

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM 15 (Rev. 1)

AGENDA ID: 17107

RESOLUTION E-4977

January 31, 2019

ENERGY DIVISION

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 a monthly opt-out and reporting option for annual fuel use requirements, 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. Contracts executed pursuant to the terms of Resolution E-4770 are known as "BioRAM 1" contracts.

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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.

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

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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:

- Requires IOUs, Publicly Owned Utilities (POUs), and Community Choice Aggregators (CCAs) with BioRAM contracts or biomass

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

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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, POU's, 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. Finally, this Resolution addresses other issues related to post-wildfire salvaged biomass material and air quality reporting requirements established by D.18-12-003.

Part 1: Expanded HHZ Definition

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

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

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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.

There are two distinct parts of this section. The first part establishes monthly reporting and opt-out options for sellers and establishes reporting and payment terms therein. The second part amends the eligible events of default in BioRAM contracts.

Monthly Opt-Out, 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. The IOUs measure fuel usage on an annual basis to ensure that BioRAM contracted facilities are meeting the requirements ordered by the Commission over a 12-month period.

Amended Pub. Util. Code § 399.20.3(d) establishes a new option—monthly reporting. 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. It also allows facilities to opt out of their mandated fuel or feedstock usage in any particular month upon providing written notice to the electrical corporation in the month of operation. If a seller chooses to opt out of its feedstock requirements in any given month, it must report its fuel use to the IOU for that month through a monthly fuel use attestation in addition to its quarterly reporting requirements.

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Pub. Util. Code § 399.20.3(b) sets annual feedstock obligations for BioRAM facilities. This section was not amended by the legislature, and the IOUs will continue to measure fuel usage on an annual basis to determine a facility's compliance with the feedstock requirements. But SB 901 amended Pub. Util. Code § 399.20.3(d) to allow annual compliance measurements to exclude any months where the seller opts out of compliance through written notice to the utility.

The contract price and payment terms will remain unchanged for all months when the facility does not opt out. That is, sellers will be paid the contract price for all deliveries during the calendar year, excluding months where the seller opted out, if the seller meets its annual feedstock requirements. Sellers will be paid the lower alternative price however for all deliveries during months where it opts out of the feedstock requirements, and for all deliveries during the calendar year if the facility fails to meet its annual feedstock requirements.

This Resolution implements amended Pub. Util. Code § 399.20.3(d) by requiring that the IOUs amend their existing BioRAM contracts to add monthly opt-out and reporting optionality with revised payment terms for those facilities that choose to opt out. In establishing a monthly opt-out and reporting option in the BioRAM contracts, the following changes must be made to contracts:

1. 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 by the 20th day of the month of operation.
2. If the seller opts out of its mandated fuel or feedstock usage level, 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.
3. 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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4. The seller shall submit a monthly fuel use attestation to the Buyer on or before the 20th day of the month following the month that it opted out of the fuel use requirements specifying, among other things, the designated high hazard zones and the percentage of fuel burned that came from designated high hazard zones during that month.
5. Quarterly Fuel Attestations shall include fuel use during the months that the seller did not opt out of the fuel use requirements.
6. The seller's annual compliance shall be calculated using fuel use during all months of the preceding calendar year, excluding months where the seller opted out of its fuel use requirements. The fuel use in the months in which a seller opts out will not be used to calculate whether it met its annual fuel use requirements.

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. This change shall apply to all BioRAM 2 contracts and all new and amended contracts executed pursuant to Section 8388.

Part 3: Five-Year Contract Extension

Section 8388 states:

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

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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, new or amended contracts must conform to the feedstock requirements of BioRAM 2 for the extension period. In addition, amendments to existing BioRAM 1 PPAs may incorporate 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

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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conditions of BioRAM 2 regarding feedstock requirements. Those contracts or contract amendments must also include all terms and conditions required elsewhere in this Resolution and provisions requiring sellers to attest that their biomass facilities are physically capable of using HHZ and sustainable forestry management fuel and have any necessary permits to do so. 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 or parties do not agree on terms and provide supporting documentation showing that all reasonable efforts were made including an Independent Evaluator report on the negotiations. Upon review of the attestation and supporting documentation, the Director of Energy Division may approve the filing or order the IOU to go back into negotiations with an eligible seller.

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 establish a per se reasonableness price benchmark for new or amended BioRAM contracts executed pursuant to this section at current contract price levels. We also establish a per reasonableness price benchmark for contracts executed with facilities pursuant to Section 8388 that are not currently part of the BioRAM program at the weighted average price for current BioRAM contracts—\$119/MWh. This is in order to prevent protracted contract negotiations where sellers or buyers may have an incentive to hold out for a higher or lower price. Parties may include inflation adjustment or any other price escalation in new or

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amended contracts if they determine that such an adjustment is reasonable and necessary.

Contract prices executed below the per se reasonableness benchmark will be assumed to be reasonable and should be filed as a Tier 2 Advice Letter. Contract prices executed above the per se reasonableness benchmark will require a Tier 3 Advice Letter explaining why a higher price is reasonable in that instance. If there is clear evidence that a facility can economically operate using the feedstock requirements of BioRAM 2 for a price less than the per se reasonableness benchmark, then the parties are encouraged to execute a contract at that lower price. Any procurement expenses incurred pursuant to this Resolution shall be collectible through the Tree Mortality non-bypassable charge, including other bioenergy contracts that choose to accept the BioRAM 2 feedstock requirements.

We note that Pub. Util. Code § 8388 also includes small IOUs, CCAs, and POUs.³ 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.

If an IOU is unable to execute a new or amended contract with an eligible seller pursuant to this section, we find that a CCA may enter into a contract with that seller, and the procurement expenses incurred therein may be collectible through the Tree Mortality non-bypassable charge, if such contracts conform to all of the terms and conditions of BioRAM 2, including the rules and conditions established through this Resolution.

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

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Other Issues

Salvaged Biomass

In an effort to address wildfire emergency recovery efforts 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 wildfires. 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 engaging in 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 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 response situations, a BioRAM facility may be able to accept salvaged

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biomass from a burn area, if the IOUs find that doing so aligns with the fuel use terms of the contract. Therefore, we authorize the IOUs 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. Prior to execution of the contract amendments, the IOUs shall submit their analysis to the Procurement Review Group. Following contract execution, amended contracts must be filed with the Commission for approval via Tier 2 Advice Letters.

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

Air Quality Reporting

D.18-12-003 requires the IOUs to collect information on whether a BioRAM facility operator complies with the facility's air pollution control requirements, to report that information to the Commission every six months, and to explain how any violations of air quality requirements are being resolved. We authorize the IOUs to amend their contracts to facilitate air pollution control reporting. Contract amendments shall make the following changes: (a) seller shall provide the IOUs with semi-annual reports in January and July providing evidence that the project is in compliance with all applicable air pollution and control requirements for the preceding 6 months; (b) seller shall notify Buyer of any air quality violation within 5 days of the issue date of the notification that a violation has occurred; and (c) If the air pollution and control requirements were not or are not being met, the seller must explain the circumstances of the non-compliance,

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the steps taken by the seller to rectify the non-compliance, and if the non-compliance is ongoing the expected resolution of the non-compliance.

PG&E Bankruptcy

On Monday, January 14, 2019, PG&E gave notice pursuant to state law to its employees that it intends to file for Chapter 11 bankruptcy protection on January 29, 2019. Such a filing could implicate several terms and conditions in PG&E's existing BioRAM contracts, which could complicate their ability to implement the changes discussed in this Resolution.

Specifically, Section 5.1 of the contracts say, among other things, that a party becoming bankrupt is an occurrence that is subject to an Event of Default. Also, Section 10.2 of the contracts require each party to represent and warrant to the other party that, among other things, it "is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt" and "there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement."

We authorize PG&E to modify sections related to representations and warranties and events of default in any eligible biomass contracts that it must amend or execute pursuant to this Resolution to account for PG&E's status in bankruptcy and the related jurisdiction of a federal bankruptcy court. This authority includes the ability to amend existing BioRAM contract terms and conditions and to add any necessary new terms and conditions. PG&E shall provide redlines of any such proposed changes when filing the advice letter(s) seeking approval of resulting contract extensions, amendments, or new contracts.

Implementation

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SCE and SDG&E 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 opt-out and reporting option with revised payment and other terms described in Part 2 of this Resolution; 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; and d) the air quality reporting requirements described in the Other Issues section 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). Tier 2 Advice Letters must also list all the IOUs' biomass contracts and explain why each contract does or does not meet the criteria of Pub. Util. Code § 8388.

PG&E shall file a Tier 2 advice letter within 60 days of this Resolution containing the same implementation requirements set for SCE and SDG&E as well as proposed modifications to sections related to representations and warranties and events of default for eligible biomass contracts being amended or executed pursuant to this Resolution to account for PG&E's status in bankruptcy and the related jurisdiction of a federal bankruptcy court. PG&E's Advice Letter shall describe these proposed new or modified terms and conditions related to bankruptcy and provide a redline of any existing contract that it is amending to show the changes.

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 Advice Letter shall also include: a) a new or amended contract that extends the contract term length, includes the feedstock requirements of BioRAM 2, as described in Part 3 of this Resolution, and requires sellers to attest that their biomass facilities are physically capable of using HHZ and sustainable forest management fuel and have any necessary permits to do so; 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

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BioRAM 2 or do not agree on terms, and supporting documentation to show that all reasonable efforts were made by the IOU including an Independent Evaluator report on the negotiations. The Advice Letters must be Tier 3 Advice Letters if contract prices are executed above the per se reasonableness benchmark.

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. The Advice Letters must be Tier 3 Advice Letters if contract prices are executed above the per se reasonableness benchmark.

SAFETY

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

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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, the Draft Resolution was mailed to parties for comments on December 21, 2018.

Comments were filed in a timely fashion on January 11, 2019, by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively, the Joint IOUs), the Public Advocates Office (PAO), California Community Choice Association (CalCCA), California Biomass Energy Association (CBEA), the Small Business Utility Advocates (SBUA), and the Center for Biological Diversity and Sierra Club California (Environmental Groups). Reply comments were filed in a timely fashion on January 16, 2019, by the Joint IOUs, PG&E, the Environmental Groups, and CBEA.

The objective and timing of this Resolution is directed to implement specific provisions of SB 901. We carefully considered comments which focused on factual, legal, or technical errors and made appropriate changes and clarifications to the draft Resolution. While all of the comments were read and considered, the scope of this Resolution is limited to comments relevant to the implementation of the statute.

Inflation Adjustment Adder

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The Joint IOUs argue that adding inflation to existing prices will increase customer costs, and that it has not been clearly demonstrated that BioRAM facilities require significant capital investments over the course of the extended BioRAM contracts, adding that an estimated 2% annual inflation adder would add \$10 million to contract prices. The Joint IOUs propose that the Resolution be modified to remove the inflation adder.⁴

CBEA disagrees with the Joint IOUs, arguing that an inflation adjustment is a reasonable element of any contract extension. They assert that the IOUs fail to submit any evidence to support the claims listed as justification for the request and add that the price of forest fuel is based upon and comprise the costs of labor, equipment, and fuel to process and transport the forest fuel, each of which face inflationary pressures.⁵

The Resolution is amended to remove the requirement for an inflation adjustment adder.

Reasonableness Benchmark for New and Amended Contracts

The Joint IOUs assert that SB 901 requires that the IOUs offer five-year contract extensions so long as the counterparties are willing and able to meet the fuel use requirements of BioRAM 2. They argue that the Draft Resolution's \$119/MWh price cap for these contracts gives these facilities the leverage to insist on that benchmark price in negotiations, even if the current contract price, and the price necessary to economically operate the generator while meeting the new fuel use requirements, is significantly lower. Rather, the IOUs recommend that existing prices for BioRAM and non-BioRAM contracts be deemed reasonable, and further suggest that the participation of an Independent Evaluator in negotiations to provide an opinion of reasonableness would be beneficial.⁶

SBUA recommends that contract extensions should be 20% lower than the original contracts because they do not have to cover the initial capacity

⁴ Joint IOU comments at 3

⁵ CBEA reply comments at 2.

⁶ Joint IOU comments at 3-4.

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investment, which should have been covered over the first five years.⁷ However, as the Joint IOUs and CBEA noted in their replies, BioRAM facilities were built before the BioRAM program commenced, and thus capacity investments are not included in the PPA price.⁸

We agree with the IOUs that existing prices should be deemed reasonable for existing BioRAM contracts but disagree with that rationale for contracts executed with facilities pursuant to Pub. Util. Code § 8388 that are not currently part of the BioRAM program. In order to qualify for a contract under Pub. Util. Code § 8388, biomass contracts must accept more stringent feedstock requirements, which likely justifies a higher contract price. The Resolution is amended to set a per se reasonableness benchmark at existing prices for BioRAM contracts and their extensions, and a reasonableness benchmark at \$119/MWh for contracts executed with facilities pursuant to Pub. Util. Code § 8388 that are not currently part of the BioRAM program.

Attestations by Biomass Facilities

The Joint IOUs propose that the Draft Resolution be modified to require new provisions in the contracts requiring sellers to attest that their biomass facilities are physically capable of using HHZ and Sustainable Forest Management fuel and have the permits to do so in order to prevent a situation where a non-BioRAM facility may accept a contract and then opt out of the fuel requirements every month.⁹ No party opposes this recommendation, and it was supported by the Environmental Groups.¹⁰ This recommendation is adopted.

Monthly and Annual Reporting

The Joint IOUs and CBEA argue that the Draft Resolution incorrectly interprets amended Section 399.20.3(d) by establishing monthly compliance and annual

⁷ SBUA comments at 1

⁸ Joint IOU reply comments at 4, CBEA reply comments at 7

⁹ Joint IOU comments at 4.

¹⁰ Environmental Groups reply comments at 5-6

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compliance options.¹¹ The Joint IOUs point out that Section 399.20.3(b), which was not amended by SB 901, provides (emphasis added): “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.” Therefore, they assert that Section 399.20.3(d) requires only monthly reporting and opt-out provisions, and facilities must continue to meet the Section 399.20.3(b) annual requirements for all months in which the facility did not opt out. The Joint IOUs and CBEA propose that compliance with feedstock requirements continue to be measured on an annual basis but exclude from compliance measurement any months where the bioenergy facility opts out of compliance.

The Environmental Groups oppose this suggestion by the Joint IOUs and CBEA, writing that those parties incorrectly propose that amended Section 399.20.3(d) does not provide for monthly reporting requirements.

The position of the Joint IOUs and CBEA is reasonable—the requirements of Section 399.20.3(b) shall remain in effect. The Resolution is amended so that compliance with feedstock requirements will continue to be measured on an annual basis but exclude from compliance measurement any months where the bioenergy facility opts out of compliance through notice to the utility. We further clarify that nothing in the Resolution relieves facilities from reporting their monthly fuel usage. The IOUs shall collect quarterly fuel use data from BioRAM facilities, which includes monthly fuel use data, and sellers shall submit a monthly fuel use attestation to the IOUs specifying fuel use during any month where they opt out of the fuel use requirements.

If a facility does opt out of the fuel use requirements for a given month, the Joint IOUs request that the Commission revise the Resolution to establish a reasonable timeframe (for example, by the 10th day of each month) by which time the seller should be required to indicate whether the seller wishes to opt out of a month.

¹¹ Joint IOU comments at 4-6, CBEA comments at 3-4.

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They write that this is needed to allow sufficient time for monthly invoice processing.¹²

CBEA objects to the Joint IOU suggestion that opt-out notifications be made by the 10th of the month, writing that it will often not be clear until late in the month whether the facility will be able to meet the requirements for that month, and that the plain statutory language contemplates that such notice can be given at any time in the month of operation.¹³

We agree that setting a date certain to report an opt-out would promote administrative efficiency, but the Joint IOUs and CBEA have not provided sufficient justification for why that date should be 10th day of each month or at any time during the month. We amend the Resolution to require that the seller indicate whether it wishes to opt out by the 20th day of each month.

The Joint IOUs also request that the Draft Resolution be modified to allow the IOUs to modify the time-of-delivery (TOD) factors in existing and extended eligible contracts for all months to ensure that the monthly opt-out option is not gamed to maximize revenues. CBEA objects to this proposal because contracts prices were based on the existence of TOD factors. CBEA adds that TODs are intended to reflect the relative value of product to the IOUs, and the IOUs do not specify how the ability to opt out in a given month increases a facility's chances of gaming.¹⁴ We agree with CBEA that the Joint IOUs have not provided sufficient evidence for why modifying TOD factors would reduce the potential for gaming.

The Joints IOUs also request that monthly fuel attestations be due by the 10th day of the subsequent month, rather than during the delivery month, so that the attestations can be fully accurate for the entire month.¹⁵ CBEA agrees but suggests that the due date for such attestation should be 30 days after the end of the delivery month. They argue that this is consistent with current practice for

¹² Joint IOU comments at 6.

¹³ CBEA reply comments at 3

¹⁴ CBEA reply comments at 3

¹⁵ Joint IOU comments at 6-7

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BioRAM 1 contracts and ensures the most accurate reporting possible.¹⁶ The Resolution is amended so that monthly fuel attestations are due by the 20th day of the subsequent month.

HHZ Fuel Use Delineation

The Joint IOUs argue that the Draft Resolution's reporting requirements to distinguish between Tier 1 HHZ, Tier 2 HHZ, and newly-defined HHZ under SB 901 are more burdensome than current requirements and are unnecessary to ensure compliance with SB 901. Rather, they recommend that the Commission allow the IOUs to request from sellers this information but not require third-party verification of this new information.¹⁷ CBEA, also opposes this requirement, and disagrees with the Joint IOUs that the IOUs should be allowed to request from sellers fuel delineated by category even for informational purposes but without third-party verification.¹⁸ CBEA adds that fuel usage logs provided by sellers already include sufficient information to determine the source of a facility's fuel supply. CBEA concludes that it is not necessary, and unduly burdensome, to require Sellers to provide information delineating how much fuel is from Tier 1 and Tier 2 HHZs.

The Environmental Groups support the requirement that fuel attestations from sellers delineate how much fuel comes from different HHZ categories, writing that such precision is necessary to implement legislative goals of protecting communities and structures from wildfire damage and promoting forest health. They add that sellers already have this information on hand so including it in attestations is not burdensome.¹⁹ Further, the Environmental Groups write that this reporting requirement would facilitate programmatic evaluation moving forward so that the Commission or legislature can know if intervention is necessary to prioritize the use of trees from Tier 1 HHZs.²⁰

¹⁶ CBEA reply comments at 3

¹⁷ Joint IOU comments at 7

¹⁸ CBEA reply comments at 4.

¹⁹ Environmental Group comments at 2-3

²⁰ Environmental Groups reply comments at 4

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Knowing if HHZ fuel came from Tier 1 HHZ, Tier 2 HHZ, or newly-defined HHZ under SB 901 is important for evaluating the program's overall contribution toward state forest management and wildfire mitigation goals. CBEA notes that the information needed to delineate the fuel source by HHZ category, including the coordinates of qualified sources and a CAL FIRE map that provides a visual representation of the project area, is already collected in facility fuel usage logs. We therefore agree with the Environmental Groups that including this information in attestations is not unduly burdensome. Fuel Use Attestations shall 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.

Quarterly Audits

The Joint IOUs recommend that the quarterly audit requirement be removed, writing that verification of monthly feedstock usage would be administratively burdensome and would fail to provide customers value since compliance should be based on annual calculations.²¹ CBEA also disagrees with additional quarterly audits, arguing that increasing the frequency of the audit is an unnecessary administrative burden adding cost with no corresponding added value.²²

The Environmental Groups support quarterly audits, arguing that they ensure that BioRAM facilities are meeting fuel requirements and that IOUs are accounting fuel usage correctly.²³

Contract Extension Terms

The Joint IOUs argue that the provisions in SB 901 that amended Section 399.20.3(d) by adding the monthly opt-out option and removing missing fuel use requirements as an event of default only apply to existing BioRAM contracts. Thus, they assert that new contracts with facilities that do not currently have

²¹ Joint IOU comments at 7-8.

²² CBEA comments at 4-5.

²³ Environmental Groups reply comments at 5

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BioRAM contracts can include missing feedstocks requirements as an event of default and do not need to contain the monthly opt-out and reporting option required in current BioRAM contracts.²⁴

CBEA opposes the recommendation from the Joint IOUs writing that the Joint IOUs do not provide any justification for why any new BioRAM contracts should be treated differently, and that the intent of SB 901 was to create more flexibility, which should be provided to any biomass facility that adheres to the feedstock requirements.²⁵

We agree with CBEA that the Joint IOUs have not presented a compelling reason for why there should be two classes of BioRAM facilities going forward, or why they should be treated different. Contracts pursuant to Section 8388 shall contain the monthly opt-out and events of default provisions described in Part 2 of this Resolution.

Air Quality Standards

The Joint IOUs comment that D.18-12-003 requires the IOUs to collect information on whether a BioRAM facility operator complies with the facility's air pollution control requirements, to report that information to the Commission every six months, and to explain how any violations of air quality requirements are being resolved. In order to comply with those directives, and SB 901, the Joint IOUs request that the following contract terms be added: (a) seller shall provide the IOUs with semi-annual reports in January and July providing evidence that the project is in compliance with all applicable air pollution and control requirements for the preceding 6 months; (b) seller shall notify Buyer of any air quality violation within 5 days of the issue date of the notification that a violation has occurred; (c) If seller is unable to cure within 60 days of an air quality violation, the IOUs have the right to terminate the contract; (d) Even if a counterparty cures within 60 days, if the counterparty has more than 3 air quality violations (even if they are cured) during the term of the PPA, the IOUs have the

²⁴ Joint IOU comments at 8.

²⁵ CBEA reply comments at 5

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right to terminate the contract; and (e) If seller violates air quality requirements and such violation is incapable of being cured and such violation is continuing, the IOUs have the right to terminate the contract. The Joint IOUs write that these modifications will further the IOU's ability to manage their portfolios to protect the public's safety and health, consistent with D.18-12-003.²⁶

The Environmental Groups support the proposal from the Joint IOUs, commenting that biomass facilities release pollution, and that if a facility is consistently in violation of air quality standards, that facility is harming public health and safety. The Environmental Groups ask that IOUs be required to report these violations to the Commission, and that facilities with a given number of air quality violations be precluded from participating in the BioRAM program.²⁷

CBEA agrees with the Joint IOU recommendations to address air quality reporting requirements but writes that their list of suggested modifications goes beyond reporting. CBEA argues that some of the proposed modifications are more properly under the jurisdiction of state and federal environmental non-compliance agencies, and that implementation would risk the ability of facilities to obtain financing.²⁸

No party objects to addressing the air quality reporting requirements from D.18-12-003 in this Resolution. The Resolution is amended to require that the IOUs make modifications to their BioRAM contracts that will facilitate compliance with the reporting requirements placed on the IOUs in D.18-12-003. Neither SB 901 nor D.18-12-003 required that contract be terminated due to air quality violations. It would be inappropriate to require as such here.

RPS Plans

The Joint IOUs write that the Draft Resolution's order to update their most recently approved RPS Procurement Plans to reflect procurement pursuant to SB 901 within 60 days of the Resolution is administratively burdensome and

²⁶ Joint IOU comments at 8-9

²⁷ Environmental Groups reply comments at 6

²⁸ CBEA reply comments at 5-6

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unnecessary. They argue that the contracted volumes required by SB 901 are relatively small and will not materially change the IOUs' overall RNS position. The Joint IOUs request that the Commission allow the IOUs to modify their RPS Plans in the normal annual cycle and to incorporate the additional RPS credits into their RNS when producing the next quarterly update to that table.²⁹

The Joint IOUs shall modify their RPS plans in the normal annual cycle or within 60 days of this Resolution.

Eligible Sellers

The Joint IOUs request that the Resolution contain attachments that list each of the "eligible sellers" that must be offered contract extensions pursuant to Section 8388 and that summarize each of the changes that must be made to the existing contracts, separating out those terms that must be changed only if an extension is executed pursuant to Section 8388.³⁰

We agree that additional clarity can be made regarding whether the IOUs' contracts meet the conditions of Section 8388. Thus, the Resolution is amended to require that the Tier 2 Advice Letters due within 60 days of this Resolution shall list all IOU biomass contracts and specify which contracts meet the criteria of Section 8388.

Salvaged Biomass

PAO recommends that the Commission modify the Draft Resolution to further simplify the proposed process for permitting the IOUs and biomass facilities to execute BioRAM contract amendments for salvaged biomass material in response to a wildfire. Specifically, PAO recommends the IOUs make an upfront amendment to their BioRAM contracts, as part of their mandatory Tier 2 advice letter filings, to allow biomass facilities to accept salvaged biomass material deliveries in response to a Governor declared state of emergency due wildfire

²⁹ Joint IOU comments at 9.

³⁰ Joint IOU comments at 10.

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without the need to execute additional contract amendments for individual wildfire events.³¹ PAO adds that the amendments should include parameters to reasonably confine the definition of “temporary” reporting requirements during those periods when facilities accept salvaged biomass fuel, or alternatively, the Draft Resolution should be modified to include those parameters and criteria. Further, PAO asks that the Tier 2 advice letter detail the IOUs’ methodologies to conduct analysis to show how they arrived at the HHZ fuel and Sustainable Forest Management fuel percentages. PAO argues that these changes would allow biomass facilities to consistently accept salvaged biomass material deliveries and assist the Commission and stakeholders in the ERRA Compliance filings because there will be clearer standards to review the reasonableness of the IOUs contract management.³² CBEA supports PAO’s recommendations.³³

The Joint IOUs assert that PAO’s proposal for a general amendment that details the IOUs’ methodologies to conduct analysis to show how they arrived at fuel percentages would be unworkable because making those determinations is location- and fire-specific. The Joint IOUs also disagree with PAO’s suggestion to include parameters to reasonably confine the definition of “temporary” reporting requirements because the reasonable length of time needs to be determined on a case-by-case basis.³⁴

The Joint IOUs agree with PAO that there should be specific, established standards for assessing a utility’s compliance with post-wildfire contract amendments during the ERRA process. The Joint IOUs urge the Commission to clarify this requirement by creating a process for expedited staff review and written approval of any such wildfire-specific amendments prior to execution. Specifically, the Joint IOUs recommend that the IOU should be required to submit proposed analysis and contract amendment language to the Director of Energy Division, who should be granted the authority to approve or order modifications to that amendment.³⁵

³¹ PAO comments 1-2.

³² PAO comments 2-3.

³³ CBEA reply comments at 7

³⁴ Joint IOU reply comments 2-3

³⁵ Joint IOU reply comments at 3

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CBEA recommends that the Draft Resolution be amended to encourage as well as authorize IOUs to amend BioRAM contracts to facilitate deliveries of salvaged biomass fuel following a wildfire event.³⁶

The Environmental Groups oppose allowing IOUs and facilities to amend their contracts to accept salvaged biomass fuel without prior Commission approval. They argue that all post-wildfire situations are different, and that salvaged biomass in remote areas may pose no risk to human lives and may in fact serve an ecological function. The Environmental Groups also argue that reviewing amended contracts through ERRA is too infrequent, and that if the provision is adopted, the Commission should review the contract modifications on a quarterly basis or more frequently and develop guidelines in advance that are protective of forest ecosystems and wildlife as well as public health and safety. Finally, the Environmental Groups recommend affirmative local approval should be required for contract amendments, or at least the Buyer and seller should be required to show that they made a good-faith effort to obtain the appropriate documentation, but that the local government could not provide it.³⁷

We agree with parties that there should be clear standards to review the reasonableness of the IOUs contracts in the ERRA process. However, for the reasons detailed by the Joint IOUs, it may be unworkable for the Commission to approve any specific salvaged biomass fuel classification methodology or define "temporary" reporting requirements prior to any specific wildfire. The proposal by the Joint IOUs however is inconsistent with CPUC process. Therefore, the Resolution is amended so that prior to execution of the contract amendments, the IOUs shall submit their analysis to the Procurement Review Group. Following contract execution, amended contracts must be filed with the Commission for approval via Tier 2 Advice Letters.

CCA BioRAM Contracts

³⁶ CBEA comments at 6-7.

³⁷ Environmental Group comments at 5-7

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CalCCA argues that the Draft Resolution fails by not including CCAs as potential counterparties for amended or extended BioRAM contracts.³⁸ CalCCA asserts that there may be factors that would motivate sellers to want to contract with a CCA instead of an IOU.³⁹ Since the Tree Mortality non-bypassable charge will be collected from all customers, including CCA customers, CalCCA argues that it is appropriate for CCAs to be available as potential counterparties under these contracts. They write that this would be the same approach authorized by the Commission in D.18-06-027 that allowed CCAs to create DAC-Green Tariff programs funded by GHG allowance revenues and established a Tier 3 Advice Letter process program so that terms and conditions could be applied in a manner that best ensured CCAs would abide by program rules and conditions.⁴⁰ CalCCA requests that an Ordering Paragraph be added to the Draft Resolution to accommodate CCAs being the counterparty to an amended or extended contract.⁴¹

The Environmental Groups write that if the Commission accepts CalCCA's suggestion, CCAs should have to meet the same statutory requirements as IOUs. For example, CCAs should not be able to enter into contracts with facilities located in federal severe or extreme nonattainment areas for particulate matter or ozone to ensure that energy derived from woody biomass does not further exacerbate air quality and public health. Further, the Environmental Groups write that like the IOUs, the CCAs should have to seek Commission approval for all new and extended contracts to ensure that all BioRAM and eligible biomass contracts effectuate the intent of SB 901.⁴² CalCCA's comments do in fact propose that the CCAs should conform to the rules and conditions of BioRAM including those set in this Resolution.

The Resolution has been modified to accommodate CCAs being the counterparty to an amended or extended contract as long as they abide by all BioRAM rules and conditions.

³⁸ CalCCA comments at 2

³⁹ CalCCA comments at 2-3

⁴⁰ CalCCA comments at 3.

⁴¹ CalCCA comments at 3-4.

⁴² Environmental Groups reply comments at 7-8

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PG&E Bankruptcy Announcement

PG&E writes that on January 14, 2019, PG&E gave notice pursuant to state law to its employees that it intends to file for Chapter 11 bankruptcy protection on January 29, 2019. PG&E requests that the Draft Resolution be modified to allow them to modify the terms and conditions of any eligible biomass contracts that it must amend or execute pursuant to the Draft Resolution to account for PG&E's status in bankruptcy and the related jurisdiction of a federal bankruptcy court. This authority would include the ability to amend existing BioRAM contract terms and conditions and to add any necessary new terms and conditions.⁴³

The Resolution has been amended to allow PG&E to modify BioRAM terms and conditions related to representations and warranties and events of default that may no longer be accurate due to a bankruptcy.

FINDINGS

1. SB 901 expands the definition of "High Hazard Zones."
2. 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.
3. 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.

⁴³ PG&E reply comments at 2

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4. 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.
5. New or amended contracts executed pursuant to this Resolution that extend the contract term length must follow the feedstock requirements of BioRAM 2 for the extension period.
6. Amendments to existing BioRAM 1 PPAs may incorporate the feedstock requirements of BioRAM 2.
7. All contracts executed pursuant to Section 8388 of the Public Utilities Code must contain the monthly opt-out and events of default provisions described in part 2 of this Resolution as well as all other terms and conditions required by this Resolution.
8. The Director of Energy Division may order the IOUs to go back into contract negotiations with an eligible seller if the parties are unable to execute an amended contract pursuant to this Resolution.
9. 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.
10. It is reasonable to set a per se reasonableness price benchmark to prevent protracted contract negotiations and contain costs by removing incentives to hold out for a higher price.
11. 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.18-12-003.
12. Starting on January 1, 2019, the definition of High Hazard Zones, as used in BioRAM contracts, should include biomass fuels removed from fuel

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

13. The Commission should authorize the IOUs to amend their BioRAM contracts to include the expanded HHZ definition.
14. The Commission should authorize the IOUs and sellers to amend their existing BioRAM contracts to add monthly opt-out and reporting optionality with revised payment terms for those facilities that choose to opt out of feedstock requirements.
15. 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.
16. The per se reasonableness benchmark for contract prices for new or amended BioRAM contracts executed pursuant to this Resolution should be no higher than current contract prices, and per se reasonableness benchmark for 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.

THEREFORE IT IS ORDERED THAT:

1. 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 opt-out and reporting option with revised 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 list of all the IOU's biomass contracts and an explanation for why each contract does or does not meet the criteria of Pub. Util. Code § 8388;
 - e. a showing that the buyer has contacted all their contracted BioRAM facilities and other eligible biomass facilities;
 - f. the air quality reporting requirements described in the Other Issues section of this Resolution;
 - g. if applicable, or if a contract with an eligible seller has already expired, and if new or amended contracts are priced below the per se reasonableness benchmark, a new or amended contract that extends the contract term length, includes the feedstock requirements of BioRAM 2, as described in part 3 of this Resolution, and requires sellers to attest that their biomass facilities are physically capable of using HHZ and sustainable forest management fuel and have any permits necessary to do so; and
 - h. if applicable, or if a contract with an eligible seller has already expired and has not been extended pursuant to subsection g of this subsection, 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 or do not agree on terms, and supporting documentation to show that all reasonable efforts were made by the buyer, including an Independent Evaluator report on the negotiations.
2. Pacific Gas and Electric Company is ordered to file a Tier 2 advice letter 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 opt-out and reporting option with revised 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 list of all the IOU's biomass contracts and an explanation for why each contract does or does not meet the criteria of Pub. Util. Code § 8388;
 - e. a showing that the buyer has contacted all their contracted BioRAM facilities and other eligible biomass facilities;
 - f. the air quality reporting requirements described in the Other Issues section of this Resolution;
 - g. if applicable, or if a contract with an eligible seller has already expired, a new or amended contract that extends the contract term length, includes the feedstock requirements of BioRAM 2, as described in part 3 of this Resolution, and requires sellers to attest that their biomass facilities are physically capable of using HHZ and sustainable forest management fuel and have any permits necessary to do so;
 - h. if applicable, or if a contract with an eligible seller has already expired and has not been extended pursuant to subsection g of this subsection, 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 or do not agree on terms, and supporting documentation to show that all reasonable efforts were made by the buyer, including an Independent Evaluator report on the negotiations; and
 - i. proposed modifications to sections related to representations and warranties and events of default for eligible biomass contracts being amended or executed pursuant to this Resolution to account for PG&E's status in bankruptcy and the related jurisdiction of a federal bankruptcy court.
3. If Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company do not address subsections g and h of Ordering Paragraph 1 or Ordering Paragraph 2 within 60 days of this Resolution, they are ordered to file Tier 2 advice letters at least 12 months

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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, and requires sellers to attest that their biomass facilities are physically capable of using HHZ and sustainable forest management fuel and have any necessary permits to do so, if the contracts are priced below the per se reasonableness benchmark; 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 or do not agree on terms, and supporting documentation to show that all reasonable efforts were made by the buyer, including an Independent Evaluator report on the negotiations.
4. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company are ordered to submit Tier 3 Advice Letters if they execute a new or amended biomass contract pursuant to this Resolution if the price of that contract is higher than the per se reasonableness benchmark, which is set here as:
 - a. the price of the current contract between that buyer and seller if the current contract is a BioRAM contract; and
 - b. \$119 per megawatt-hour 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 shall update their most recently approved RPS Procurement Plans to reflect procurement pursuant to SB 901 during their normal annual cycle or within 60 days of this Resolution.
6. Procurement expenses incurred by a community choice aggregator shall be eligible for cost recovery via the methodology adopted in D.12-18-003 if those expenses are incurred pursuant to a contract that:

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- a. has been approved by the Commission through a Tier 3 advice letter filed by the community choice aggregator; and
 - b. contains the feedstock requirements of BioRAM 2, and otherwise contains terms and conditions that conform to the BioRAM contracts used by the IOUs, including those set forth in this Resolution.
7. If Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company execute contract amendments with a seller to accept salvaged biomass fuel following a wildfire event are ordered to file Tier 2 Advice Letters containing contract amendments executed with a seller to accept salvaged biomass fuel following a wildfire event and supporting analysis that demonstrate that the contract:
- a. identifies clear interim criteria for counting the percentage of fuel that is from HHZ fuel and the percentage that is from Sustainable Forest Management fuel;
 - b. contains temporary amended reporting criteria that align with the fuel use terms of the contract; and
 - c. was submitted to the Procurement Review Group along with supporting analysis to show how the IOU arrived at the HHZ fuel and Sustainable Forest Management fuel percentages.

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