

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

AGENDA ID: 17107
RESOLUTION E-4977
January 31, 2019

R E S O L U T I O N

Resolution E-4977. Commission Motion Amending the Bioenergy Renewable Auction Mechanism (BioRAM) Program and Authorizing the Extension of Certain Contracts pursuant to Senate Bill 901.

PROPOSED OUTCOME:

- Requires Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) to amend certain BioRAM and other biomass contracts related to compliance, reporting, payment, terms of default, feedstock requirements, and contract term length.

SAFETY CONSIDERATIONS:

- This Resolution implements biomass provisions of Senate Bill 901 (stats. 2018, ch. 626), which in part addresses biomass energy as a means to remove forest materials.
- Renewable Auction Mechanism standard contracts contain Commission approved safety provisions. There are not any expected incremental safety implications associated with approval of this Resolution.

ESTIMATED COST:

- This Resolution is expected to result in extended energy procurement contracts which will lead to increased ratepayer costs. Actual costs are unknown at this time.

By Energy Division's own motion.

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SUMMARY

This Resolution orders Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively IOUs) to amend their BioRAM contracts to expand the eligible fuel stock that can be classified as High Hazard Zone (HHZ) fuel, offer BioRAM sellers the option to comply with fuel use requirements on either a monthly basis or an annual basis, and remove missed fuel requirements as an event of default.

This Resolution also orders PG&E, SCE, and SDG&E to seek to extend certain BioRAM and other biomass contracts by five years.

BACKGROUND

Overview of the Emergency Proclamation, Senate Bill 859, and the "BioRAM"

Severe drought conditions and an epidemic infestation of bark beetles have caused increased tree mortality in several regions of California. On October 30, 2015, Governor Brown issued an Emergency Proclamation (Proclamation) to protect public safety and property from falling dead trees and wildfire. 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 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 progressively higher annual minimum prescribed levels of HHZ material as feedstock. The calendar year HHZ minimums were set as follows: 40 percent in 2016, 50 percent in 2017, 60 percent in 2018, and 80 percent for each subsequent year. The IOUs were required to provide five-year contracts to facilities, with the right to extend the five-year contract term for one year at a time, up to a cumulative total of ten years so long as HHZ fuel is available at the minimum fuel requirement.

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Contracts executed pursuant to the terms of Resolution E-4770 are known as "BioRAM 1" contracts.

In 2016, SB 859 (stats. 2016, ch. 368) was enacted. SB 859 included a new requirement for IOUs and Publicly-Owned Utilities (POUs) 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. The IOU assigned portion is 96 MW. Specifically, the legislation required that at least 80 percent of the feedstock of an eligible facility, on an annual basis, must be a byproduct of sustainable forestry management, which includes removal of trees from HHZs and is not that from lands that have been clear cut, and that at least 60 percent of the feedstock must come from HHZs. The bill also specified that procurement pursuant to Commission Resolution E-4770 that is in excess of the procurement requirement in Resolution E-4770 shall count towards meeting the utility's share of the 125 MW goal. In addition, SB 859 added Public Utilities (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.

On October 21, 2016, the Commission issued Resolution E-4805 to implement the IOU procurement requirements of SB 859. Resolution E-4805 said that IOUs could meet their proportionate shares of the 125 MW goal using any combination of a) the BioRAM ordered by Resolution E-4770; b) a subsequent RAM, or "BioRAM 2" authorized in the Resolution; and c) bilateral procurement. In order to allow procurement under option b) above, Resolution E-4805 required the IOUs to create an updated BioRAM 2 standard contract rider. BioRAM 2 contracts only differ from BioRAM 1 contracts in that they contain the feedstock requirements established in SB 859; specify that the contract length is five years; require that the contracted facility is an existing bioenergy project that commenced operation prior to June 1, 2013; and update administrative details such as dates, deadlines, and process requirements.

Collectively, the BioRAM program requires the IOUs to procure 146 MW of qualifying biomass electricity. 153 MW is currently under contract—119 MW under BioRAM 1 contracts and 34 MW under BioRAM 2.

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On December 13, 2018, the Commission issued D.18-12-003 establishing a methodology for calculating a non-bypassable charge to collect revenue to pay for BioRAM procurement by the IOUs through each utility's public purpose program charge.

Overview of Senate Bill (SB) 901, Sections 25 and 43

The California Legislature passed SB 901 (stats. 2018, ch. 626) on August 31, 2018 and Governor Edmund G. Brown Jr. signed it into law on September 21, 2018.¹ The portions of this bill that are implemented herein are Section 25, which amended Pub. Util. Code § 399.20.3, and Section 43, which added Pub. Util. Code § 8388.

Appendix A contains the full text of Sections 25 and 43. Key provisions of Pub. Util. Code § 399.20.3, for purposes of this Resolution, are summarized below:

- Sub-division (c): States that for the purposes of BioRAM contracts entered into pursuant to 399.20.3(b), Commission Resolution E-4770, and Commission Resolution E-4805, Tier 1 and Tier 2 high hazard zone fuel or feedstock shall also include biomass fuels removed from fuel reduction operations exempt from timber harvesting plan requirements pursuant to subdivisions (a), (f), (j), and (k) of Section 4584 of the Public Resources Code.
- Sub-division (d): Requires IOUs to allow BioRAM fuel or feedstock reporting requirements to be based on a monthly or annual basis; requires that BioRAM facilities be paid a lower alternate price for months where they opt out of or miss the mandated fuel or feedstock usage levels; and removes as an event of default missing fuel requirements.

Key provisions of Pub. Util. Code § 8388, for purposes of this Resolution, are summarized below:

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB901

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- Requires IOUs, Publicly Owned Utilities (POUs), and Community Choice Aggregators (CCAs) with BioRAM contracts or biomass contracts that are operative at any time in 2018, and expire on or before December 31, 2023, to seek to amend those contracts or seek new contracts that include five-year extensions so long as the contract extensions follow the feedstock requirements of BioRAM 2 and facilities are not located in federal severe or extreme nonattainment areas for particulate matter or ozone.

Overview of 2017 RPS Procurement Plans

Pursuant to the authority provided in Pub. Util. Code § 399.13(a)(1), D.17-12-007 accepted, with some modifications, the draft 2017 RPS Procurement Plans, including the related solicitation protocols, filed by the IOUs. D.17-12-007 in addition accepted the IOUs' positions that they were well-positioned to meet their RPS targets and would therefore not be required to issue a 2017 RPS solicitation. D.17-12-007 also required the IOUs to first seek the Commission's permission before entering into any solicitations or bilateral contracts for RPS-eligible resources during the time period covered by their respective 2017 RPS solicitation cycles.

DISCUSSION

This Resolution implements key provisions of SB 901, which revise HHZ fuel definitions, require BioRAM contracts to include a monthly compliance option with updated reporting and payment, and revise default terms. This Resolution also implements Pub. Util. Code § 8388, which requires the IOUs, POUs, and CCAs to offer contract negotiations and make all reasonable efforts to execute new or amended contracts that extend certain BioRAM and other bioenergy contracts by five years if those facilities agree to the feedstock requirement of BioRAM 2.

Part 1: Expanded HHZ Definition

Amended Pub. Util. Code § 399.20.3(c) states:

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For the purpose of contracts entered into pursuant to subdivision (b), commission Resolution E-4770 (March 17, 2016), and commission Resolution E-4805 (October 13, 2016), Tier 1 and Tier 2 high hazard zone fuel or feedstock shall also include biomass fuels removed from fuel reduction operations exempt from timber harvesting plan requirements pursuant to subdivisions (a), (f), (j), and (k) of Section 4584 of the Public Resources Code.

BioRAM contracts currently define High Hazard Zones as “areas designated as Tier 1 or Tier 2 high hazard zones for wildfire and falling trees by the California Department of Forestry and Fire Protection (‘CAL FIRE’), the California Natural Resources Agency, the California Department of Transportation, the California Energy Commission, or other designated agency.” This definition, when paired with the language in amended Pub. Util. Code § 399.20.3(c), is largely self-implementing. In other words, starting on January 1, 2019 when SB 901 goes into effect, the High Hazard Zones definition will automatically include the expanded definition of eligible feedstock. That is because the language does not direct any entity to take any action. Rather, it provides direction on how the high hazard zone language in existing contracts should be interpreted.

However, in the interest of clarity so that contracts clearly define what is eligible fuel, the IOUs should amend their contracts to expand the High Hazard Zone definition. The expanded definition should read:

- “High Hazard Zones” means areas designated as Tier 1 or Tier 2 high hazard zones for wildfire and falling trees by the California Department of Forestry and Fire Protection (“CAL FIRE”), the California Natural Resources Agency, the California Department of Transportation, the California Energy Commission, or other designated agency, and biomass fuels removed from fuel reduction operations exempt from timber harvesting plan requirements pursuant to subdivisions (a), (f), (j), and (k) of Section 4584 of the Public Resources Code.

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This amended definition should also be used in any new contract. Also, to assist with oversight and fuel use tracking, starting on January 1, 2019, fuel attestations from sellers should delineate how much fuel comes from Tier 1 HHZs and Tier 2 HHZs, as defined by CALFIRE, and biomass fuels removed from fuel reduction operations exempt from timber harvesting plan requirements pursuant to subdivisions (a), (f), (j), and (k) of Section 4584 of the Public Resources Code.

Biomass fuels that are added by the amended definition include fuels that result from:

- The cutting or removing of trees for the purpose of constructing or maintaining a right-of-way for utility lines;
- Timber operations on land managed by the Department of Parks and Recreation;
- The cutting or removal of trees on a person's property that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break, subject to certain conditions; and
- The harvesting of trees, limited to those trees that eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire spread, duration and intensity, fuel ignitability, or ignition of tree crowns, subject to certain conditions.

Part 2: Revised Reporting, Payment, and Default Terms

Amended Pub. Util. Code § 399.20.3(d) states:

The commission shall require an electrical corporation that has entered into a contract pursuant to subdivision (b), commission Resolution E-4770 (March 17, 2016), or commission Resolution E-4805 (October 13, 2016) to allow fuel or feedstock reporting requirements to be based on a monthly or annual basis, and a bioenergy facility providing generation pursuant to that contract shall have the right to opt out of the mandated fuel or

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feedstock usage levels in any particular month upon providing written notice to the electrical corporation in the month of operation. For months in which a bioenergy facility opts out of the mandated fuel or feedstock usage levels or misses the mandated fuel or feedstock targets, that facility shall be paid the alternate price adopted by the commission in commission Resolution E-4770 for all megawatthours generated during that month. Contracts shall continue in force through the end of the contracted term without creating an event of default for missing mandated fuel or feedstock usage levels and without giving rise to a termination right in favor of the electrical corporation.

There are two distinct parts of this section. The first part establishes a new monthly compliance option for sellers and establishes reporting and payment terms therein. The second part amends the eligible events of default in BioRAM contracts.

Monthly and Annual Compliance, Reporting, and Payment Terms

Currently, the IOUs collect quarterly data from BioRAM facilities to track the amount of bioenergy that is being produced from HHZ and, for BioRAM 2 contracts, Sustainable Forest Management fuel. In addition, the IOUs are required to perform an annual audit to verify the amount of HHZ fuel that BioRAM facilities utilized during the calendar year. This information is used to determine if sellers met their fuel minimums and compliance with contracts' annual fuel minimums.

Amended Pub. Util. Code § 399.20.3(d) establishes a new option—monthly compliance. SB 901 requires that the IOUs give sellers the option to report their fuel or feedstock requirements on either an annual basis or a monthly basis. If sellers choose to report on a monthly basis, their payment level will be based on whether they hit their fuel or feedstock targets each month. For months where they meet their minimum fuel targets, they will be paid the contract price. For months where they opt out of or miss their mandated fuel or feedstock usage levels, they will be paid a lower alternative price. In other words, SB 901 gives sellers the right to choose whether compliance with their contract fuel

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minimums, and thus the price that the buyer pays for their energy, will be determined on a monthly or an annual basis. If the seller chooses monthly compliance, the monthly fuel minimum will be set at the annual fuel minimum rate that would have otherwise existed in that calendar year. That is, for any month in 2019, the monthly requirement for sellers with monthly compliance will be 80% HHZ fuel for BioRAM 1 contracts and 60% HHZ and 80% Sustainable Forest Management fuel for BioRAM 2 contracts, which are the annual fuel requirements for 2019.

This Resolution implements amended Pub. Util. Code § 399.20.3(d) by requiring that the IOUs amend their existing BioRAM contracts to add monthly compliance optionality and revised reporting and payment terms for those facilities that choose monthly compliance. To maximize facility and fuel-use flexibility, this Resolution also finds that facilities may switch between monthly and annual compliance at the end of each calendar year. In establishing a monthly compliance option in the BioRAM contracts, the following changes must be made to contracts:

1. The seller shall submit monthly attestations to the IOU during the delivery month, specifying, among other things, whether the mandated fuel or feedstock usage levels were met.
2. The seller shall have the right to opt out of its monthly mandated fuel or feedstock usage levels in any month if it provides written notice to the electrical corporation in the month of operation.
3. If the seller opts out of its mandated fuel or feedstock usage level, or if the seller misses its mandated fuel or feedstock targets, that facility shall be paid the alternate price adopted by the Commission in Resolution E-4770—\$89.23/MWh—for all megawatthours generated during that month.
4. The buyer shall collect or be credited towards future payments the difference between the contract price and the alternative price in instances where a seller may have been overpaid in previous months.

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5. A seller on the monthly compliance option must stay on monthly reporting until the end of the calendar year. Prior to the end of the calendar year, the seller must decide if it will stay on monthly reporting during the next calendar year, or switch to annual compliance and reporting.

The above contract terms shall only apply to those sellers that choose monthly compliance. If a seller chooses to maintain the existing annual compliance requirements, all current contract terms and conditions shall apply with respect to these new terms. Sellers that maintain annual compliance shall not have the right to opt in and out of their mandated fuel or feedstock usage levels, and they shall not have revised reporting or payment terms. These sellers must stay on annual compliance until the end of the calendar year. As with sellers on the monthly compliance option, though, prior to the end of the calendar year, the seller will have the option to decide to stay on annual compliance in the next calendar year, or switch to monthly compliance.

Furthermore, the IOUs shall produce an audit on a quarterly basis to verify that the contracting facilities on monthly compliance terms are meeting their monthly mandated fuel or feedstock usage levels and provide information about their verification processes and findings to the Director of the Energy Division on request.

Event of Default

The IOUs must also amend their contracts to remove not achieving fuel requirements as an event of default. Under no circumstances may missing the mandated fuel or feedstock usage levels in BioRAM contracts give rise to a termination right in favor of the buyer. In practice, this change will only affect BioRAM 2 contracts, because missing fuel requirements is not currently an event of default in BioRAM 1 contracts.

Part 3: Five-Year Contract Extension

Section 8388 states:

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An electrical corporation, local publicly owned electric utility, or community choice aggregator with a contract to procure electricity generated from biomass pursuant to subdivision (b) of Section 399.20.3, commission Resolution E-4770 (March 17, 2016), or commission Resolution E-4805 (October 13, 2016), or with a contract that is operative at any time in 2018, and expires or expired on or before December 31, 2023, shall seek to amend the contract to include, or seek approval for a new contract that includes, an expiration date five years later than the expiration date in the contract that was operative in 2018, so long as the contract extension follows the feedstock requirement of subdivision (b) of Section 399.20.3. This section shall not apply to facilities located in federal severe or extreme nonattainment areas for particulate matter or ozone.

Accordingly, the IOUs must offer contract negotiations to all eligible sellers and make all reasonable efforts to execute new or amended contracts that extend contract term lengths by up to five years. Eligible sellers are all counterparties to BioRAM contracts and any other biomass contracts that were operative at any time in 2018 and expire or expired on or before December 31, 2023, except for sellers that operate facilities located in federal severe or extreme nonattainment areas for particulate matter or ozone are not eligible for contract extensions.² New or amended contracts executed pursuant to Pub. Util. Code § 8388 must follow the feedstock requirements of Pub. Util. Code § 399.20.3(b)—at least 80 percent of the feedstock of an eligible facility must be a byproduct of sustainable forestry management, which includes the removal of trees from HHZs and not from lands that have been clear cut, and at least 60 percent of the feedstock must come from HHZs. In other words, in order to be eligible for a contract extension,

² The U.S. Environmental Protection Agency (EPA) keeps detailed information about area National Ambient Air Quality Standards (NAAQS) designations, classifications and nonattainment status. If an area is not in attainment federal NAAQS standards, its nonattainment classification can range from marginal to extreme. BioRAM and other biomass facilities will be considered ineligible for contract extensions pursuant to this Resolution if their EPA non-attainment classification is "Severe," including "Severe-15" and "Severe 17," or "Extreme" for ozone or particulate matter. Information on the Green Book and pollutant designations and classifications can be found here: <<https://www.epa.gov/green-book>>

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new or amended contracts must conform to the feedstock requirements of BioRAM 2.

In order to comply with this section, the IOUs must offer five-year contract extensions or new contracts to eligible sellers that include the terms and conditions of BioRAM 2. Those contracts or contract amendments may not include missing fuel requirements as an event of default and must offer sellers the option to comply with their fuel or feedstock requirements on either an annual or monthly basis. From there, the IOU must make all reasonable efforts to execute new or amended contracts with the Seller. If the parties execute a new or amended contract, the IOU must seek Commission approval. If the parties do not execute a new or amended contract, the IOU shall file an attestation that the parties agree not to move forward and provide supporting documentation showing that all reasonable efforts were made.

D.17-12-007 accepted the IOUs' positions that they were well-positioned to meet their RPS targets and would therefore not be required to issue a 2017 RPS solicitation. D.17-12-007 also required that the IOUs first seek the Commission's permission before entering into any solicitations or bilateral contracts for RPS-eligible resources during the time period covered by their respective 2017 RPS solicitation cycles. To implement the SB 901, it is essential that the IOUs be allowed to enter into bilateral contracts to facilitate any potential contracts with forest bioenergy facilities receiving feedstock from high hazard zones. Therefore, PG&E, SCE, and SDG&E shall update their most recently approved RPS Procurement Plans to reflect procurement pursuant to SB 901.

We further require that contract prices for new or amended BioRAM contracts executed pursuant to this section be no higher than current contract prices plus inflation. Contract prices for other new or amended biomass contracts executed pursuant to this section shall be no higher than the weighted average price for current BioRAM contracts—\$119/MWh—plus inflation. This is in order to prevent protracted contract negotiations where sellers may have an incentive to hold out for a higher price. Any procurement expenses incurred pursuant to this

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Resolution shall be collectible through the BioRAM non-bypassable charge, including other bioenergy contracts that choose to accept the BioRAM 2 terms .

Finally, we note that Pub. Util. Code § 8388 also includes small IOUs, CCAs, and POU³s. In Resolution E-4805, the Commission declined to require the small IOUs to procure pursuant to BioRAM program and found that SB 859 did not provide procurement direction for direct access providers. Thus, none of these load serving entities have BioRAM contracts. These smaller electricity providers, however, shall integrate biomass facilities that use forest fuels from HHZs into their energy portfolio. The Commission will coordinate with the California Energy Commission and the state's Forest Management Task Force to stay informed of their SB 901 implementation progress.

Implementation

The IOUs shall file Tier 2 advice letters within 60 days of this Resolution containing contract amendments that contain: a) the expanded HHZ definition described in Part 1 of this Resolution; b) the monthly compliance option with revised reporting, payment, and other terms described in Part 2 of this Resolution; and c) the removal of not achieving mandated fuel or feedstock usage levels as an event of default as described in Part 2 of this Resolution. Tier 2 Advice Letters must also contain a showing that the IOU has contacted all their contracted BioRAM facilities and other biomass facilities with contracts that were operative at any time in 2018, and expire or expired on or before December 31, 2023, so long as those facilities are not located in federal severe or extreme nonattainment areas for particulate matter or ozone (Part 3 of this Resolution).

Upon approval of the contract amendments, sellers may choose to switch to monthly compliance or maintain annual compliance. If the seller chooses the monthly compliance option, all terms and conditions of monthly compliance will retroactively apply to the beginning of that calendar year. The IOUs must also inform the Director of Energy Division by December 15 of each year by

³ This Commission does not have regulatory and procurement oversight over the POU³s.

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compliance letter which reporting option, monthly or annual, will be used by the IOU's contracted sellers for as long as those contracts remain operative.

Furthermore, if an agreement can also be reached between the IOU and an eligible seller regarding contract term extension within 60 days of this Resolution, the Tier 2 Advice Letter shall also include: a) a new or amended contract that extends the contract term length and includes the feedstock requirements of BioRAM 2, as described in Part 3 of this Resolution; or b) an attestation that the IOU and the eligible seller do not wish to execute contracts with an extended term length and the fuel and feedstock requirements of BioRAM 2, and supporting documentation to show that all reasonable efforts were made by the IOU.

If an agreement extending the contract term length is not reached between the IOU and an eligible seller within 60 days of the Resolution, the IOU must file a separate Tier 2 Advice Letter no later than 12 months prior to the current contract end date showing compliance with Part 3 of this Resolution.

OTHER ISSUES

In an effort to address wildfire emergency situations in California and maintain the obligation of BioRAM facilities to adhere to fuel requirements under the PPA, it is prudent to provide clear direction to IOUs and facilities regarding the classification of salvaged biomass material due to wildfire. In post-wildfire situations where early recovery efforts may focus on salvage logging to restore impacted areas, BioRAM facilities may be an important utilization option for communities and local governments. Program rules and reporting requirements should not be an impediment to BioRAM facilities and IOUs playing a useful role in post-emergency response operations.

For example, on September 4, 2018, PG&E sent a letter to the Director of Energy Division seeking guidance on an amendment to a BioRAM 2 contract between PG&E and Wheelabrator Shasta Energy Company Inc. on its proposal for categorizing deliveries of salvaged biomass material due to the Carr Fire. PG&E proposed for a period of one year to count the salvaged biomass as 80% HHZ

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fuel and 100% Sustainable Forest Management Fuel using modified reporting requirements. PG&E determined that these percentages were appropriate based on a GIS analysis of the area of the fire relative the HHZ boundaries, and a review of the Sustainable Forest Management definitions per Commission Decision 14-12-081. PG&E found that this amendment was necessary because members of the community and local governments responding to the Carr Fire would potentially not have the required documentation, which could otherwise prevent the facility from accepting the fuel.

This is an instance where it may be prudent for the utility and the biomass facility to quickly execute a BioRAM contract amendment so that the facility can accept deliveries from the community in response to a wildfire situation. Yet the CPUC will have the opportunity to review the reasonableness of such modifications given that the utilities report contract amendments as part of the IOU's Energy Resources Recovery Account (ERRA) Compliance filing. In future wildfire situations a BioRAM facility may be able to accept salvaged biomass from the burn area, if the IOUs find that doing so aligns with the fuel use terms of the contract. Therefore, we authorize the IOUs and facilities to amend their contracts to facilitate such deliveries through temporary amended reporting requirements that identify clear interim criteria for counting the percentage of fuel that is from HHZ fuel and the percentage that is from Sustainable Forest Management fuel. The IOU must also provide an analysis to show how it arrived at the HHZ fuel and Sustainable Forest Management fuel percentages.

This change will better enable BioRAM facilities to accept trees from areas that have been damaged by wildfire in situations where IOUs determine that the fuel is BioRAM-eligible, but local governments may not be in a position to provide the necessary documentation regarding BioRAM eligibility. Local governments and communities may be motivated by health and safety concerns in prioritizing biomass salvage operations in the immediate aftermath of wildfires. In these instances, it is reasonable to allow IOUs to make fuel eligibility determinations, subject to subsequent commission review.

SAFETY

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Pub. Util. Code § 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

This Resolution requires the IOUs to amend certain BioRAM and other biomass contracts related to reporting, payment, terms of default, and end-dates. It implements the biomass provisions of Senate Bill 901, which in part addresses biomass energy as a means to remove forest materials.

Additionally, RAM contracts to be used pursuant to this Resolution contain Commission approved safety provisions, which require, among other things, the seller to operate the generating facility in accordance with Prudent Electrical Practices, as defined in the contracts, and all applicable requirements of law, including those related to planning, construction, ownership, and/or operation of the projects. These provisions specifically require that all sellers take a list of reasonable steps to ensure that the generation facility is operated, maintained, and decommissioned in a safe manner.

Lastly, to the extent a contractual arrangement intended to meet the mandate of this Resolution involves contractors and subcontractors in a PG&E line of business defined as "medium" or "high" risk who perform work on PG&E assets, PG&E's contracting practices for performing work pursuant to this Resolution must comply with the Contractor Safety Standard approved by the Commission in D.15-07-014.

COMMENTS

Public Utilities Code Section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this Resolution was neither waived nor reduced. Accordingly, this draft Resolution was mailed to parties for

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comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. SB 901 expands the definition of "High Hazard Zones."
2. BioRAM contracts may have either monthly compliance or annual compliance fuel or feedstock requirements and reporting.
3. Allowing sellers to switch between monthly and annual compliance between calendar years will provide facilities with more flexibility.
4. It is reasonable, to assist with program oversight and fuel use tracking, for the IOUs to collect fuel attestations from BioRAM sellers that delineate how much fuel comes from Tier 1 HHZs and Tier 2 HHZs, as currently defined by CALFIRE, and biomass fuels removed from fuel reduction operations exempt from timber harvesting plan requirements pursuant to subdivisions (a), (f), (j), and (k) of Section 4584 of the Public Resources Code.
5. Under no circumstances may missing the mandated fuel or feedstock usage levels in BioRAM contracts give rise to a termination right in favor of the buyer.
6. Sellers that operate facilities located in federal severe or extreme nonattainment areas for particulate matter and ozone are not eligible for the contract extensions described in this Resolution.
7. New or amended contracts executed pursuant to this Resolution that extend the contract term length must follow the feedstock requirements of BioRAM 2.

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8. D.17-12-007 requires that the investor owned utilities first seek the Commission's permission before entering into any solicitations or bilateral contracts for RPS-eligible resources during the time period covered by their respective 2017 RPS Procurement Plans.
9. It is reasonable to cap prices to prevent protracted contract negotiations and contain costs by removing incentives to hold out for a higher price.
10. It is reasonable to allow any procurement expenses incurred pursuant to this Resolution to be collected through the BioRAM non-bypassable charge authorized by the Commission in D.18-12-XXX.
11. Starting on January 1, 2019, the definition of High Hazard Zones, as used in BioRAM contracts, should include biomass fuels removed from fuel reduction operations exempt from timber harvesting plan requirements pursuant to subdivisions (a), (f), (j), and (k) of Section 4584 of the Public Resources Code.
12. The Commission should authorize the IOUs to amend their BioRAM contracts to include the expanded HHZ definition.
13. The Commission should authorize the IOUs and sellers to amend their existing BioRAM contracts to add monthly compliance optionality with revised reporting and payment terms for those facilities that choose monthly compliance.
14. The Commission should authorize the IOUs to offer sellers the option to comply with their fuel or feedstock requirements on either an annual basis or a monthly basis.
15. The IOUs should produce an audit on a quarterly basis to verify that BioRAM sellers on monthly compliance are meeting their monthly mandated fuel or feedstock usage levels to ensure the accuracy of the attestations provided by the counterparty.

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16. It is reasonable that the IOUs verify that the contracting facilities are using fuel from high hazard zones and provide information about their verification processes and findings to the Director of the Energy Division on request.
17. Contract prices for new or amended BioRAM contracts executed pursuant to this Resolution should be no higher than current contract prices plus inflation, and that contract prices for other new or amended biomass contracts executed pursuant to this Resolution should be no higher than the weighted average price for current BioRAM contracts—\$119/MWh—plus inflation.
18. The IOUs may amend BioRAM contracts to facilitate deliveries of salvaged biomass fuel following a wildfire event through temporary amended reporting criteria that align with the fuel use terms of the contract and demonstrate that it complies with the interim counting of the percentage of HHZ fuel and the percentage of Sustainable Forest Management fuel. The IOU must also provide an analysis to show how it arrived at the HHZ fuel and Sustainable Forest Management fuel percentages. These amendments and analysis may be reported as routine contract administration as part of the IOU's Energy Resources Recovery Account (ERRA) Compliance filing.

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company, are ordered to file Tier 2 advice letters within 60 days of this Resolution containing contract amendments that contain:
 - a. the expanded High Hazard Zone definition described in part 1 of this Resolution;
 - b. the monthly compliance option with revised reporting, payment, and other terms described in part 2 of this Resolution;

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- c. if applicable, the removal of missing mandated fuel or feedstock usage levels as an event of default as described in part 2 of this Resolution;
 - d. a showing that the buyer has contacted all their contracted BioRAM facilities and other eligible biomass facilities;
 - e. if applicable, a new or amended contract that extends the contract term length and includes the feedstock requirements of BioRAM 2, as described in part 3 of this Resolution; and
 - f. if applicable, an attestation that the buyer and the eligible seller do not wish to execute contracts with an extended term length and the fuel and feedstock requirements of BioRAM 2, and supporting documentation to show that all reasonable efforts were made by the buyer.
2. If Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company do not address subsections e and f of Ordering Paragraph 1 within 60 days of this Resolution, they are ordered to file Tier 2 advice letters at least 12 months prior to the current end dates of eligible BioRAM and other eligible biomass contracts that contain:
- a. a new or amended contract that extends the contract term length and includes the feedstock requirements of BioRAM 2, as described in part 3 of this Resolution; or
 - b. an attestation that the buyer and the eligible seller do not wish to execute contracts with an extended term length and the fuel and feedstock requirements of BioRAM 2, and supporting documentation to show that all reasonable efforts were made by the buyer.
3. PG&E, SCE, and SDG&E shall update their most recently approved RPS Procurement Plans to reflect procurement pursuant to SB 901 within 60 days of this Resolution.
4. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company may not execute a new or

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amended biomass contract pursuant to this Resolution if the price of the contract is higher than:

- a. the price of the current contract plus inflation between that buyer and seller if the current contract is a BioRAM contract.
 - b. \$119 per megawatthour plus inflation if the current contract is not a BioRAM contract.
5. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company, are ordered to inform the Director of Energy Division by December 15 of each year by compliance letter if their contracted BioRAM sellers will choose annual compliance or monthly compliance during the following year for as long as those contracts remain operative.
 6. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company, are ordered to perform an audit on a quarterly basis to verify that BioRAM sellers on monthly compliance are meeting their monthly mandated fuel or feedstock usage levels.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on January 31, 2019; the following Commissioners voting favorably thereon:

ALICE STEBBINS
Executive Director

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Appendix A

**Text of Senate Bill 901, Sections 25 and 43
(Additions to Statute made by SB 901 shown as underlined)**

SEC. 25. Section 399.20.3 of the Public Utilities Code is amended to read:

399.20.3 (a) For purposes of this section, the following definitions apply:

(1) "Bioenergy" has the same meaning as set forth in paragraph (4) of subdivision (f) of Section 399.20.

(2) "Tier 1 high hazard zone" includes areas where wildlife and falling trees threaten power lines, roads, and other evacuation corridors, critical community infrastructure, or other existing structures, as designated by the Department of Forestry and Fire Protection pursuant to the Proclamation of a State of Emergency on Tree Mortality declared by the Governor on October 30, 2015.

(3) "Tier 2 high hazard zone" includes watersheds that have significant tree mortality combined with community and natural resource assets, as designated by the Department of Forestry and Fire Protection pursuant to the Proclamation of a State of Emergency on Tree Mortality declared by the Governor on October 30, 2015.

(b) In addition to the requirements of subdivision (f) of Section 399.20, by December 1, 2016, electrical corporations shall collectively procure, through financial commitments of five years, their proportionate share of 125 megawatts of cumulative rated generating capacity from existing bioenergy projects that commenced operations prior to June 1, 2013. At least 80 percent of the feedstock of an eligible facility, on an annual basis, shall be a byproduct of sustainable forestry management, which includes removal of dead and dying trees from Tier 1 and Tier 2 high hazard zones and is not that from lands that have been clear cut. At least 60 percent of this feedstock shall be from Tier 1 and Tier 2 high hazard zones.

(c) For the purpose of contracts entered into pursuant to subdivision (b), commission Resolution E-4770 (March 17, 2016), and commission Resolution E-4805 (October 13, 2016), Tier 1 and Tier 2 high hazard zone fuel or feedstock shall

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also include biomass fuels removed from fuel reduction operations exempt from timber harvesting plan requirements pursuant to subdivisions (a), (f), (j), and (k) of Section 4584 of the Public Resources Code.

(d) The commission shall require an electrical corporation that has entered into a contract pursuant to subdivision (b), commission Resolution E-4770 (March 17, 2016), or commission Resolution E-4805 (October 13, 2016) to allow fuel or feedstock reporting requirements to be based on a monthly or annual basis, and a bioenergy facility providing generation pursuant to that contract shall have the right to opt out of the mandated fuel or feedstock usage levels in any particular month upon providing written notice to the electrical corporation in the month of operation. For months in which a bioenergy facility opts out of the mandated fuel or feedstock usage levels or misses the mandated fuel or feedstock targets, that facility shall be paid the alternate price adopted by the commission in commission Resolution E-4770 for all megawatthours generated during that month. Contracts shall continue in force through the end of the contracted term without creating an event of default for missing mandated fuel or feedstock usage levels and without giving rise to a termination right in favor of the electrical corporation.

(e) (1) For each electrical corporation, the commission shall allocate its proportionate share of the 125 megawatts based on the ratio of the electrical corporation's peak demand to the total statewide peak demand.

(2) Procurement by an electrical corporation of generation capacity pursuant to a contract under the commission's Resolution E-4770 (March 17, 2016) that is in excess of the requirement of that electrical corporation under that resolution shall count towards meeting the electrical corporation's proportionate share allocated pursuant to paragraph (1).

(f) The commission may direct each electrical corporation to develop standard contract terms and conditions that reflect the operational characteristics of the bioenergy projects and to provide a streamlined contracting process or may require the electrical corporations to use the mechanism established pursuant to the commission's Resolution E-4770 (March 17, 2016) to meet the requirements of subdivision (e). The procurement pursuant to the developed standard contract shall occur on an expedited basis due to the Proclamation of a State of Emergency on Tree Mortality declared by the Governor on October 30, 2015.

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(g) A local publicly owned electric utility serving more than 100,000 customers shall procure its proportionate share, based on the ratio of the utility's peak demand to the total statewide peak demand, of 125 megawatts of cumulative rated capacity from existing bioenergy projects described in subdivision (b) subject to terms of at least five years.

(h) The commission shall ensure that the costs of any contract procured by an electrical corporation to satisfy the requirements of this section are recoverable from all customers on a nonbypassable basis.

(i) The Procurement Review Group within the commission shall advise the commission on the cost of the generation procured pursuant to this section and its impact on ratepayers.

SEC. 43. Section 8388 is added to the Public Utilities Code, to read:

8388. An electrical corporation, local publicly owned electric utility, or community choice aggregator with a contract to procure electricity generated from biomass pursuant to subdivision (b) of Section 399.20.3, commission Resolution E-4770 (March 17, 2016), or commission Resolution E-4805 (October 13, 2016), or with a contract that is operative at any time in 2018, and expires or expired on or before December 31, 2023, shall seek to amend the contract to include, or seek approval for a new contract that includes, an expiration date five years later than the expiration date in the contract that was operative in 2018, so long as the contract extension follows the feedstock requirement of subdivision (b) of Section 399.20.3. This section shall not apply to facilities located in federal severe or extreme nonattainment areas for particulate matter or ozone.

End of Appendix A