

Decision 19-12-004 December 5, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005

**DECISION GRANTING PETITION FOR MODIFICATION OF
DECISION 14-12-081 AND THE BIOMAT TARIFF
APPROVED IN DECISION 15-09-004**

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**DECISION GRANTING PETITION FOR MODIFICATION OF
DECISION 14-12-081 AND THE BIOMAT TARIFF
APPROVED IN DECISION 15-09-004**

Summary

We grant an unopposed petition for modification filed in this proceeding by the Bioenergy Association of California. This decision modifies Decision 14-12-081 to eliminate the requirement that an eligible Bioenergy Market Adjusting Tariff (BioMAT) project that uses agricultural waste as its feedstock must be located “on agricultural premises.” Each of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company is directed to file a Tier 1 Advice Letter modifying its BioMAT to be consistent with this decision.

This proceeding shall remain open to address other issues in the proceeding.

1. Background

The Order Instituting Rulemaking that initiated this proceeding was adopted by the Commission on May 5, 2011. The Scoping Memo and Ruling of Assigned Commissioner was issued on July 8, 2011.

Senate Bill (SB) 1122 (Rubio, 2012) amends Public Utilities Code section 399.20 (the “feed-in tariff” provisions) of California’s renewable portfolio standard (RPS) program to require that investor-owned utilities (IOUs) procure 250 megawatts of RPS-eligible generation from facilities using three separate categories of bioenergy. The categories of bioenergy and the allocations are as follows:¹

- i. For biogas from wastewater treatment, municipal organic waste diversion, food processing, and codigestion, 110 megawatts.

¹ Pub. Util. Code § 399.20(f)(2)(A).

- ii. For dairy and other agricultural bioenergy, 90 megawatts.
- iii. For bioenergy using byproducts of sustainable forest management, 50 megawatts.

The Commission's Energy Division staff drafted a Staff Proposal on Implementation of SB 1122 (Staff Proposal). On November 19, 2013, the Administrative Law Judge's Ruling Seeking Comments on the Staff Proposal was issued. After considering comments, Decision (D.) 14-12-081 was adopted on December 14, 2014 to implement SB 1122. The decision set procurement quantities for the large IOUs, identified the required characteristics of each type of eligible generation fuel, and established a statewide 'starting price' for the generation resources. The decision also directed the IOUs to submit a draft tariff, standard contract, and certain ancillary documents.

In D.15-09-004 (adopted September 17, 2015), the Commission accepted draft documents, with modifications, submitted by the large IOUs for the operation of the Bioenergy Market Adjusting Tariff (BioMAT). The decision directed each large IOU to file a Tier 2 Advice Letter (AL) with the tariff, standard contract, and all ancillary documents necessary to implement BioMAT. On October 19, 2015, PG&E filed AL 4723-E, Southern California Edison Company filed AL 3295-E, and San Diego Gas & Electric Company filed AL 2804-E. The three Advice Letters were approved with an effective date of November 19, 2015.

2. D.14-12-081 Definition of Category 2 Other Agricultural Bioenergy

The BioMAT program requires IOUs to purchase small-scale bioenergy projects from specific categories of feedstock. SB 1122 includes specific procurement amounts for three categories of organic wastes, to ensure that the program promotes small-scale bioenergy projects across all organic waste

sectors. The inclusion of agricultural waste in “Category 2” of the BioMAT program advances the state’s climate and air quality goals because open burning of agricultural waste is a significant source of air pollution.

Pursuant to the definitions adopted in D.14-12-081, Category 2 bioenergy projects are divided into separate sub-categories consisting of “dairies” and “other agricultural bioenergy” projects. Category 2 “other agricultural bioenergy” projects are required to be located on agricultural premises.

The Staff Proposal defined “other agricultural bioenergy” as “Biomass or biogas that is generated by a customer on the same premises where the customer produces agricultural or horticultural products...”² In response to the Staff Proposal, Phoenix Energy filed comments stating that the requirement that the production of biogas or biomass be “on the same premise” as the agricultural operation is too restrictive, and may prevent agricultural operations in the same area from pooling waste resources.

In D.14-12-081, the Commission agreed to modify the requirement that the bioenergy facility be located on the same site as the agricultural operation. The Commission reasoned that allowing the use of “other agricultural” feedstock obtained from complying agricultural sources that are not on the same premises as the bioenergy generation facilities would maximize opportunities to use “other agricultural” fuel sources in the same general area as feedstock for one facility. However, the Decision requires that the generation facility be on agricultural premises, noting that this would increase the value of the resource to farmers and thereby increase the likelihood that farmers would be interested in it. The Decision also noted that this requirement would reduce the likelihood of

² D.14-12-081 at 18.

the generation facility being located far from the sources of feedstock, which could introduce the prospect of emissions from long-distance truck transport of feedstock to the generation facility.³

Therefore, the Commission adopted a definition requiring that an eligible BioMAT project that uses agricultural waste as its feedstock must be located “on agricultural premises,” but allowed the use of “other agricultural” feedstock obtained from complying agricultural sources that are not on the same premises. Section 2.2.2.2. of the Decision states:

A project that meets the criteria for the ‘other agricultural bioenergy’ category:

...is located on agricultural premises and utilizes the waste, residue or byproducts of growing crops, raising livestock or growing horticultural products. Agricultural wastes include, but are not limited to, agricultural crop residues; fruits and vegetables; orchard and vineyard removal; and crop tree and vineyard prunings. Agricultural waste also includes waste, residues and by-products from agricultural drying, hulling, shelling and ginning operations as well as fresh fruit and vegetable packing operations.⁴

3. Petition to Modify D.14-12-081

On June 21, 2019, the Bioenergy Association of California (BAC) submitted a petition to modify D.14-12-081 to remove the requirement that agricultural waste projects be located on agricultural premises (PFM).⁵

³ See D.14-12-081, at 20-21.

⁴ See also, Conclusion of Law 14, at 83. The same definition is included in Section 14.b.(2) of the utilities’ BioMAT tariffs.

⁵ BAC titled the petition “Petition for Modification of Decision 14-12-081 and the BioMAT Tariff Approved in Decision 15-09-004.” As noted in the Background section above, the BioMAT tariffs were actually approved through a Tier 2 Advice Letter process.

BAC states that it is submitting the PFM more than one year after the issuance of D.14-12-081 because it believes BioMAT Category 2 other agricultural bioenergy projects now face insurmountable hurdles and significant unnecessary costs due to the overly restrictive definition of agricultural waste.

BAC requests the modification for several reasons:

1. Current program rules allow projects to use agricultural waste from other locations that are not on the same premises and that feedstock could constitute most or all of the feedstock used by the facility. Therefore, the requirement that the facility must be on agricultural premises does not, by itself, reduce transporting of agricultural waste.⁶
2. Locating a bioenergy facility on agricultural land may violate local zoning ordinances that restrict the use of some agricultural lands to growing crops and livestock operations.⁷
3. Geographic restrictions may increase interconnection costs by limiting the ability to operate in optimal locations.⁸
4. High agricultural waste transportation costs will prevent long transportation distances, which the location requirement was initially intended to address.⁹
5. The benefits of small-scale bioenergy projects for farmers will occur whether the projects are located on agricultural premises or somewhere nearby.¹⁰
6. SB 1122 does not require facilities to be located on agricultural premises.¹¹
7. No other feedstock category has a restriction on project location.¹²

⁶ BAC PFM at 6-7.

⁷ *Id.* at 7.

⁸ *Id.* at 7.

⁹ *Id.* at 8.

¹⁰ *Id.* at 8-9.

¹¹ *Id.* at 5.

¹² *Id.* at 5.

8. The term “agricultural premise” is vague and undefined.¹³

3.1. Proposed Modifications

BAC proposes that D.14-12-081, section 2.2.2.2., be modified as follows:¹⁴

A project that meets the criteria for the “other agricultural bioenergy” category:

~~... is located on agricultural premises and~~ utilizes the waste, residue or byproducts of growing crops, raising livestock or growing horticultural products. Agricultural wastes include, but are not limited to, agricultural crop residues; fruits and vegetables; orchard and vineyard removal; and crop tree and vineyard prunings. Agricultural waste also includes waste, residues and by-products from agricultural drying, hulling, shelling and ginning operations as well as fresh fruit and vegetable packing operations.

BAC proposes that the BioMAT tariff be modified as follows:¹⁵

Section 14. DEFINITIONS

b. Category 2:

(1) Dairy: Biogas derived solely from the anaerobic digestion of dairy waste.

(2) Other Agriculture: Biogas or biomass derived from a facility that ~~is located on agricultural premises and~~ utilizes the waste, residue or by-products of growing crops, raising livestock or growing horticultural products. Agricultural wastes include, but are not limited to, agricultural crop residues; fruits and vegetables; orchard and vineyard removal; and crop tree and vineyard prunings. Agricultural waste also includes waste, residues and by-products from agricultural drying, hulling, shelling and ginning operations as well as fresh fruit and vegetable packing operations.

¹³ *Id.* at 6.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 9-10.

4. Positions of Parties

Comments were received from five parties: Phoenix Energy (Phoenix); Brad Thompson Company (BradTCo), TSS Consultants (TSS); SynTech Bioenergy, LLC (SynTech); and Pacific Gas and Electric Company (PG&E). Phoenix, BradTCo, TSS, and SynTech support the PFM. PG&E does not take a position, noting in its comments that it neither supports nor opposes the Petition for Modification. BAC also submitted reply comments.

TSS and SynTech agree with BAC's assertion that locating bioenergy facilities on agricultural land could violate local zoning ordinances that restrict the use of some agricultural lands to growing crops and livestock operations. SynTech explains that, under the Subdivision Map Act,¹⁶ most subdivided parcels are legally required to be at least 20 acres. This law applies both to purchasing land and to long-term lease arrangements.¹⁷

Phoenix, BradTCo, and SynTech also agree with BAC's claim that the current requirement may increase interconnection costs by forcing developers to choose project locations on agricultural premises rather than close to substations and powerlines with available capacity and minimal upgrade costs.¹⁸ BradTCo also notes that separating the processing site from the growing operation may eliminate the need for additional transportation from the processing site to the agricultural premise, and allows for locating the bioenergy facility at a site that is able to utilize some of the renewable or thermal energy on-site.¹⁹

¹⁶ Government Code §§ 66410 – 66499.58.

¹⁷ *Ibid.*

¹⁸ *Id.* at 3-4.

¹⁹ BradTCo comments at 2-3.

SynTech states that “agricultural premise” is not clearly defined in Decision 14-12-081 and that PG&E has interpreted “agricultural premise” to mean that the activity of growing crops, livestock or growing horticultural products must be occurring on the project site. Because most crops do not grow year-round, farmland may be fallowed for seasons or years.²⁰

SynTech further argues that the “agricultural premises” requirement requires project developers to compensate the landowner for taking productive agricultural land out of service, to make room for the bioenergy facility.²¹

Phoenix and SynTech also assert that the high cost of feedstock transportation and the requirement that project developers attest that feedstock complies with the BioMAT requirement will ensure that BioMAT projects are located near sources of agricultural feedstocks. Therefore, they argue that eliminating the agricultural premises requirement would not significantly increase emissions from long-distance transportation.

PG&E, a Program Administrator (PA) of the BioMAT program, does not oppose or support the PFM, but requests further clarification of Category 1 and 2 definitions to avoid potential disputes between BioMAT program participants and PAs moving forward.²² PG&E does not present a proposal on how to best further distinguish between Categories 1 and 2 but supports resolving the matter directly through a Commission decision, or a workshop with stakeholders.²³

²⁰ Phoenix comments at 4.

²¹ Syntech comments at 3.

²² PG&E comments at 1.

²³ *Id.* at 5.

In its reply comments, BAC requested that the Commission adopt the changes proposed in the PFM as quickly as possible and address PG&E's concerns as part of the comprehensive staff review and proposed changes to the BioMAT Program which is currently underway.²⁴

5. Discussion

5.1. BAC's PFM

Rule 16.4 (d) of the Commission's Rules of Practice and Procedure (Rules) states that:

Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.²⁵

As previously noted, BAC states that it is submitting the PFM because it believes that some projects in BioMAT Category 2 now face insurmountable hurdles and significant unnecessary costs due to the overly restrictive facility location requirement.

The Commission agrees with BAC that the challenges asserted by BAC provide sufficient justification for filing this PFM more than one year after D.14-12-081.

²⁴ BAC reply comments at 5. Energy Division's BioMAT Program Review and Staff Proposal was issued October 2018 and a Workshop was held July 19, 2019.

²⁵ Commissioner's Rules of Practice and Procedure 16.4 (d), available here: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M209/K618/209618807.PDF>.

5.2. Decision to Grant the PFM

Based on the PFM and parties' comments, the Commission acknowledges that BAC and other parties may have difficulty meeting the requirement that other agricultural bioenergy facilities be located on agricultural premises.²⁶ The Commission agrees that this potential barrier should be addressed.

The agricultural premises requirement set out in D.14-08-21 was intended to increase the value of generation facilities for farmers. However, based on the Subdivision Map Act and information provided by parties, this requirement is likely to conflict with zoning and other laws that are designed to protect agricultural land. The PFM cites to San Joaquin, Fresno, and Tulare county land use ordinances that have established Agriculture Exclusive Zones that prohibit biomass energy in such zones.²⁷ As such, agricultural zoning may prohibit industrial uses such as a bioenergy facility. This conflict was previously unforeseen and not considered in D.14-12-081 and presents a barrier for BioMAT project developers.

Furthermore, SynTech states that under the currently used definition of agricultural premise, if a project developer is are not the customer that produces

²⁶ We note that since the BioMAT program began in December 2016, there have only been contracts signed for 6.7 megawatts of projects using primarily non-dairy other agricultural bioenergy. The IOU BioMAT feed-in tariff information can be found on the web at https://pgebiomat.accionpower.com/biomat/doccheck.asp?doc_link=biomat/docs/FIT/2015/documents/d.%20PPAs%20Awarded/2.%20PPAs%20Awarded-10-Day%20Report/BioMAT_ExecutedPPAs_10DayReport.xlsx; [https://scebiomat.accionpower.com/biomat/doccheck.asp?doc_link=biomat/docs/FIT/2015/documents/10%20Day%20Report/SCE%20BioMAT%2010%20Day%20Reporting%20Requirement%20Table%20\[08-1-2019\].pdf](https://scebiomat.accionpower.com/biomat/doccheck.asp?doc_link=biomat/docs/FIT/2015/documents/10%20Day%20Report/SCE%20BioMAT%2010%20Day%20Reporting%20Requirement%20Table%20[08-1-2019].pdf); and https://sdgebiomat.accionpower.com/biomat/doccheck.asp?doc_link=biomat/docs/FIT/2015/documents/g.%2010-Day%20Report/BioMAT_Executed%20PPA_10-Day%20Report_3-21-2019.pdf.

²⁷ BAC PFM at 7.

the agricultural or horticulture products that are the fuel source, then it may have to compensate the landowner for taking productive agricultural land out of service to make room for a BioMAT project. Such a conflict is at odds with the state's goals of protecting and prioritizing primary agricultural lands.²⁸

In addition, based on the parties' comments, the Commission finds that restricting the location of BioMAT projects to agricultural premises may limit a project's ability to minimize costs by not being able to consider locations that may be less expensive due to proximity to substations and/or powerlines with available capacity and minimal upgrade costs.

For all these reasons, the "agricultural premises" requirement may have the unintended effects of unnecessarily increasing the cost of bioenergy projects and severely restricting the potential locations where they may be built, which is contrary to achieving the procurement goal of SB 1122 and the goal of increasing the value of bioenergy to farmers. In addition, because there is no limit on use of agricultural waste from offsite, the "agricultural premises" requirement does not achieve the goal of limiting emissions from transportation. The Commission also recognizes that none of the other BioMAT categories has such a requirement. As with the other categories, the additional cost of transporting the fuel is incentive for locating a facility near the sources of fuel.

Therefore, eliminating the agricultural premises requirement is unlikely to significantly increase emissions from qualifying BioMAT projects.

For these reasons, the Commission grants the PFM and eliminates the agricultural premises requirement in the definition of "other agricultural

²⁸ See Government Code § 51220.

bioenergy” in D.14-12-081 (section 2.2.2.2. and Conclusion of Law 14) and the utilities’ BioMAT Tariff Section 14.(b)(2).

As noted above, PG&E requested further clarification of the definitions for categories of agricultural waste projects. PG&E is concerned that with the elimination of the “agricultural premises” requirement it may be difficult to determine if a project is in Category 1 or Category 2. We do not address this concern in today’s decision but we may consider it in a future proceeding.

6. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Atamturk in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3. On November 12, 2019, the Joint Bioenergy Parties (BAC, BradTCO, Phoenix, SynTech, and TSS) filed comments supporting the proposed decision. No reply comments were filed.

7. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and ALJ Nilgun Atamturk, Manisha Lakhanpal, and ALJ Sarah R. Thomas are the assigned ALJs in this proceeding.

Findings of Fact

1. The Bioenergy Association of California has provided sufficient justification for filing its Petition for Modification of Decision 14-12-081 more than one year after the decision was issued.
2. The requirement that a Category 2 bioenergy facility be located on “agricultural premises” has not, in practice, met its intended goals.
3. It was not foreseen that the requirement to locate Category 2 bioenergy facilities on “agricultural premises” could conflict with local zoning rules that

limit the use of some agricultural lands to growing crops and livestock operations.

4. Because fuel used in a Category 2 bioenergy facility is not required to come from the premises on which the facility is located, requiring the facility to be on “agricultural premises” does not eliminate vehicle emissions from transporting the fuel to the facility site.

5. The requirement to be located on “agricultural premises” may increase project costs if projects cannot take advantage of locations with lower interconnection costs.

6. The requirement may cause productive agricultural land to be taken out of production so the land may be used for a bioenergy facility.

Conclusions of Law

1. The proposed modification to D.14-12-081 and corresponding changes to the BioMAT tariff is in the public interest, and consistent with the goals of SB 1122.

2. D.14-12-081 and the BioMAT tariff should be modified to eliminate the requirement that an eligible BioMAT project that uses agricultural waste as its feedstock must be located on “agricultural premises”.

3. BAC’s Petition for Modification should be granted.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 14-12-081 is granted.
2. Decision 14-12-081 is modified as follows:

- a. Section 2.2.2.2. is revised to read:

A project that meets the criteria for the “other agricultural bioenergy” category:

Utilizes the waste, residue or byproducts of growing crops, raising livestock or growing horticultural products. Agricultural wastes include, but are not limited to, agricultural crop residues; fruits and vegetables; orchard and vineyard removal; and crop tree and vineyard prunings. Agricultural waste also includes waste, residues and by-products from agricultural drying, hulling, shelling and ginning operations as well as fresh fruit and vegetable packing operations.

- b. Conclusion of Law 14 in Decision 14-12-081 is revised to read as follows:

For purposes only of implementing SB 1122, “other agricultural bioenergy” should be defined as:

A bioenergy project that utilizes the waste, residue or by-products of growing crops, raising livestock or growing horticultural products. Agricultural wastes include, but are not limited to, agricultural crop residues; fruits and vegetables; orchard and vineyard removal; and crop tree and vineyard prunings. Agricultural waste also includes waste, residues and byproducts from agricultural drying, hulling, shelling and ginning operations as well as fresh fruit and vegetable packing operations.

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 3. Not later than 30 days from the date of this decision, Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and

Electric Company are directed to each file a Tier 1 Advice Letter modifying its corresponding Bioenergy Market Adjusting Tariff to conform with today's decision.

4. Rulemaking 11-05-005 remains open to resolve outstanding issues.

This order is effective today.

Dated December 5, 2019, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners