

ALJ/PD1/jt2

**Date of Issuance 12/21/2018**

Decision 18-12-003 December 13, 2018

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

Joint Application to Establish Non-Bypassable Charge (“NBC”) for Above-Market Costs Associated with Tree Mortality Power Purchase Agreements (“Tree Mortality”) in Compliance with Senate Bill 859 and Resolution E-4805.

Application 16-11-005

**DECISION ESTABLISHING A NON-BYPASSABLE CHARGE FOR COSTS  
ASSOCIATED WITH TREE MORTALITY BIOMASS ENERGY  
PROCUREMENT**

## Table of Contents

Title	Page
DECISION ESTABLISHING A NON-BYPASSABLE CHARGE FOR COSTS ASSOCIATED WITH TREE MORTALITY BIOMASS ENERGY PROCUREMENT .....	1
Summary .....	2
1. Background.....	2
2. Discussion.....	5
3. Valuation and Calculation Methodologies .....	6
3.1. Fixed Costs and Variable Costs.....	8
3.2. Energy Revenue and Ancillary Service Revenue.....	8
3.3. Renewable Energy Credit Value.....	9
3.4. Resource Adequacy Valuation.....	13
4. Cost Treatment if Plants Do Not Meet Statutory or Contract Requirements .....	19
5. The Public Purpose Program Charge as a Vehicle for the TM NBC.....	20
6. The Duration of the TM NBC .....	21
7. Coordination with Rulemaking 17-06-026.....	22
8. Conclusion .....	22
9. Outstanding Procedural Matters.....	22
10. Comments on Proposed Decision .....	23
11. Assignment of Proceeding .....	23
Findings of Fact.....	23
Conclusions of Law .....	24
ORDER .....	25

**DECISION ESTABLISHING A NON-BYPASSABLE CHARGE FOR COSTS  
ASSOCIATED WITH TREE MORTALITY BIOMASS ENERGY  
PROCUREMENT**

**Summary**

Pursuant to the requirements of Pub. Util. Code § 399.20.3(f), this decision establishes a methodology for calculating a non-bypassable charge that will collect revenue to pay for certain biomass energy procurement by California's three largest electric utilities. The biomass energy procurement at issue in this proceeding is mandated by law, and is intended to address the state's tree mortality crisis.

The methodology established by this decision accepts some common positions of the parties and resolves key areas of dispute. The non-bypassable charge will recover the net costs to the utilities of the tree mortality-related biomass energy procurement. These net costs exclude revenue received by the utilities through sales of energy and ancillary services related to the procurement. The net costs also exclude the value of renewable energy credits as determined by the sales of these credits in the marketplace (or a benchmark value if such sales are impossible), and the value of the resource adequacy capacity of the procurement as determined through utility sales of such capacity (or a benchmark value if such sales are impossible). This decision requires that the non-bypassable charge be collected through each utility's public purpose program charge.

This decision resolves all scoped issues and closes the proceeding.

**1. Background**

On October 30, 2015 Governor Brown issued a Proclamation of a State of Emergency (Proclamation) to address a tree mortality crisis in California. The

Proclamation classified the dead and dying trees located in designated high-hazard zones (HHZ) as being a high priority for removal.

In response to the Proclamation, on March 17, 2016 the Commission issued Resolution E-4770, requiring that each of the state's three largest electric utilities (Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively Joint Investor-Owned Utilities (IOUs)) enter into contracts to purchase their share of at least 50 megawatts (MW) of collective generating capacity collectively from biomass generation facilities that use minimum prescribed levels of HHZ material as feedstock.

In 2016 Senate Bill (SB) 859 (stats. 2016, ch. 368) was enacted. SB 859 included a new requirement for electrical corporations to procure their respective shares of 125 MW from existing biomass facilities using prescribed amounts of dead and dying trees located in HHZs as feedstock. In addition, SB 859 added Pub. Util. Code § 399.20.3(f) to require that the procurement costs to satisfy this requirement be recovered from all customers on a non-bypassable basis. The statute's requirement to create a non-bypassable charge is the genesis of the proceeding.

On October 21, 2016 the Commission issued Resolution E-4805 to implement the requirements of SB 859. Resolution E-4805 required the Joint IOUs to file applications within 30 days of its issuance to establish a Tree Mortality Non-bypassable Charge (TM NBC) consistent with the requirements of SB 859. Resolution E-4805 also required the Joint IOUs to file Tier 2 advice letters within 30 days of its issuance creating memorandum accounts to track the costs of procurement associated with the tree mortality (TM) emergency pending the outcome of this proceeding.

Pursuant to Resolution E-4805, the Joint IOUs filed their joint application on November 14, 2016. Protests and responses were filed on January 6, 2017 by the California Community Choice Association (CalCCA), the Energy Producers and Users Coalition, the California Clean DG Coalition, the Independent Energy Producers Association, the Solar Energy Industries Association, and Shell Energy North America (US), L.P. On January 20, 2017 the Joint IOUs filed a reply to the protests.

On June 23, 2017 the Commission held a prehearing conference. CalCCA filed a motion seeking inclusion in the scope of this proceeding the issue of whether cost recovery mechanisms should differ for procurement under both Resolutions E-4770 and E-4805. The assigned Administrative Law Judge (ALJ) denied the motion on March 14, 2018. As a result, the NBC designed by this decision applies to all procurement conducted pursuant to Resolutions E-4770 and E-4805.

The Commission held a workshop in this proceeding on December 12, 2017 in order for parties to present and discuss their proposals for the TM NBC. On April 17, 2018, ALJ Doherty issued a ruling entering parties' presentations from the December 2017 workshop and an Energy Division staff proposal into the record of the proceeding and seeking party comments. On May 11, 2018 and May 18, 2018 the parties filed opening and reply comments, respectively, on the Energy Division staff proposal and the workshop presentations.

On May 30, 2018 the Commission filed a scoping memo and ruling (scoping memo). Pursuant to the scoping memo, as amended by an ALJ ruling issued on June 18, 2018, the Joint IOUs served supplemental testimony on June 28, 2018 and CalCCA served intervenor testimony on the same date. CalCCA and the Joint IOUs each served rebuttal testimony on July 18, 2018.

Additionally, on July 9, 2018 ALJ Doherty issued a ruling requesting supplemental information from the Joint IOUs regarding historic renewable energy credit prices. Each of the Joint IOUs served this supplemental information to the extent it was available on July 19, 2018.

On June 20, 2018 the Office of Ratepayer Advocates moved to become a party to the proceeding. The motion was granted on June 21, 2018. The Office of Ratepayer Advocates was renamed the Public Advocate's Office of the Public Utilities Commission (Cal Advocates) pursuant to SB 854 (stats 2018, ch. 51).

CalCCA filed a motion on July 19, 2018 requesting evidentiary hearings; but after reaching a stipulation with the Joint IOUs, CalCCA withdrew its request for hearings. Evidentiary hearings were not held in this proceeding.

Closing briefs were filed on August 13, 2018. Reply briefs were filed on August 31, 2018. Previously served exhibits were accepted into the record on September 11, 2018, and upon that date the proceeding was submitted.

## **2. Discussion**

The scoping memo identifies the following issues for resolution in this proceeding:

- The valuation and calculation methodologies for the proposed TM NBC.
- How the TM NBC should treat contract costs if plants do not meet statutory or contract requirements.
- Whether the public purpose program (PPP) charge is the appropriate vehicle for the TM NBC, or if a different vehicle should be used.
- The appropriate duration of the TM NBC.
- How to coordinate this proceeding with Rulemaking (R.) 17-06-026 as necessary.

This decision addresses each of these issues below.

### 3. Valuation and Calculation Methodologies

Parties agree that the TM NBC should calculate the net costs of the TM biomass contracts. For reference, a table of the TM biomass contracts at issue in this proceeding and subject to the TM NBC appears below:

<b>IOU</b>	<b>Biomass Facility Name</b>	<b>Contract Capacity (MW)</b>	<b>Delivery Start Date</b>	<b>Expected Delivery End Date</b>
PG&E	Burney Forest Products	29	11/1/2017	10/31/2022
PG&E	Wheelabrator Shasta	34	12/2/2017	12/1/2022
SCE	Pacific Ultrapower Chinese Station	18	3/8/2017	2/28/2022
SCE	Rio Bravo Rocklin	24.4	9/8/2017	8/31/2022
SCE	Rio Bravo Fresno	24.3	9/8/2017	8/31/2022
SDG&E	HL Power Company, LP	24	2/1/2017	1/31/2022

For each of these contracts, the facility operator entered into a confidential power purchase agreement with the IOU to provide a certain capacity of power and generation at a certain price. The IOU, in turn, sells the energy and ancillary services provided by the facility on markets governed by the California Independent System Operator (CAISO). This sale of the energy and ancillary services results in revenue collected by the IOU. These CAISO sales therefore offset the costs paid by the IOU to the facility operator for the energy. For example, if a contract requires the IOU to pay the facility operator \$1 for a single megawatt hour (MWh) of energy, and the IOU sells that MWh for 40 cents on the CAISO markets, then the net cost to the IOU of the MWh is 60 cents (\$1 - 40 cents = 60 cents).

There are other values related to the contracts that should also be subtracted from the contract price in order to accurately calculate the net cost. These include the value of the contract's ability to provide resource adequacy (RA) and the value of the renewable energy credits (RECs) associated with the facility's renewable energy.

The IOU costs related to the purchase of the capacity from the facility operators that remain after netting all associated values are the net costs that must be recovered from ratepayers through the TM NBC. Parties generally agreed with this approach, although they disagreed on how to calculate the value of RA capacity and RECs associated with each TM contract.<sup>1</sup> In briefs, the Joint IOUs outlined the formula for calculating the TM NBC as follows: Net Costs = (Fixed Costs + Variable Costs) - ((Energy Revenue + Ancillary Service Revenue, if any) + (REC value \* Renewable Portfolio Standard-eligible Energy Generation)).<sup>2</sup>

Given the general agreement of the parties to this approach, and the reasonableness of deducting revenues and values realized by IOUs from the price paid by the IOUs for the facilities' capacity, this in an appropriate formula for calculating the TM NBCs when slightly modified to account for the presence of RA value calculations. This decision next discusses the elements of this formula in detail and settles issues of dispute between the parties.

---

<sup>1</sup> Joint IOUs' Closing Brief at 15-17; CalCCA-1 at 4-5 (noting CalCCA's support for the Joint IOUs' approach for netting energy and ancillary services sales; but opposition to the Joint IOUs' proposals for calculating REC and RA values).

<sup>2</sup> Joint IOUs' Closing Brief at 16.



### **3.1. Fixed Costs and Variable Costs**

The Joint IOUs state that the fixed and variable costs of the TM contracts should be defined as “the all-in fixed price under the TM procurement contracts. Energy costs would also include any charges incurred in the CAISO energy and [ancillary services] markets that are related to the facility’s generation and attributed to the retail seller under the respective [contract].”<sup>3</sup>

No party disputed this approach. This is a reasonable basis for determining the fixed and variable costs of the TM contracts and is adopted.

### **3.2. Energy Revenue and Ancillary Service Revenue**

The Joint IOUs stated that “[f]or purposes of the TM NBC net cost calculation, the Joint IOUs have proposed... to use actual, not imputed, CAISO market revenues to determine the net capacity costs. Using actual costs and actual CAISO market revenues to determine net costs... will lead to an accurate accounting of costs and benefits, and is feasible and appropriate for use in the TM NBC.”<sup>4</sup> CalCCA agrees that using actual energy and ancillary service revenues realized in CAISO markets to offset to costs of the TM contracts is appropriate.<sup>5</sup> Cal Advocates also supports this approach.<sup>6</sup>

Using actual CAISO market revenues to determine net energy costs is a reasonable method of offsetting the costs to be collected through the TM NBCs, and is adopted. In particular, this decision agrees that it is preferable to use

---

<sup>3</sup> Joint IOU-2 at 7.

<sup>4</sup> Joint IOU-2 at 6.

<sup>5</sup> ALJ Doherty Ruling of April 17, 2018, Appendix B at 6.

<sup>6</sup> Cal Advocates Closing Brief at 4.

actual, as opposed to imputed, values. The use of market transactions to determine the actual values of energy and services for a given TM contract maximizes the accuracy of the TM NBC and guards against over- or under-charging ratepayers for the value of the TM contracts.

### **3.3. Renewable Energy Credit Value**

The parties dispute the appropriate method to value any RECs that are associated with each TM contact. As background, a renewable energy credit – or REC – is created for every MWh of renewable energy generated. The owners of renewable energy facilities<sup>7</sup> may register with the independent renewable energy tracking system in the Western Interconnection (WREGIS)<sup>8</sup> to track RECs for each quantity of energy produced. These RECs are abstract and have no intrinsic value. Rather, they only become valuable once used by an entity to take credit for a certain amount of renewable energy production for compliance purposes. For example, an IOU may use a certain kind of REC to help it comply with California’s renewables portfolio standard (RPS), or it may sell the RECs to community choice aggregators (CCAs) or other energy service providers to help them comply with regulatory requirements.<sup>9</sup> A renewable energy generator may

---

<sup>7</sup> In California, biomass facilities are considered to be renewable energy generating facilities.

<sup>8</sup> WREGIS is an independent renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC). WREGIS tracks renewable energy generation from electric power plants that are registered in their system and creates RECs for that generation. WECC is a regional entity that promotes electric system reliability and develops reliability standards in the Western Interconnection. The WECC region extends from the Canadian provinces of Alberta and British Columbia to the northern part of Baja California, Mexico, and encompasses the 14 western U.S. states in between.

<sup>9</sup> For example, PG&E Advice Letter 5294-E illustrates a series of sales of RECs by PG&E to CCAs.

also sell its RECs to a third-party that then uses the RECs to demonstrate that it invests in renewable energy resources.

As demonstrated in the above examples, a REC may be sold or held by an entity. If sold, the value of the REC is simply its sales price. If a REC is held by the entity and not used for compliance purposes, its value is more difficult to ascertain. The monetary value of a REC is unknown unless it is sold.

The dilemma facing parties in this proceeding is how to account for the RECs associated with the TM contracts. As a condition of the TM contracts, the associated RECs are sold to the IOU and become property of the IOU counterparty.<sup>10</sup> While the IOUs could allocate the RECs to the CCAs, the Joint IOUs do not favor this approach. The Joint IOUs would prefer to value the RECs and deduct this value from the TM contract costs. They state that “[t]he proposal for the IOUs to monetize and retain the value of the REC attributes rather than allocate them to benefiting [load serving entities] is the most administratively efficient solution to share the benefits of the renewable procurement, given the limited duration of the contracts (5-years) and small size of the procurement relative to the Joint IOUs total portfolio.”<sup>11</sup> CalCCA generally agrees that the RECs should be valued rather than allocated to the CCAs.<sup>12</sup>

However, the parties dispute how to value the TM-associated RECs. CalCCA argues that the value of RECs associated with the TM contracts should be based on the value for RECs generally set in the Commission’s Power Charge Indifference Adjustment (PCIA) proceeding (R. 17-06-026). They argue that this

---

<sup>10</sup> Joint IOU-2 at 8.

<sup>11</sup> Joint IOU-2 at 9, fn 14.

<sup>12</sup> Reply Comments of CalCCA at 3.

would allow the Commission to establish one method for valuing RECs across a variety of proceedings, and would allow the Commission to adjust the valuation methodology as needed.<sup>13</sup>

The Joint IOUs prefer to value the RECs based on “current market data” and use a “market index price that tracks contemporaneous, actual sale prices for similar RECs eligible to meet” the RPS.<sup>14</sup> The Joint IOUs recommend that the REC value be established using the market index price published by S&P Global Platts<sup>15</sup> for different types of California RECs in their subscription publication “Platt’s MW Daily.” The Joint IOUs propose to use the Platt’s MW Daily published mid-price for Portfolio Content Category (PCC) 1<sup>16</sup> resources in California. Cal Advocates supports this approach.<sup>17</sup>

Neither of these approaches allows for an accurate discovery of the value of the RECs associated with the TM contracts at issue in this proceeding. As with the energy revenue value of the TM contracts, the Commission prefers actual values discovered through market processes to proxy values that are administratively derived. This provides for the most accurate assignment of costs and benefits of procurement to ratepayers, and therefore maximizes the reasonableness of rates. This decision also notes that the desire of the Joint IOUs

---

<sup>13</sup> CalCCA-1 at 5.

<sup>14</sup> Joint IOUs’ Closing Brief at 9-10.

<sup>15</sup> S&P Global Platts is an independent provider of energy and commodities markets information, including market pricing and analytics.

<sup>16</sup> PCC 1 RECs are defined as the energy plus the environmental attribute from renewable generation facilities with a first point of interconnection within a California Balancing Authority (CBA), or facilities that directly schedule electricity into a CBA on an hourly or sub-hourly basis. See Public Utilities Code Section 399.16(b)(1)(A) and Decision (D.) 11-12-052 at 29-30.

<sup>17</sup> Cal Advocates Closing Brief at 5.

to use “actual market data” to value the RECs would be best served by discovering the value of the RECs associated with the TM contracts in an actual market transaction.

To provide for maximum accuracy and to ensure the reasonableness of the TM NBC as a rate element, this decision orders each IOU to make available for sale all of the future RECs associated with their particular TM contracts as PCC 1 RECs as soon as possible after the effective date of this decision. To ensure PCC 1 categorization of the RECs, each IOU shall each offer for sale a bundled RPS product consisting of future deliveries of energy and RECs from each tree mortality-related procurement contract, with the energy being settled at the market index price. Each IOU shall update its draft 2018 RPS Procurement Plan, to the extent necessary, to conform to this decision. This update may be included in the final, conforming version of the respective 2018 RPS Procurement Plans. Future RPS Procurement Plans (and other relevant documents) shall reflect this decision for the duration of the TM contracts.

In order to ensure the timely sale of these RECs, each IOU shall file any executed sales for the PCC 1 RECs associated with its tree mortality-related procurement contracts via Tier 1 advice letters so long as it: (1) utilizes a Commission-approved RPS Sales pro forma agreement; (2) shows any necessary modifications to the pro forma agreement via a comparison document provided with the Tier 1 filing; and (3) includes a duration of five years or less.

Each IOU shall then deduct the revenue received from these sales from the total costs of the TM contract(s) assigned to their ratepayers through the TM NBC. If the RECs are not purchased, then the value deducted shall be \$0 and no load-serving entity may use the RECs for compliance purposes. The IOUs must repeat this process if the TM contracts are extended. To the extent RECs

associated with the TM contracts have already been sold, then those values shall be deducted from the total costs of the TM contracts. If the RECs were not purchased even though they were offered for sale, and they were not used for compliance purposes by any load-serving entity, then the value deducted shall be \$0. To the extent RECs associated with the TM contracts cannot be offered for sale as PCC 1 RECs (e.g., because the energy generation occurred in the past), the IOUs shall use an administrative benchmark PCC 1 REC price of \$15.04/MWh<sup>18</sup> and deduct this REC value from the total costs of the TM contract(s) assigned to their ratepayers through the TM NBC. Each IOU shall also use the \$15.04/MWh price if a REC was offered for sale in the past, not sold, and then used by the IOU for compliance purposes.

### **3.4. Resource Adequacy Valuation**

The parties also dispute the way in which the RA capacity of the TM contracts should be valued. For background, the Commission's RA program is intended to ensure sufficient resources for the safe and reliable operation of the grid in real time. It is also intended to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future. In essence, energy procurement has RA value if it helps to ensure grid reliability.

As with the valuation of RECs, parties have suggested two options for treating RA associated with the TM contracts. The Joint IOUs propose to allocate

---

<sup>18</sup> This price reflects the weighted, aggregated average price for PCC 1 RECs recently sold by IOUs as revealed in their confidential responses to ALJ Doherty's ruling of July 9, 2018. We do not deem this aggregated average price to be confidential. This aggregated average price is not deemed to be confidential. This price reflects 2017 and 2018 delivery year contracts that were approved by the Commission.

the RA capacity of the TM contracts to each load-serving entity<sup>19</sup> (LSE) by share of coincident peak, adjusted on a monthly basis.<sup>20</sup> This would obviate the need to establish a value for RA and subtract that value from the cost of TM contract procurement, because the benefit of the RA would be distributed to LSEs under this arrangement. The Joint IOUs argue that this approach is consistent with Commission practice under the existing Cost Allocation Mechanism.<sup>21</sup>

CalCCA argues that the methodology for valuing RA in R.17-06-026 (the PCIA proceeding) should also be applied to the TM NBC in order to ensure consistency across Commission proceedings and programs. They specifically cite the original proposed decision in R.17-06-026 as the source of an appropriate RA valuation methodology.<sup>22</sup> CalCCA further argues that R.17-06-026 has devoted significant attention to the question of how to establish a market price benchmark for RA values, and implies that it is therefore a sufficiently vetted benchmark that the Commission should use to value RA. However, Cal Advocates argues that the PCIA methodology is not appropriate for valuing the RA associated with the TM contracts.<sup>23</sup>

CalCCA also argues that the Joint IOUs' allocation approach is unworkable for RA values associated with the TM contracts from 2017 and 2018 (i.e., before the effective date of this decision). This is apparently because the RA allocation cannot occur for RA capacity that has expired, and it would be unfair

---

<sup>19</sup> LSEs include IOUs, CCAs, and other entities that procure power on behalf of customers.

<sup>20</sup> Joint IOUs' Closing Brief at 10.

<sup>21</sup> Joint IOUs' Closing Brief at 10.

<sup>22</sup> CalCCA Closing Brief at 9.

<sup>23</sup> Cal Advocates Closing Brief at 6-7.

in CalCCA's view to include the total cost of RA capacity in the TM NBC while only allocating some of the RA capacity to ratepayers.<sup>24</sup> Cal Advocates concurs with CalCCA and argues that RA capacity values prior to the effective date of this decision cannot be realized through market transactions, and that even 2019 values would be difficult to allocate to CCAs and other Electric Service Providers (ESPs) using RA accounting rules.<sup>25</sup>

In briefs, the Joint IOUs responded to CalCCA's arguments by stating that the RA value of the TM contracts is already being monetized using "interim mechanisms" approved by the Commission, and that the costs of the TM contracts faced by ratepayers will be reduced by the realized RA value.<sup>26</sup> However, the brief of the Joint IOUs does not clarify if any actual monetization has occurred. The brief states that PG&E "seeks to sell RA capacity from its two" TM contracts; but does not clarify if any such sales have occurred or what the realized value may have been.<sup>27</sup> A similar process is described for SCE, but no actual monetization is revealed for SCE's TM contracts.<sup>28</sup> The brief states that SDG&E has not yet valued the RA associated with its TM contracts, even on an interim basis.<sup>29</sup>

---

<sup>24</sup> CalCCA Closing Brief at 9-10.

<sup>25</sup> Cal Advocates Closing Brief at 5. For its part, Cal Advocates also argued that the record should have remained open to collect further party input on the RA valuation issue.

<sup>26</sup> Joint IOUs' Closing Brief at 11.

<sup>27</sup> Joint IOUs' Closing Brief at 12.

<sup>28</sup> Joint IOUs' Closing Brief at 13-14.

<sup>29</sup> Joint IOUs' Closing Brief at 15; CalCCA Reply Brief at 8-9 (concurring that PG&E and SCE have failed to provide price data and noting that SDG&E may simply use a benchmark value from the Commission's annual RA report).



CalCCA's reply brief argues that the valuation of RA associated with the TM contracts should take place regardless of the interim valuation measures approved by the Commission, and that the already-approved measures should not prejudice the Commission's decision-making on this issue.<sup>30</sup> CalCCA further argues that the showing in the Joint IOUs' closing brief fails to meet the standard for evidence outlined in the scoping memo.<sup>31</sup>

This decision agrees with CalCCA that the information provided by the Joint IOUs in their closing brief is insufficient to support a finding that RA value associated with the TM contracts has already been realized on an interim basis. While the Joint IOUs have described the mechanisms by which such interim value may be realized, there is no evidence proffered of any RA valuation specific to the TM contracts.

Therefore, the essential question concerning RA values remains whether the RA associated with the TM contracts should be allocated to other LSEs as proposed by the Joint IOUs, or valued and deducted from TM contract costs as proposed by CalCCA. The Commission agrees with CalCCA and Cal Advocates that allocation of RA capacity from the past appears unworkable. It is unclear from the record of this proceeding how RA capacity provided by the TM contracts before the effective date of this decision would be allocated, if at all. Allocation would therefore not be an appropriate way to address the RA capacity associated with the TM contracts.

---

<sup>30</sup> CalCCA Reply Brief at 3-4.

<sup>31</sup> CalCCA Reply Brief at 8.

The remaining option is to value the RA capacity and deduct this value from the overall cost of the TM contracts. As with other elements of the TM NBC, the Commission's preference is to use actual market transactions to determine the value of the RA associated with the TM contracts. Even using actual market data, the RA value of a generic quantum of energy is difficult to determine. The Commission's most recent report on the RA program (2017 RA Report)<sup>32</sup> states that a "total of 5,347 monthly contract prices were collected from the data request [to all load-serving entities]<sup>33</sup> and used in the price analysis contained in this report.... The price of [RA] capacity varies significantly between month, local area, and zone."<sup>34</sup> The 2017 RA Report notes a minimum price of \$0.75/kW-month and a maximum price of \$10.09/kW-month for RA capacity to be utilized in 2018.<sup>35</sup> There is wide variance in RA prices across space and time.

---

<sup>32</sup> Available at: <<http://cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442458520>>. The 2017 RA Report and its price findings are noted as a potential source for RA price information in CalCCA-2 (at 8-9). This decision takes notice of the price information in the 2017 RA Report for the purpose of examining recent trends in RA pricing, as recommended by CalCCA. Ultimately, the only fact from the 2017 RA Report relied on by this decision is that there is wide RA price variance across space and time. To the extent other parties object to the use of the 2017 RA Report in this manner they are asked to make that known in comments to the proposed decision in this proceeding, and demonstrate why this decision should not conclude that there is wide RA price variance across space and time.

<sup>33</sup> On January 24, 2017 the Commission's Energy Division issued a data request to all 29 CPUC-jurisdictional LSEs (comprised of three IOUs, 14 energy service providers, and 12 CCAs) asking for monthly capacity prices paid by (or to) LSEs for every RA capacity contract covering the 2017-2021 compliance years. The data request was confined to RA-only capacity contracts bought or sold covering the period from January 2017 - December 2021. Since RA prices can vary by month, the data request asked for specific monthly prices from each contract. Qualifying Facilities contracts, imports, demand response, and new generation contracts were excluded from the data set.

<sup>34</sup> Commission's 2017 Resource Adequacy Report at 6.

<sup>35</sup> Commission's 2017 Resource Adequacy Report at 22.

Given this price variance, the ideal solution is to determine the actual RA value associated with TM contracts at issue in this proceeding rather than relying on a proxy value that may lead to a TM NBC that under- or over-charges ratepayers. As in this decision's discussion of the REC valuation, maximizing the accuracy of the RA valuation ensures the reasonableness of the TM NBC as a rate element.

Therefore, the IOUs are ordered to monetize the RA value of their respective TM contracts as soon as possible after the effective date of this decision using existing, Commission-approved mechanisms to make available for sale the RA capacity of their TM contracts. Each IOU must detail their respective RA sales framework and protocols in the Tier 2 advice letter filing to establish the TM NBC required by this Decision.

Each IOU must deduct that value from the TM contract costs assigned to the TM NBC for their ratepayers. If the RA capacity is not purchased, then the value deducted shall be \$0, and no load-serving entity may use the RA for compliance purposes. If RA capacity for a TM contract has already been monetized, then that value shall also be deducted from the costs of the TM contract assigned to the TM NBC. If the RA capacity was not purchased even though it was offered for sale, and it was not used for compliance purposes by any load-serving entity, then the value deducted shall be \$0. If RA values cannot be offered for sale, due to the expiration of the RA value or for another reason, the benchmark RA values (also referred to as an "RA adder") established by the decision issued in the PCIA proceeding (R.17-06-026) shall be used to value the RA associated with the TM contracts and deducted from the costs of the TM contract assigned to the TM NBC, as recommended by CalCCA. This benchmark

RA value shall also be used if RA was offered for sale, not sold, and then used by an IOU for compliance purposes.

#### **4. Cost Treatment if Plants Do Not Meet Statutory or Contract Requirements**

In their closing brief, Joint IOUs state that to the extent one of the TM contract facilities fails to meet the statutory and regulatory requirements incorporated into the contract, the TM contract will be subject to termination.<sup>36</sup> They do not directly address the question of how to treat contract costs in the TM NBC if failure to abide by regulatory requirements is uncovered. No other party addressed this issue.

As a general matter, it may not be reasonable to require ratepayers to pay for the TM procurement if a TM facility's operator fails to comply with contractual requirements, or obligations imposed by law or the Commission on IOUs to protect the public's safety and health, and the IOU counterparty is aware or should have been aware of that failure. The IOU's pro forma power purchase agreements (PPAs) for Bioenergy Renewable Auction Mechanism (BioRAM) procurement include language requiring the facility operator to secure and abide by applicable permits.<sup>37</sup>

The Joint IOUs argued in comments to the original proposed decision that they should not be required, as part of their duties under the reasonable manager standard, to ensure that the entities they contract with comply with all laws and regulations that the entity may be subject to. The amendments to the original

---

<sup>36</sup> Joint IOUs' Closing Brief at 20.

<sup>37</sup> PG&E BioRAM pro forma PPA (section 10.2(a)) as described in advice letter 4822-E/A/B; SCE BioRAM pro forma PPA (section 10.02(a)) as described in advice letter 3390-E/A; and SDG&E BioRAM pro forma PPA (section 10.3(a)) as described in advice letter 3002-E.

proposed decision offered by the Joint IOUs only required the Joint IOUs to ensure compliance with the TM contract's terms under the reasonable manager standard (i.e., only breaches giving a right to termination under the contract would create a presumption against cost recovery).

In order to encourage an IOU's reasonable management of the TM contracts with respect to air pollution control standards, this decision orders the IOUs to collect information on whether or not a TM facility operator complies with the facility's air pollution control requirements during the term of its TM contract. Every six months, the IOU must send an information-only advice letter to the Commission's Energy Division confirming whether the TM facilities under contract with the IOU have complied with their applicable air pollution control requirements over the previous six months. This advice letter must be served in parallel on the service list for A.16-11-005. If the requirements were not or are not being met, the IOU must explain the circumstances of the non-compliance, the steps taken by the TM facility operator to rectify the non-compliance, and if the non-compliance is ongoing the expected resolution of the non-compliance.

#### **5. The Public Purpose Program Charge as a Vehicle for the TM NBC**

Parties did not dispute that the PPP is an appropriate vehicle for collecting the TM NBC through customer rates. This decision therefore adopts the PPP charge as the vehicle through which each IOU shall collect their TM NBC. The TM NBC shall be included in the PPP in the following manner:

- Each IOU shall establish a Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA) that shall be used for collecting the net costs for TM-related procurement.
- Each IOU shall transfer the TM-related procurement costs being tracked in its respective memorandum accounts to the

TMNBCBA, once Commission approval of the costs tracked in the memorandum accounts occurs.

- Each IOU shall design its TM NBC rate by using the then-current 12-month coincident peak demand basis for revenue allocation that is used for the cost allocation mechanism (CAM), set on a per kWh basis for each customer group, and added to the other components of the PPP rate for billing.<sup>38</sup>

## **6. The Duration of the TM NBC**

Parties disagreed on the duration of the TM NBC. CalCCA argued that the TM NBC should only exist so long as the TM contracts exist (approximately five years). Joint IOUs argued that the duration of the TM contracts should not dictate the amount of time used to recover costs, and stated that at least some of the contracts may be extended past their current five-year terms. The Joint IOUs appear to be referring to SB 901 (stats. 2018, ch. 626), which added Section 8388 to the Public Utilities Code. This new legislation mandates that counterparties to the TM contracts seek to renew the contracts, except for those contracts with facilities located in federal severe or extreme nonattainment areas for particulate matter or ozone.<sup>39</sup>

The Joint IOUs are correct that the TM NBC need not be limited in duration to the current term of the contracts covered by the TM NBC. However, there may be good reasons to limit an NBC's duration to a contract's term, especially in this case where the procurement is very specific and limited in scope.

---

<sup>38</sup> Joint IOU-1 at 10.

<sup>39</sup> Public Utilities Code Section 8388.

This decision finds that the term of the TM NBC for each IOU shall end at the end of the Energy Resources Recovery Account (ERRA) forecast period following the expiration of the last TM contract for each IOU. This will allow for the TM NBC to continue past 2022 if some of the TM contracts covered by the TM NBC are renewed pursuant to SB 901. This finding also allows for a limited term for the TM NBC as desired by CalCCA.

**7. Coordination with Rulemaking 17-06-026**

Given that a decision in R.17-06-026 has already been issued by the Commission, there is no need to consider any future coordination with that proceeding. As noted above, this decision adopts the “RA adder” methodology from the decision issued in that proceeding to be used in the calculation of the TM NBC.

**8. Conclusion**

The TM NBC will recover the net costs to the IOUs of the TM-related biomass energy procurement. These net costs exclude revenue received by the IOUs through sales of energy and ancillary services related to the procurement. The net costs also exclude the value of RECs as determined by the sales of these credits in the marketplace (or a benchmark value if such sales are impossible), and the value of the RA capacity of the procurement as determined through utility sales of such capacity (or a benchmark value if such sales are impossible). This decision requires that the non-bypassable charge be collected through each utility’s PPP charge.

**9. Outstanding Procedural Matters**

The Commission affirms all rulings made by the assigned Commissioner and assigned ALJs. All motions not previously ruled on are deemed denied.

## **10. Comments on Proposed Decision**

The proposed decision of ALJ Doherty in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 28, 2018 by the Joint IOUs, Cal CCA, and the Independent Energy Producers Association. Reply comments were filed on December 3, 2018 by the Joint IOUs and Cal CCA. Changes to the proposed decision have been made throughout in response to comments.

## **11. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Peter V. Allen and Patrick Doherty are the assigned ALJs in this proceeding.

### **Findings of Fact**

1. The Joint IOUs outlined the formula for calculating the TM NBC as follows:  $\text{Net Costs} = (\text{Fixed Costs} + \text{Variable Costs}) - ((\text{Energy Revenue} + \text{Ancillary Service Revenue, if any}) + (\text{REC value} * \text{Renewable Portfolio Standard-eligible Energy Generation}))$ .

2. The fixed and variable costs of the TM contracts should be defined as the all-in fixed price under the TM procurement contracts, and any charges incurred in the CAISO energy and ancillary services markets that are related to the facility's generation and attributed to the retail seller under the respective contract.

3. The monetary value of a REC is unknown unless it is sold.

4. As a condition of the TM contracts, the associated RECs are procured and become property of the IOU counterparty.



5. To the extent RECs associated with the TM contracts cannot be offered for sale as PCC 1 RECs, a reasonable administrative benchmark price for a PCC 1 REC is \$15.04/MWh.

6. RA value associated with the TM contracts cannot be found to have already been realized on an interim basis.

7. Allocation of RA capacity from the past is unworkable.

8. There is wide variance in RA prices across space and time.

9. The IOUs' pro forma PPAs for BioRAM procurement include language requiring the facility operator to secure and abide by applicable permits.

10. The PPP charge is an appropriate vehicle for collecting the TM NBC through customer rates.

### **Conclusions of Law**

1. The non-bypassable charge designed by this decision should apply to all procurement conducted pursuant to Resolution E-4770 and Resolution E-4805.

2. Deducting revenues and values realized by IOUs from the price paid by the IOUs for the facilities' capacity results in reasonable rates.

3. The approach for determining the fixed and variable costs of the TM contracts is reasonable and is adopted.

4. The use of market transactions to determine the actual values of energy and services for a given TM contract maximizes the accuracy of the TM NBC.

5. The sale of TM-related RECs and RA capacity provides for maximum accuracy and ensures the reasonableness of the TM NBC as a rate element.

6. As a general matter, it may not be reasonable to require ratepayers to pay for the TM procurement if a TM facility's operator fails to comply with contractual requirements, or obligations imposed by law or the Commission on

IOUs to protect the public's safety and health, and the IOU counterparty is aware or should have been aware of that failure.

7. SB 901 mandates that counterparties to the TM contracts seek to renew the contracts, except for those contracts with facilities located in federal severe or extreme nonattainment areas for particulate matter or ozone.

## **O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each use the following formula to calculate the non-bypassable charge to collect from its ratepayers the net costs of the tree mortality-related procurement contracts required by Resolution E-4770 and Resolution E-4805:  $(\text{Fixed Costs} + \text{Variable Costs}) - ((\text{Energy Revenue}) + (\text{Ancillary Service Revenue, if any}) + (\text{Resource Adequacy Revenue, if any}) + (\text{Renewable Energy Credit Revenue, if any}))$

2. The fixed and variable costs component of the formula in Ordering Paragraph 1 are defined as the all-in fixed price of the procurement contracts. Energy costs include any charges incurred in the California Independent System Operator energy and ancillary services markets that are related to the facility's generation and attributed to the retail seller under the respective contract.

3. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each:

- Make available for sale the portfolio content category 1 (PCC 1) renewable energy credits (RECs) associated with their tree mortality-related procurement contracts required by Resolution E-4770 and Resolution E-4805 as soon as possible after the

effective date of this decision. To ensure PCC 1 categorization of the RECs, each investor-owned utility (IOU) shall offer for sale a bundled Renewables Portfolio Standard product consisting of future deliveries of energy and RECs from each tree mortality-related procurement contract, with the energy being settled at the market index price.

- File any executed sales for the PCC 1 RECs associated with its tree mortality-related procurement contracts via Tier 1 advice letters so long as it: (1) utilizes a Commission-approved Renewables Portfolio Standard Sales pro forma agreement; (2) shows any necessary modifications to the pro forma agreement via a comparison document provided with the Tier 1 filing; and (3) includes a duration of five years or less.
- Deduct the revenue received from these REC sales from the total costs of the tree mortality (TM) contract(s) assigned to its ratepayers through the TM non-bypassable charge (TM NBC). If the RECs are not purchased, then the value deducted shall be \$0 and no load-serving entity may use the REC for compliance purposes.
- Repeat this process if its TM contracts are extended.
- Deduct any REC values from the total costs of its TM contracts to the extent RECs associated with the TM contracts have already been sold. If the RECs were not purchased even though they were offered for sale, and they were not used for compliance purposes by any load-serving entity, then the value deducted shall be \$0.
- Use an administrative benchmark PCC 1 REC price of \$15.04/megawatt hour and deduct this value from the total costs of the TM contract(s) assigned to its ratepayers through the TM NBC if RECs associated with the TM contracts cannot be offered for sale as PCC 1 RECs (e.g., because the energy generation occurred in the past) or if the REC was offered for sale in the past, not sold, and then used by the IOU for compliance purposes.

4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each update its draft 2018

Renewables Portfolio Standard (RPS) Procurement Plan, to the extent necessary, to conform to this decision. This update may be included in the final, conforming version of the respective 2018 RPS Procurement Plans. Future RPS Procurement Plans (and other relevant documents) shall reflect this decision for the duration of the tree mortality contracts.

5. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each:

- Monetize the resource adequacy (RA) capacity value of their respective tree mortality (TM) contracts as soon as possible after the effective date of this decision using existing, Commission-approved mechanisms to make available for sale the RA capacity of their TM contracts. Each IOU must also detail their respective RA sales framework and protocols in the Tier 2 advice letter filing to establish the TM non-bypassable charge required by this decision.
- Deduct that value from the TM contract costs assigned to the TM non-bypassable charge (TM NBC) for its ratepayers. If the RA capacity is not purchased, then the value deducted shall be \$0 and no load-serving entity may use the RA for compliance purposes.
- Deduct the RA capacity value of the TM contract assigned to the TM NBC if RA capacity for the TM contract has already been monetized. If the RA capacity was not purchased even though it was offered for sale, and it was not used for compliance purposes by any load-serving entity, then the value deducted shall be \$0.
- Use the benchmark RA values (also referred to as an “RA adder”) established by the decision issued in the Power Charge Indifference Adjustment proceeding (Rulemaking 17-06-026) to value the RA capacity associated with the TM contracts and deduct from the costs of the TM contract assigned to the TM NBC if RA values cannot be offered for sale, due to the expiration of the RA value or for another reason. This benchmark RA value shall also be used if RA was offered for sale, not sold, and then used by an IOU for compliance purposes.

6. Pacific Gas and Electric Company (PG&E) must collect information on whether or not a tree mortality (TM) facility is in compliance with the facility's air pollution control requirements during the term of its TM contract. Every six months, beginning six months after the date this decision is issued, PG&E must send an information-only advice letter to the Commission's Energy Division confirming whether the TM facilities under contract with PG&E have complied with their applicable air pollution control requirements over the previous six months. The first information-only filing must cover the period from the delivery start date to the date of the letter. Each advice letter must state whether any of PG&E's TM contracts are with facilities operating in federal severe or extreme nonattainment areas for particulate matter or ozone. These advice letters must be served in parallel on the service list for Application 16-11-005. If the requirements were not or are not being met, PG&E must explain the circumstances of the non-compliance, the steps taken by the TM facility operator to rectify the non-compliance, and if the non-compliance is ongoing the expected resolution of the non-compliance.

7. Southern California Edison Company (SCE) must collect information on whether or not a tree mortality (TM) facility is in compliance with the facility's air pollution control requirements during the term of its TM contract. Every six months, beginning six months after the date this decision is issued, SCE must send an information-only advice letter to the Commission's Energy Division confirming whether the TM facilities under contract with SCE have complied with their applicable air pollution control requirements over the previous six months. The first information-only filing must cover the period from the delivery start date to the date of the letter. Each advice letter must state whether any of SCE's TM contracts are with facilities operating in federal severe or

extreme nonattainment areas for particulate matter or ozone. These advice letters must be served in parallel on the service list for Application 16-11-005. If the requirements were not or are not being met, SCE must explain the circumstances of the non-compliance, the steps taken by the TM facility operator to rectify the non-compliance, and if the non-compliance is ongoing the expected resolution of the non-compliance.

8. San Diego Gas & Electric Company must collect information on whether or not a tree mortality (TM) facility is in compliance with the facility's air pollution control requirements during the term of its TM contract. Every six months, beginning six months after the date this decision is issued, SDG&E must send an information-only advice letter to the Commission's Energy Division confirming whether the TM facilities under contract with SDG&E have complied with their applicable air pollution control requirements over the previous six months. The first information-only filing must cover the period from the delivery start date to the date of the letter. Each advice letter must state whether any of SDG&E's TM contracts are with facilities operating in federal severe or extreme nonattainment areas for particulate matter or ozone. These advice letters must be served in parallel on the service list for Application 16-11-005. If the requirements were not or are not being met, SDG&E must explain the circumstances of the non-compliance, the steps taken by the TM facility operator to rectify the non-compliance, and if the non-compliance is ongoing the expected resolution of the non-compliance.

9. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall each use their public purpose program (PPP) charge as the vehicle through which it

collects its tree mortality non-bypassable charge (TM NBC). The TM NBC shall be included in the PPP in the following manner:

- Each of PG&E, SCE, and SDG&E shall establish a Tree Mortality Non-Bypassable Charge Balancing Account (TMNBCBA) that shall be used for collecting the net costs for tree mortality-related procurement.
- Each of PG&E, SCE, and SDG&E shall transfer the tree mortality-related procurement costs being tracked in its respective memorandum accounts to the TMNBCBA, once Commission approval of the costs tracked in the memorandum accounts occurs.
- Each of PG&E, SCE, and SDG&E shall design its TM NBC rate by using the then-current 12-month coincident peak demand basis for revenue allocation that is used for the cost allocation mechanism (CAM), set on a per kWh basis for each customer group, and added to the other components of the PPP rate for billing.

10. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each end the term of their own tree mortality non-bypassable charge at the end of the Energy Resources Recovery Account (ERRA) forecast period following the expiration of the last tree mortality-related contract.

11. No later than 60 days after the issuance of this decision, Pacific Gas and Electric Company (PG&E) shall design and implement a non-bypassable charge to collect from its ratepayers the net costs of PG&E's tree mortality-related procurement contracts required by Resolution E-4770 and Resolution E-4805 as defined in this decision, and shall file a Tier 2 advice letter describing the design and implementation of the non-bypassable charge. This advice letter shall be served on the service list for this proceeding.

12. No later than 60 days after the issuance of this decision, Southern California Edison Company (SCE) shall design and implement a non-bypassable charge to collect from its ratepayers the net costs of SCE's tree mortality-related procurement contracts required by Resolution E-4770 and Resolution E-4805 as defined in this decision, and shall file a Tier 2 advice letter describing the design and implementation of the non-bypassable charge. This advice letter shall be served on the service list for this proceeding.

13. No later than 60 days after the issuance of this decision, San Diego Gas & Electric Company (SDG&E) shall design and implement a non-bypassable charge to collect from its ratepayers the net costs of SDG&E's tree mortality-related procurement contracts required by Resolution E-4770 and Resolution E-4805 as defined in this decision, and shall file a Tier 2 advice letter describing the design and implementation of the non-bypassable charge. This advice letter shall be served on the service list for this proceeding.

14. All pending motions not previously ruled on are denied.

15. There is no need for an evidentiary hearing in this proceeding.

16. Application 16-11-005 is closed.

This order is effective today.

Dated December 13, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners