

Decision 20-02-044 February 27, 2020

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

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.

Rulemaking 15-02-020

**DECISION GRANTING PETITION FOR MODIFICATION OF  
DECISION 15-09-004**

**Summary**

We grant the petition for modification filed in this proceeding by FuelCell Energy, Inc. and Toyota Motor North America. Accordingly, this decision modifies Decision 15-09-004 to clarify that directed biogas is eligible under the Bioenergy Market Adjusting Tariff (BioMAT), provided that projects using directed biogas comply with all applicable BioMAT program eligibility requirements. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company are directed to file Tier 2 Advice Letters modifying their BioMAT standard contracts to be consistent with this decision.

This proceeding remains open to resolve other issues in the proceeding.

**1. Procedural History**

On November 1, 2019, FuelCell Energy, Inc. (FCE) and Toyota Motor North America (Toyota) (collectively, Petitioners) filed a petition to modify Decision (D.) 15-09-004 and supporting documents implementing the BioMAT

Program and request for expedition (Petition). On December 2, 2019, the Coalition for Renewable Natural Gas and California Hydrogen Business Council filed comments to support the modification sought. Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) (Joint IOUs) filed a timely response opposing the Petition. On December 12, 2019, per authorization provided by the Administrative Law Judge's (ALJ) December 6, 2019 email, Petitioners filed a reply to the responses filed on December 2, 2019.

## **2. Background**

The Order Instituting Rulemaking that initiated this proceeding was adopted by the Commission on February 26, 2015. The Scoping Memo and Ruling of Assigned Commissioner was issued on May 22, 2015.

Senate Bill (SB) 1122 (Rubio), stats. 2012, ch. 612, amends Public Utilities (Pub. Util.) Code section 399.20 (the "feed-in tariff" provisions) of California's renewables 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. For purposes of this statute, "bioenergy" means biogas and biomass.<sup>1</sup> The categories of bioenergy and the allocations are as follows:<sup>2</sup>

- i. For biogas from wastewater treatment, municipal organic waste diversion, food processing, and codigestion, 110 megawatts.
- ii. For dairy and other agricultural bioenergy, 90 megawatts.

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<sup>1</sup> Pub. Util. Code § 399.20(f)(5).

<sup>2</sup> Pub. Util. Code § 399.20(f)(2)(A).

- 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 ALJ's Ruling Seeking Comments on the Staff Proposal was issued in Rulemaking 11-05-005. After considering comments, 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.<sup>3</sup> The decision also directed the IOUs to submit a draft tariff, standard contract, and certain ancillary documents.

The Commission further implemented the BioMAT program through D.15-09-004 (adopted September 17, 2015) by approving certain modifications to the bioenergy electric generation tariff, standard contracts, and supporting documents.

### **3. Petition to Modify D.15-09-004**

On November 1, 2019, FCE and Toyota filed a petition to modify D.15-09-004 and requested adding language to D.15-09-004, and, if found necessary, the BioMAT tariff and power purchase agreement (PPA) to affirm language that projects using directed biogas are eligible to participate in the BioMAT program, provided they comply with all applicable program eligibility requirements. Petitioners define "directed biogas" as biomethane

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<sup>3</sup> The decision refers to each of the fuel categories as including "biogas" - Category (i) is limited to biogas from specified sources, while Category (ii) and (iii) consist of specified sources of biogas, or biomass to be used as a feedstock to produce biogas. See D.14-12-081 at 21.

delivered through a common carrier pipeline.<sup>4</sup> Petitioners' proposed project is to use "directed biogas." Specifically, Petitioners propose a BioMAT generating facility at the Port of Long Beach and propose obtaining biomethane from Central Valley dairy farms, water treatment plants, or other sources where it will be injected into the pipeline at one location, while the BioMAT generating facility uses the same amount of gas extracted from the pipeline at a different location.<sup>5</sup>

Petitioners claim that this affirmation is required, because 1) one program administrator, SCE, believes that directed biogas is an ineligible fuel, and 2) without relief granted through this Petition, the Petitioners' project may be cancelled. Petitioners also request expedited treatment to avoid further delay to their project.

Petitioners support their request by the following arguments: 1) Petitioners claim that D.14-12-081 adopted the definition of biogas as "including digester gas, landfill gas, and *any gas derived from a feedstock eligible under the California renewables portfolio standard,*" for purposes of implementing SB 1122;<sup>6</sup> 2) Petitioners state that, "in addition to qualifying under the California RPS and CEC [California Energy Commission] certification requirements, an eligible BioMAT project must use feedstock from the three statutory resource categories [in SB 1122]";<sup>7</sup> 3) Petitioners claim while D.14-12-081 did not "establish any limitation or prohibition excluding directed biogas, D.15-09-004 explicitly

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<sup>4</sup> Petition at 1.

<sup>5</sup> Petition at 3.

<sup>6</sup> Petition at 8.

<sup>7</sup> Petition at 8.

recognized the use of directed biogas;” 4) Petitioners claim that as a result of SCE continuing to refuse to acknowledge that directed biogas is a BioMAT eligible fuel, Petitioners are forced to request the Commission add a new conclusion of law and ordering paragraph confirming what already is stated in text on pages 28-29 of D.15-09-004.<sup>8</sup>

Petitioners also note that in a letter addressed to SCE the Commission’s Energy Division stated that “the use of directed biogas is allowable under BioMAT contracts provided that the directed biogas feedstock meets BioMAT fuel resource category requirements and that requiring clear reporting requirements can address [SCE’s] prudent contact management concerns.”<sup>9</sup>

Petitioners believe that eliminating uncertainty around the eligibility of directed biogas will support BioMAT program goals. Petitioners also note that the requested relief does not require any substantive change in the BioMAT program eligibility or reporting requirements, because existing reporting requirements allow for all BioMAT projects to demonstrate compliance and meet qualifications as an eligible renewable resource. Petitioners point to the PPA, CEC RPS Eligibility Guidebook, and BioMAT Program rules for various program requirements and reporting procedures.<sup>10</sup>

### **3.1. Proposed Modifications**

Petitioners request that the Commission add further clarifying language to D.15-09-004, with conforming changes in the BioMAT Tariff and PPA as needed,

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<sup>8</sup> Petition at 10.

<sup>9</sup> Petition at 8 and 9.

<sup>10</sup> Petition at 14.

confirming the use of directed biogas is permissible in the current BioMAT program, as long as a project meets all other applicable program requirements.

In specific, Petitioners propose that Conclusion of Law 37 be modified as follows:<sup>11</sup>

37. Because it is consistent with the requirements of D.13-11-024, section 3.1.1 of the BioMAT standard contract submitted on February 9, 2015 should be approved as submitted on February 9, 2015 and included in the final BioMAT standard Contract, renumbered to be section 3.1 (and as it may be subsequently renumbered). It will apply to all eligible BioMAT projects using biomethane delivered through a common carrier pipeline.

Petitioners also propose adding a new Conclusion of Law:

BioMAT projects using biomethane delivered through a common carrier pipeline are eligible for a BioMAT PPA, provided they meet all applicable BioMAT program requirements.

Petitioners also propose adding new clarifying language in the BioMAT Tariff and in the BioMAT PPA, if necessary.

### **3.2. Positions of Parties**

The Coalition for Renewable Natural Gas and California Hydrogen Business Council support the Petition and agree that the pipeline directed biogas is explicitly eligible in the BioMAT Program.

Joint IOUs recommend denying the Petition. Claiming that unrestricted directed biogas does not provide benefits to California, Joint IOUs express various concerns regarding directed biogas, including the following:

- There is a lack of safeguards to ensure BioMAT requirements are met.

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<sup>11</sup> Petition at 16.

- Allowing directed biogas does not encourage development of in-state biogas production due to possible lack of proximity between sellers and purchasers.
- The BioMAT does not allow for a de minimis amount of fossil fuel.
- The Commission did not include the discussion of BioMAT eligibility in its finding of facts or conclusion of law in D.15-09-004.
- As a policy matter, directed biogas should not be eligible to participate in the BioMAT program.

In the case that directed biogas is allowed to participate in the BioMAT program, Joint IOUs recommend that the Commission implement safeguards to protect the state's goals and customer rates and develop a record for directed biogas' eligibility to participate in the BioMAT program. The Joint IOUs list a number of policy and implementation questions in their response.<sup>12</sup>

In their reply to responses, Petitioners note that the scope of the Petition is narrow and does not involve policy or program changes.

#### **4. Discussion**

##### **4.1. Timeliness of the Petition**

Before considering the merits of any arguments made for modification of a prior decision, the Commission must determine that a petition for modification complies with the requirements of Rule 16.4 of the Commission's Rules of Practice and Procedure, including the requirement that a petition for modification must be filed "within one year of the effective date of the decision proposed to be modified." (Rule 16.4(d).)

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<sup>12</sup> Joint IOU Response at 6 and 7.

“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 date of the decision.” (Rule 16.4(d).) Since the Petition was filed more than a year after the effective date of D.15-09-004, it must explain why it “could not have been presented” within the one-year timeframe.

Petitioners assert that “FCE and Toyota were unaware until September 2018, when SCE reversed its position, that SCE would contest the eligibility of directed gas biogas projects for participation in BioMAT.”<sup>13</sup> According to Petitioners, prior to September 2018, “there was no ambiguity on this question, given verbal and written assurances from SCE and PG&E, and the explicit acknowledgement in Decision 15-09-004 and the SCE BioMAT PPA that directed biogas projects are BioMAT eligible.”<sup>14</sup> Hence, there was no need to seek clarification or affirmation within one year of the decision’s effective date.

Rule 16.4 (e) requires petitioners that were not parties to the proceeding in which the decision to be modified was issued to state specifically how they were affected by the decision and why they did not participate in the proceeding. Petitioners explain that they were not parties to Rulemaking 15-02-020, the proceeding in which D.15-09-004 was issued, because at the time the BioMAT program was implemented, they did not have active plans to develop a BioMAT project. Petitioners assert that “the Petitioners’ project cannot move forward and may have to be abandoned” until the Commission clarifies the eligibility of directed biogas as a BioMAT fuel source.

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<sup>13</sup> Petition at 6.

<sup>14</sup> Petition at 6.



We find that the Petition provides sufficient justification for filing this Petition more than one year after the issuance of D.15-09-004. The Commission agrees with Petitioners that the ambiguity in D.15-09-004 should not deter the development of projects to be proposed under the BioMAT.

#### **4.2. Discussion**

Upon consideration of the Petition and party comments, we find the Petition to add new language to D.15-09-004 to affirm eligibility of directed biogas reasonable as discussed below.

##### **4.2.1. Omission in D.15-09-004**

In D.15-09-004 the Commission approved the utilities' proposed BioMAT standard contracts. Section 2.3.6.1 of D.15-09-004 discusses Section 3.1.1 of the BioMAT PPA, which is titled as "Biomethane Transactions."<sup>15</sup> The Commission concluded that the IOUs' draft section 3.1.1 should be adopted and Section 3.1.1 "applies only to BioMAT projects using biomethane delivered through a common carrier pipeline (if any such projects are proposed)."<sup>16</sup> Specifically, the Commission approved the following language for the IOUs' standard contract for BioMAT, as Section 3.1.1 Biomethane Transactions:

"[The Biogas purchased for use at Seller's Facility complies with all applicable pipeline tariff rules, including, if any, quality specifications.]"

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<sup>15</sup> The Health and Safety Code § 25420(b) defines "biomethane" as "biogas that meets the standards adopted pursuant to subdivisions (c) and (d) of Health and Safety Code 25421 for injection into a common carrier pipeline." The Health and Safety Code § 25420(f) defines the common carrier pipeline as "a conveyance pipeline, located in California, that is owned or operated by a utility or gas corporation, excluding a dedicated pipeline." The Commission adopted the standards that must be met by biogas that is injected into common carrier pipelines in Rulemaking 13-02-008.

<sup>16</sup> D.15-09-004 at 29.

Petitioners request adding a clarifying sentence to Conclusion of Law 37 of D.15-09-004. Because the suggested language reflects the language from the text of D.15-09-004, we do not consider it as new language. It is rather an omission that should be corrected. Accordingly, Conclusion of Law 37 of D.15-09-004 will be modified as requested and read as follows:

Because it is consistent with the requirements of D.13-11-024, section 3.1.1 of the BioMAT standard contract submitted on February 9, 2015 should be approved as submitted on February 9, 2015 and included in the final BioMAT standard Contract, renumbered to be section 3.1 (and as it may be subsequently renumbered). It will apply to all eligible BioMAT projects using biomethane delivered through a common carrier pipeline.

#### **4.2.2. New language in D.15-09-004**

Petitioners request adding the following new Conclusion of Law to D.15-09-004:

BioMAT projects using biomethane delivered through a common carrier pipeline are eligible for a BioMAT PPA, provided they meet all applicable BioMAT program requirements.<sup>17</sup>

The Commission finds the proposed conclusion of law consistent with D.14-12-081 and D.15-09-004, as discussed below, and grants the Petitioners' request. Conclusion of Law 53 will read as follows:

BioMAT projects using biomethane delivered through a common carrier pipeline should be eligible for a BioMAT PPA, provided they meet all applicable BioMAT program requirements.

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<sup>17</sup> Petition at 16.

In D.14-12-081, the Commission defined biogas and identified the required characteristics of each fuel type to be used in RPS-eligible generation under the mandates of SB 1122.

D.14-12-081 finds that SB 1122 does not define biogas, but that the term is defined in the CEC's RPS Eligibility Guidebook (See Glossary of Terms, 7<sup>th</sup> edition).<sup>18</sup> In order to maintain consistency of usage of language for the RPS program between this Commission and the CEC, the Commission relied on the CEC's RPS Eligibility Guidebook definition of "biogas" for purposes of implementing SB 1122. Accordingly, the Commission defined "biogas" as "including digester gas, landfill gas, and any gas derived from a biomass feedstock eligible under the California RPS."<sup>19</sup>

The CEC's RPS Eligibility Guidebook 7th edition, which implemented, in part, Assembly Bill (AB) 2196 (Chesbro), stats. 201, ch. 168,<sup>20</sup> listed biomethane in the biogas category, whether using a dedicated pipeline or common carrier. However, we note that RPS eligibility is not sufficient to be eligible for BioMAT. As discussed in D.14-12-081, to participate in the bioenergy FiT under SB 1122, the feedstock used must be in one of the three categories listed in SB 1122, as further defined in D.14-12-081.<sup>21</sup> This remains applicable to projects that use biomethane delivered through a common carrier.

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<sup>18</sup> D.14-12-081 Findings of Fact 1 and 2.

<sup>19</sup> D.14-12-081 Col 1 and 2.

<sup>20</sup> AB 2196 amended RPS rules including new requirements for tracking and verifying biomethane.

<sup>21</sup> For example, landfill gas is considered to be RPS-eligible by the CEC; but it is not eligible for the bioenergy FiT because it is not on the list of resources set out in SB 1122 for the first biogas category, or the other two fuel source categories. D.14-12-081 at 9 and 10.

Joint IOUs expressed a number of concerns on policy grounds and requested developing safeguards to protect the state’s goals and customer rates. We believe that reasonable safeguards are already accounted for because directed biogas must meet the requirements in the CEC’s RPS Eligibility Guidebook. The BioMAT program review is within the scope of Rulemaking 18-07-003 and the Commission can also consider further refinements to BioMAT therein.

**4.2.3. Changes in Tariff and Power Purchase Agreement**

Petitioners propose adding new clarifying language in the BioMAT Tariff and in the BioMAT PPA, if necessary. With respect to the tariff changes proposed by the Petitioners, the Commission finds that it is unnecessary to include the new language proposed by the Petitioners. The proposed language restates what is already being affirmed in this decision. Section D.13 of BioMAT also already includes explicit requirements for fuel resources to comply with the CEC’s RPS eligibility criteria, BioMAT program requirements, and for the applicant to submit a fuel attestation for the project.

With respect to the new language in the BioMAT PPA, we find the Petitioners’ request to include specifications about whether or not a project will use directed biogas in the PPA, as well as the PPA’s accompanying documents (fuel attestations and the appropriate appendices) reasonable and adopt it as modified below.

- A. Fuel Resource Category and Transaction Type:
  - (i) Project’s Fuel Resource Category (please indicate if any of the Project’s fuel will be delivered through a common carrier pipeline):
    - ...
    - (xi) Fuel Use description (brief explanation of any Fuel Use from other Fuel Resource Categories as applicable per the Fuel Resource

Requirements), including identification of any fuel delivered through a common carrier pipeline:

Pacific Gas and Electric Company, SDG&E, and SCE are directed to file Tier 2 Advice Letters modifying their BioMAT standard contracts to be consistent with this decision.

## **5. Comments on Proposed Decision**

The proposed decision of ALJs Atamturk and Lakhanpal in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on January 29, 2020, by Petitioners, PG&E, and SCE. Reply comments were filed on February 3, 2020, by Petitioners and PG&E.

In response, we changed the classification of the advice letter the IOUs must submit from Tier 1 to Tier 2 in order to incorporate definitions and reporting requirements within the BioMAT PPA that are consistent with the CEC's RPS Eligibility Guidebook. We also changed the filing date from 30 days to 45 days after the issuance of this decision. No other substantive changes were made to the proposed decision. We reiterate that the BioMAT program review is within the scope of Rulemaking 18-07-003 and the Commission can consider further refinements to BioMAT therein.

Based on comments, we also realize there is some potential for confusion because D.15-09-004 sometimes used the term "biomethane" and sometimes used the term "biogas." Section 2.3.6.1 of D.15-09-004 discusses a section of the BioMAT PPA titled "Biomethane Transactions" but the Decision approves PPA language that refers to "biogas." The IOUs' standard contract for BioMAT includes the following language: "The Biogas purchased for use at Seller's Facility complies with all applicable pipeline tariff rules, including, if any,

quality specifications.” The Health and Safety Code definition of biomethane referenced in footnote 15 of this decision also uses the terms interchangeably. The Ninth Edition of the CEC RPS Eligibility Guidebook does not define “biogas.” It defines “biomethane” narrowly (fuel from digester gas and/or landfill gas), and also defines other categories of potentially RPS-eligible electricity generated using “biomass” fuel -- which includes fuel that results from “biomass conversion” -- or “biodiesel.”<sup>22</sup> To avoid confusion, we clarify that this Decision and D.15-09-004 use the terms “biomethane” and “biogas” interchangeably. Accordingly, directed biogas in the BioMAT Program may include any fuel source identified in Pub. Util. Code § 399.20(f)(2) that is also an eligible feedstock pursuant to CEC’s RPS eligibility rules.

## **6. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner and ALJ Nilgun Atamturk and ALJ Manisha Lakhanpal are the assigned Administrative Law Judges in this proceeding.

### **Findings of Fact**

1. The Petitioners have provided sufficient justification for filing the Petition for Modification of D.15-09-004 more than one year after the decision was issued.
2. D.14-12-081 finds that the term “biogas” is defined in the CEC’s RPS Eligibility Guidebook (7th edition) and adopts it.

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<sup>22</sup> See RPS Guidebook, at 5, available at: <https://www.energy.ca.gov/programs-and-topics/programs/renewables-portfolio-standard>.

3. CEC's RPS Eligibility Guidebook (9th Edition) does not define "biogas" but has definitions for electricity generated with "biodiesel", "biomass", or "biomethane."

4. The terms "biomethane" and "biogas" are used interchangeably in this Decision and in D.15-09-004.

5. Conclusion of Law 37 of D.15-09-004 does not fully reflect the text on page 29 of D.15-09-004.

### **Conclusions of Law**

1. The proposed modifications to Decision 15-09-004 are consistent with D.14-10-081.

2. D.15-09-004 and the standard contract should be modified to affirm that directed biogas is eligible for BioMAT, provided that the proposed projects meet all other program requirements.

3. Directed biogas in the BioMAT Program may include any fuel source identified in Pub. Util. Code § 399.20(f)(2) that is also an eligible feedstock pursuant to CEC's RPS eligibility rules.

4. FCE and Toyota's Petition for Modification of D.15-09-004 should be granted.

### **O R D E R**

**IT IS ORDERED** that:

1. The Petition for Modification of Decision 15-09-004 is granted.

2. Decision 15-09-004 is modified as follows:

a. Conclusion of Law 37 in D.15-09-004 is revised to read as follows:

Because it is consistent with the requirements of D.13-11-024, section 3.1.1 of the BioMAT standard contract submitted on February 9, 2015 should be approved as submitted on February 9, 2015 and included in

the final BioMAT standard Contract, renumbered to be section 3.1 (and as it may be subsequently renumbered). It will apply to all eligible BioMAT projects using biomethane delivered through a common carrier pipeline.

b. Conclusion of Law 53 is added to D.15-09-04 and reads as follows:

BioMAT projects using biomethane delivered through a common carrier pipeline should be eligible for a BioMAT PPA, provided they meet all applicable BioMAT program requirements.

3. Not later than 45 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 2 Advice Letter modifying its corresponding BioMAT Power Purchase Agreement to conform with today's decision that clarifies directed biogas is eligible under BioMAT by incorporating the new language specified in Section 4.2.3 and incorporating reporting requirements that are consistent with the California Energy Commission's Renewables Portfolio Standard Eligibility Guidebook.

4. Rulemaking 15-02-020 remains open to resolve outstanding issues. This order is effective today.

Dated February 27, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners