state that the item was “withdrawn.” Both of these actions were taken by CPUC staff, not the Commission, and the meeting minutes clearly indicate that the Commission itself did not vote on the purported withdrawal.

Months later, on April 10, 2026, and without prior notice to any party, a *different* Administrative Law Judge (ALJ Kline) issued what purported to be a *different* Proposed Decision reaching the opposite conclusion regarding the timeliness of Bioenergy’s Petition for Modification. The April 10, 2026 Proposed Decision did not acknowledge the earlier Proposed Decision, much less provide any explanation of the reason (or legal authority) for issuing a second Proposed Decision changing the Commission’s recommended action.

This procedure is highly irregular and unauthorized by any provision of the RPP. The RPP sets forth a structured mechanism for CPUC decision-making, under which Proposed Decisions issued by assigned ALJ’s are considered and disposed of by the appointed Commissioners through formal public process. Such Proposed Decisions are not binding on the Commission – the RPP specifically authorizes any Commissioner to issue an Alternate Proposed Decision on which the full Commission may vote (RPP 14.2(c)) – but this is a public action, taken by the Commissioners, and for which they are accountable. The RPP do not contemplate or authorize CPUC staff to simply “disappear” Proposed Decisions with which they may disagree in a backroom, and then judge-shop for a more favorable outcome.

Under the plain terms of the RPP, the September 18, 2025 Proposed Decision, having never been acted upon by the Commission in any manner, remains the proper subject of Commission consideration. By contrast, the April 10, 2026 Proposed Decision, being wholly unauthorized by the RPP, is not properly before the Commission, and adoption of that Proposed Decision would represent a violation of the RPP and a failure to “proceed[] in the manner required by law.” (Pub. Util. Code, § 1757, subd. (a)(2).)

***The Proposed Conclusion that “BAC’s Petition does not meet the timeliness requirement of Rule 16.4” Represents an Abuse of Discretion.***

In addition to its procedural defects, adoption of the April 10, 2026 Proposed Decision would abuse the Commission’s discretion. That Proposed Decision concludes that the Petition must be denied because it was not filed within one year of the effective date of Decision 20-08-043 and failed to sufficiently justify the delay in accordance with Rule 16.4 of the Commission’s Rules of Practice and Procedure. This exemplifies a continuing pattern of inconsistent, delayed, and internally contradictory procedural handling of BioMAT-related issues by the Commission.

To begin with, Supporters of the BioMAT program, including Bioenergy, had no reason to seek modification (or rehearing) of Decision 20-08-043 at the time it was issued. In that decision, the Commission plainly stated that it was extending the BioMAT program end date because “the BioMAT program has not yet served to fulfill the general statutory requirement to procure 250 MW of bioenergy.” The *only* reasonable conclusion based on this statement is that the Commission acknowledged its obligation to implement “the general statutory requirement” of Senate Bill 1122 until this requirement was satisfied – and that the Commission would extend the BioMAT end date again if needed (or adopt a successor program) to comply with statute. The interpretation of Decision 20-08-043 presently advanced by the Commission (or at least its staff) – i.e., that the Commission intended to cease implementing SB 1122 *in toto*, contrary to its plain language, on December 31, 2025 – was not reasonably foreseeable at the time that decision was adopted, nor within one year thereafter.

Bioenergy was plainly “justified” under RPP 16.4(d) in filing its Petition for Modification only later, when the Commission, notwithstanding its prior statements, indicated that it would treat the stated “program end date” as the termination of *all efforts* to execute SB 1122’s unambiguous statutory command. Any conclusion to the contrary represents a clear abuse of discretion.

Moreover, the filing delay was further caused by the Commission’s own conduct. The Commission’s administration of the BioMAT program has repeatedly shifted procedural venues in a manner that has made timely and effective participation exceedingly difficult. In November 2021, stakeholders—including RCRC and the Bioenergy Association of California—filed a petition seeking to extend the BioMAT program sunset and address known barriers to implementation. The Commission took nearly two and a half years to resolve those requests and ultimately denied them *not on substantive grounds*, but on the basis that they were on procedurally improper and should have been brought in a different proceeding (specifically, R.18-07-003).

During that prolonged period of inaction, the Commission initiated a new Renewables Portfolio Standard rulemaking, R.24-01-017. In that Order Instituting Rulemaking (OIR), the Commission expressly identified “ongoing monitoring, reviewing, and revising” of RPS procurement mechanisms—including the Bioenergy Market Adjusting Tariff (BioMAT)—as a principal topic of the OIR. Stakeholders reasonably relied on that representation and actively participated in R.24-01-017, submitting comments that again underscored the need to extend or modify BioMAT to meet wildfire mitigation, forest health, organic waste diversion, and climate objectives. In its Assigned Commissioner’s Scoping Memo, the Commission further indicated that it would consider revising the BioMAT program end date as part of that proceeding.

Despite these representations, the Commission failed to take timely action on BioMAT within R.24-01-017. After more than a year of continued inaction, and with the BioMAT sunset rapidly approaching, the Bioenergy Association of California filed the

March 6, 2025 Petition to Modify D.20-08-043 in Rulemaking 18-07-003—the same venue that the Commission previously identified as the appropriate forum for BioMAT modifications. It is deeply unsettling that the Proposed Decision at issue summarily denies the Petition for Modification as untimely under Rule 16.4 when stakeholders were reasonably (and patiently) waiting for the Commission to act on the issue in R.24-01-017. The Proposed Decision penalizing petitioners for relying in good faith on the Commission’s own procedural direction.

This confusing procedural history illustrates the regulatory whack-a-mole stakeholders have been trying to navigate for several years: being repeatedly told that their concerns belong in a different proceeding only to later be denied relief for having brought those issues either too late or in the wrong docket. These shifting procedural sands, combined with the number of times the previous Proposed Decision was pulled (or withdrawn) from Commission hearings make it virtually impossible for stakeholders to navigate the regulatory process and ensure the Commission follows both the letter and the spirit of SB 1122.

The new Proposed Decision applies Rule 16.4 as an inflexible bar while ignoring the Commission's own role in creating confusion and delay. Perhaps the former Railroad Commission should take notice of oft-cited admonitions in popular children books and shows that we must strive to avoid “confusion and delay” in order to ensure the trains run on schedule. Procedural rules exist to promote fair and orderly administration, not to provide a shield against addressing an ongoing and unmet statutory mandate.

By closing Rulemaking 18-03-007 and declining to consider the substance of the Petition (after years of delay and conflicting signals), the Commission’s process abandons basic principles of administrative fairness and reasoned decision-making. These procedural irregularities appear to be part of a deliberate objective to ignore both the letter and spirit of SB 1122.

***Proposed Decision’s Finding of Fact is Grossly Misleading and Contrary to the Procedural the Record***

Finding of Fact Number 3 in the Proposed Decision is grossly misleading and ignores subsequent Commission statements contrary to the asserted fact. In Finding of Fact 3, the Proposed Decision states that “The Commission affirmed that R.18-07-003 was the appropriate venue to consider changes to the BioMAT program sunset date on April 6, 2023.” This statement ignores the fact that the Commission subsequently made contrary statements in the Order Instituting Rulemaking (OIR) for R.24-01-017 on February 1, 2024. Failure to mention subsequent regulatory history is both misleading and fails to acknowledge the Commission’s role in confusing and misdirecting stakeholders as to how and in what venue the matter would be considered.

In the R.24-01-017 OIR, the Commission stated that the rulemaking would “have three principal tasks” including resolving remaining issues from R.18-07-003 and

continuing monitoring, reviewing, and improving the RPS program. In particular, page 7 of the OIR noted that the rulemaking would perform “Ongoing monitoring, reviewing and revising, as needed, all RPS procurement methods and tariffs, such as IOU solicitations, renewable auction mechanism, the Renewable Market Adjusting Tariff (ReMAT), and the Bioenergy Market Adjusting Tariff (BioMAT).” Three months later, on May 9, 2024, the R.24-01-017 Scoping Memo and Ruling led parties (including ourselves) to believe that the Commission would consider issuing an amended scoping memo in early 2025 that would reassess and consider extending the BioMAT program end date. As such, the Commission sent clearly contradictory statements to stakeholders as to where and how the Commission would consider the issue. Only after the Commission failed to act in R.24-01-017 did the Bioenergy Association of California submit the Petition for Modification in the R.18-07-003 proceeding.

***The CPUC Must Address the Merits of the Petition and the Ongoing Need for Bioenergy Procurement***

The Proposed Decision explicitly declines to evaluate the substantive merits of the Petition, yet the consequences of denial put the CPUC in direct conflict with the overarching procurement mandate. Pursuant to SB 1122 of 2012, Public Utilities Code Section 399.20 requires electrical corporations to collectively procure at least 250 megawatts of electricity from eligible small bioenergy facilities. That statute contains no sunset date, nor does it condition the procurement obligation on any specific Commission determinations. As of the end of 2025, the Commission itself acknowledged that only a small fraction of the required 250 MW has been procured. Without any successor program in place (or even in development), denial of the Petition sends a clear signal that the Commission seeks to permanently abandon pursuit of the unmet legislative directive.

RCRC does not question the Commission’s discretion or authority with respect to program design and implementation; however, that discretion does not extend to ignoring, extinguishing, or indefinitely delaying compliance with a clear statutory procurement mandate.

Over the last few years, RCRC and other stakeholders have requested extension of the BioMAT program’s sunset date multiple times across several proceedings, but the Commission has consistently evaded the issue. Ironically, stakeholders should not have been required to submit petitions for modification to get the CPUC to align the BioMAT program’s regulatory sunset date with PUC Section 399.20’s statutory directive. By allowing the BioMAT program to expire – without a successor program in place - solely because the CPUC deemed a petition to be procedurally defective, the Proposed Decision produces an outcome that directly conflicts with the Legislature’s express mandate.

Terminating BioMAT, without any successor program in place, prevents further procurement to meet SB 1122’s clearly defined objective, cuts off projects in active

development, and undermines multiple statewide policy objectives related to wildfire risk reduction, forest health, waste diversion, air quality, and climate resilience.

The Petition raised compelling and well-supported arguments that:

- The statutory procurement target has not been met;
- Significant delays, many of which are attributable to Commission action or inaction, have hindered project development;
- New statutory and regulatory frameworks—including AB 843 (Ch. 234, Statutes of 2021) and SB 1383 (Ch. 395, Statutes of 2016) implementation—have increased, not decreased, the need for bioenergy resources; and
- Community Choice Aggregators were afforded insufficient time to meaningfully participate before the program was allowed to sunset.

Unfortunately, one of the consequences of siloed regulatory agency decision making is that the goals of one agency are often reliant upon (but sometimes ignored) by a sister agency, as appears to clearly be the case here. For example, biomass facilities are crucial to accomplishing the state's wildfire risk reduction and fuel management goals; however, electricity from baseload biomass energy is expensive (compared to other forms of intermittent renewable energy) and so utilities and energy regulators are sometimes reluctant to prioritize the purchase of electricity from those facilities. While RCRC completely agrees with the need to keep energy costs down, focusing on the price of electricity delivered by those facilities ignores the key role they play in managing forest fuel loads. Similarly, biomass and bioenergy facilities often play an important role in achieving the state's organic waste diversion mandates, as alternatives like landfilling or composting are unrealistic. Failure to align the state's energy planning and investment decisions to accommodate and align with these objectives leaves the state, local governments, and businesses with virtually no other alternatives for the management of those waste streams and inhibits compliance with state waste management and wildfire risk reduction goals and mandates.<sup>1</sup>

By refusing to acknowledge these issues, the Proposed Decision places procedural gamesmanship above the Commission's own obligation to faithfully implement the law. The Commission retains ample authority to modify program rules, adjust pricing structures, coordinate with sister agencies, redesign procurement mechanisms, or create a successor program. What it does not have the authority to do is walk away from an unfulfilled statutory obligation.

### ***Terminating BioMAT Without a Successor Program Conflicts With and Undermines SB 1122***

---

<sup>1</sup> We incorporate by reference our statements about the compelling need to maintain and expand the utilization of small-scale biomass facilities as articulated in pages 5-8 of our November 3, 2025 letter to the CPUC entitled "Oppose R.18-07-003's Proposed Decision Terminating The BioMAT Program". This letter was in response to the earlier September 18, 2025 Proposed Decision in this proceeding.

SB 1122 reflects a clear legislative judgement that small-scale bioenergy procurement serves unique and critical public purposes that were not being met by other renewable procurement tools. The creation of BioMAT was not discretionary.

While the Commission may impose reasonable implementation parameters, including periodic review, those parameters cannot be used to defeat the statute itself. Allowing a Commission-created sunset date to override an express statutory procurement mandate with no sunset sets a dangerous precedent and invites regulatory nullification of duly enacted law. The Commission remains duty-bound to administer a program that meaningfully works toward fulfilling the statute's requirements.

### **Conclusion**

For the reasons stated above, RCRC urges the Commission to reject the April 10, 2026 Proposed Decision, address the merits of the Petition for Modification, and take affirmative steps to ensure continued and lawful implementation of SB 1122.

The CPUC should not close the proceeding without a clear pathway to meet the Legislature's bioenergy procurement mandate either through an expedited track in an existing proceeding (like R.24-01-017) or in a new successor rulemaking).

We appreciate your consideration of our comments and welcome further engagement on how the Commission can align its regulatory actions with statutory requirements and the state's broader wildfire, waste management, and climate objectives.

If you should have any questions, please do not hesitate to contact me at [jkennedy@rcrcnet.org](mailto:jkennedy@rcrcnet.org)

Sincerely,



JOHN KENNEDY  
Senior Policy Advocate

cc: Darcie L. Houck, Commissioner, California Public Utilities Commission  
Karen Douglas, Commissioner, California Public Utilities Commission  
Matthew Baker, Commissioner, California Public Utilities Commission  
Christine Harada, Commissioner, California Public Utilities Commission  
Wade Crowfoot, Secretary, California Natural Resources Agency  
Joe Tyler, Director, CAL FIRE

President John Reynolds  
Opposition to R.18-07-003 Proposed Decision  
April 30, 2026  
Page 8

Jennifer Lucchesi, Director, Department of Conservation  
Zoe Heller, Director, California Department of Resources Recycling and  
Recovery  
Angela Avery, Executive Officer, Sierra Nevada Conservancy  
Lauren Sanchez, Chair, California Air Resources Board  
Dee Dee Myers, Senior Advisor and Director, Governor's Office of Business and  
Economic Development  
Brady Borcharding, Deputy Legislative Secretary, Governor Gavin Newsom  
CPUC R.18-07-003 Service List  
CPUC R.24-01-017 Service List

**Julia Levin**

---

**From:** Travis Legault <tlegault@rcrcnet.org>  
**Sent:** Thursday, April 30, 2026 10:36 AM  
**Subject:** R.18-07-003 (BioMAT), RCRC Comments on Proposed Decision  
**Attachments:** RCRC CPUC R.18-07-003 PD Letter\_04-30-26.pdf

To the Service Lists of R.18-07-003 & R.24-01-017:

Please find attached a letter submitted to the CPUC expressing the Rural County Representatives of California's opposition to a proposed decision in Rulemaking R. 18-07-003 terminating the BioMAT program at the end of this year. RCRC is not a party to that proceeding but is forwarding our letter to the service lists in the interest of transparency. This document is being serviced in multiple batches to better ensure delivery.

Please contact [John Kennedy](#), RCRC Senior Policy Advocate, with any questions.

Please note that proceeding service lists are maintained by the CPUC; as such, requests should be directed to [Process\\_Office@cpuc.ca.gov](mailto:Process_Office@cpuc.ca.gov).



**Travis Legault | Policy Analyst**  
Rural County Representatives of California (RCRC)  
1215 K Street Suite 1650  
Sacramento, CA 95814  
[tlegault@rcrcnet.org](mailto:tlegault@rcrcnet.org)  
916-447-4806 ext: 1035