

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Implement Assembly Bill 843 –
the Bioenergy Market Adjusting Tariff
Program

FILED
PUBLIC UTILITIES COMMISSION
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SAN FRANCISCO, CALIFORNIA
RULEMAKING 22-10-010

**ORDER INSTITUTING RULEMAKING TO IMPLEMENT
ASSEMBLY BILL 843 – THE BIOENERGY MARKET
ADJUSTING TARIFF PROGRAM**

Summary

The purpose of this rulemaking is to implement Assembly Bill (AB) 843 (Aguiar-Curry), Stats. 2021, ch. 234 and authorize Community Choice Aggregators (CCAs) to participate in the Bioenergy Market Adjusting Tariff (BioMAT) program.

AB 843 amended Public Utilities Code Section 399.20 to extend to CCAs within an electrical corporation's service territory the existing renewable feed-in tariff for qualifying bioenergy electric generation facilities. AB 843 authorizes a CCA to execute contracts for eligible bioenergy projects and submit those contracts for cost recovery pursuant to the BioMAT program, if open capacity exists within the 250-megawatt BioMAT program limit, as specified. AB 843 additionally requires that every kilowatt hour of electricity purchased from a bioenergy electric generation facility count toward both the CCA's Renewables Portfolio Standard procurement requirements and the bioenergy project procurement requirements of the electrical corporation whose service territory encompasses the CCA, and that the physical generating capacity of a bioenergy

electric generation facility count toward the CCA's resource adequacy requirements.

All registered CCAs, and Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company are respondents to this proceeding. Parties are invited to comment on this Order Instituting Rulemaking within 30 days of its issuance. Reply comments may be filed within 15 days after filing and service of comments.

1. Background

The California Renewables Portfolio Standard (RPS) program was established by Senate Bill (SB) 1078 (Sher), Stats. 2002, ch. 516, and has been subsequently modified by SB 107 (Simitian), Stats. 2006, ch. 464; SB 1036 (Perata), Stats. 2007, ch. 685; SB 2(1X) (Simitian), Stats. 2011, ch. 1; SB 350 (De León), Stats. 2015, ch. 547; and SB 100 (De León), Stats. 2018, ch. 312. The RPS program is codified in Public Utilities (Pub. Util.) Code Sections 399.11-399.33. Pursuant to SB 100, the RPS program requires the state's electric load-serving entities to procure 60 percent of their total retail sales from renewable energy resources by 2030. SB 100 also established a goal for 100 percent of the state's electricity to come from carbon-free resources by 2045.

Within the RPS program, Section 399.20 was added to the Pub. Util. Code by Assembly Bill (AB) 1969 (Yee), Stats. 2006, ch. 731 to create the state's renewable feed-in-tariff program. Since 2007, the Legislature has adopted several amendments to Section 399.20,¹ including SB 380 (Kehoe), Stats. 2008, ch. 544; SB 32 (Negrete McLeod), Stats. 2009, ch. 328; SB 2 (1X); SB 1122 (Rubio), Stats. 2012, ch. 612; and AB 1979 (Bigelow), Stats. 2016, ch. 665.

¹ Unless otherwise noted, all further references to code sections are to the Public Utilities Code.

The Bioenergy Market Adjusting Tariff (BioMAT) program is a feed-in-tariff program created by SB 1122 which established a 250 megawatt (MW) procurement program for small-scale bioenergy projects. The program was first implemented in 2014 and uses a standard contract and a market-based mechanism to arrive at the contract price. The goal of the BioMAT program is to promote competition for entrants to the bioenergy market using a simplified procurement mechanism. The program procurement is allocated into three discrete fuel resource categories: biogas, dairy/agriculture, and sustainable forest management.

In Decision (D.) 14-12-081 and D.15-09-004, the Commission established the BioMAT program, and the investor-owned utilities (IOUs) began offering contracts in February 2016. Since 2016, the BioMAT program has been modified and refined several times in response to legislative mandates. In 2016, D.16-10-025 implemented several changes to the BioMAT program for generation facilities using forest biomass as fuel in response to SB 840 (Trailer Bill), Stats. 2016, ch. 341 and the Governor's October 30, 2015 Emergency Proclamation regarding tree mortality. In 2017, D.17-08-021 implemented AB 1923 (Wood), Stats. 2106, ch. 663, which modified the capacity limits for BioMAT generation facilities to allow for greater participation in the BioMAT program. Most recently, D.20-08-043 directed changes to the BioMAT program rules and contract terms, as well as made clarifications to the overall procurement process.

The BioMAT program authorizes IOUs to cease offering BioMAT contracts after December 31, 2025. In 2014, the Commission set the ending date for the

BioMAT program at five years after its start, February 2021.² In 2020, the Commission extended the program end date to December 31, 2025.³

In 2021, the Bioenergy Association of California, California Association of Sanitation Agencies, and Rural County Representatives of California (collectively, the Joint Petitioners), filed a Petition for Modification of D.14-12-081 and D.20-08-043 (Petition) seeking to extend the program end date to December 31, 2030. The Joint Petitioners proposed that the extension will provide more long-term programmatic certainty for developers and allow more time for project development, while maintaining the Commission’s direction to establish a program end date.⁴

The 250 MW program capacity is allocated amongst the three large IOUs. Table 1 shows each IOU’s share as defined in D.14-12-081. The allocations are further distributed across three categories of fuel resource, biogas, dairy and other agriculture, and sustainable forest management.

Table 1: BioMAT Procurement Targets for each IOU

IOU	BioMAT Procurement Targets (MW)
Pacific Gas and Electric Company	111
Southern California Edison Company	115
San Diego Gas & Electric Company	25
Total	250

² “Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company may cease offering the bioenergy feed-in tariff established by this decision after the end of the 60th month after the beginning of the first program period, so long as they allow 90 days for the resolution of bids in their respective bioenergy FiT queues on the last day of the 60th month after the beginning of the first program period.” (D.14-12-081 at Ordering Paragraph 6.)

³ D.20-08-043 at Conclusion of Law 1.

⁴ Petition at 15.

Since the start of the program, the IOUs have executed BioMAT contracts totaling nearly 50 MW. Table 2 shows the capacity allocated in each fuel resource category, the capacity contracted, and total capacity remaining.

Table 2: BioMAT Program Capacity

BioMAT Fuel Resource Category	BioMAT Capacity Allocation (MW)	Capacity Contracted (MW)	Capacity Remaining (MW)
Category 1: Biogas	110	10	100
Category 2: Dairy and Other Agriculture	90	26.5	63.5
Category 3: Sustainable Forest Management	50	11	39
Total	250	47.5	202.5

AB 843 allows Community Choice Aggregators (CCAs) to also participate in the BioMAT program should capacity in the three fuel resource category allocations remain available. CCAs are governmental entities formed by cities and counties to purchase power for their residents and businesses. The bill further clarifies that, by taking up open program capacity, BioMAT procurement by a CCA will reduce the procurement category targets for the IOU whose service territory encompasses the CCA.

To implement AB 843, the Commission must complete several tasks, including, establishing a filing and approval process for CCAs' standard contract terms and conditions, adopting a process for CCAs to file their BioMAT Tariffs, establishing a process for CCAs to submit eligible bioenergy contracts to the Commission for cost recovery, and determining how the BioMAT program queue will be coordinated and contracted megawatts will be tracked.

2. Purpose of Proceeding

The purpose of this proceeding is to implement AB 843 and include CCAs as a part of the BioMAT feed-in-tariff program. AB 843 adds new responsibilities for the Commission to enable CCAs to execute contracts with BioMAT eligible projects to further BioMAT program goals. AB 843 also requires the resulting CCA bioenergy feed-in-tariff procurement be subject to Commission approval and under the Commission's jurisdiction regarding cost recovery and contract management.

The full text of Pub. Util. Code Section 399.20, as amended by AB 843, is set forth in Appendix A.

3. Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure (Rules). As required by Rule 7.1(d), this Order Instituting Rulemaking (OIR) includes a preliminary scoping memo as set forth below, and preliminarily determines the category of this proceeding and the need for hearing.

In this Preliminary Scoping Memo, we describe the issues to be considered in this proceeding and the timetable for the proceeding. In response to this OIR, parties will have the opportunity to provide preliminary comments on the issues raised. After a prehearing conference, the assigned Commissioner will issue a Scoping Memo and Ruling that will establish the issues and procedural path in greater detail.

3.1. Preliminary Issues

The preliminary issues for the scope of this proceeding are as follows:

- a. What process should the Commission establish for CCAs to file their standard contract terms and conditions, and tariffs for approval?

- b. What process should the Commission establish for CCAs to have a streamlined contracting process?
- c. Whether the existing BioMAT pricing applies to CCAs' BioMAT contracts?
- d. What process should the Commission establish for CCAs to submit eligible bioenergy contracts to the Commission for cost recovery?
- e. How should the BioMAT program queue be coordinated, and contracted megawatts tracked?
- f. What process or rules should the Commission establish for CCAs' prudent contract management?
- g. What process should the Commission establish for the CCAs (and IOUs) to track and allocate the costs, revenues, benefits, and products of the BioMAT contracts?
- h. Should the existing BioMAT program end date of December 31, 2025, be extended to December 31, 2030, or to some other date to provide the opportunity for CCAs to participate in BioMAT? In accordance with the provisions in Ordering Paragraph (OP) 6 of D.14-12-081, should IOUs and CCAs also have the option to continue offering new BioMAT contracts after this date for any authorized megawatts that have not been contracted?
- i. Are there any other actions the Commission should take to allow CCA participation in the BioMAT program?

3.2. Preliminary Schedule

The preliminary schedule for this proceeding is presented below.

EVENT	DATE
Comments on the OIR filed and served	30 days after the issuance date of OIR
Reply Comments on the OIR filed and served	15 days after comments are filed and served
Prehearing Conference held	2023 Q1
Scoping Memo and Ruling issued	2023 Q1
Proposed Decision issued	2023 Q3

EVENT	DATE
Commission Decision issued	No sooner than 30 days after Proposed Decision

Initial comments shall be filed and served no later than 30 days after issuance of this rulemaking, with reply comments 15 days later. The Commission will use parties' comments and a prehearing conference, to be scheduled, as a basis to identify areas that need clarification, and may consider the addition of specific issues or questions related to the items described in Section 3.1 of this OIR to the scope of this proceeding, pursuant to the guidance set forth herein.

The assigned Commissioner or the assigned Administrative Law Judge (ALJ) may change the schedule and scope as necessary to provide full development of record and to promote efficient and fair administration of this proceeding. We leave open the possibility that issue areas may be decided in more than one decision, if necessary.

Notice of workshops in this proceeding will be served to the service list of this proceeding and posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops.

This proceeding will conform to the statutory case management deadline for ratesetting matters set forth in Pub. Util. Code Section 1701.5. It is the Commission's intent to resolve all relevant issues within 18 months of the date this OIR is adopted.

4. Category of Proceeding; *Ex Parte* Communications; and Need for Hearing

Rule 7.1 (d) of the Commission's Rules of Practice and Procedure requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. This rulemaking is preliminarily

determined to be ratesetting as defined in Rule 1.3(g). Accordingly, the *ex parte* rules of Article 8 of the Rules of Practice and Procedure apply.

The Commission preliminarily determines that hearings are not necessary for this proceeding. Any person who objects to the preliminary hearing determination shall state the objections in their comments on this OIR. The assigned Commissioner will make a final determination on the need for hearing in the Scoping Memo and Ruling issued following a prehearing conference.

5. Respondents

Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and all registered CCAs, namely, Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance of Southern California, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Energy for Palmdale's Independent Choice, King City Community Power, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy Authority, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power (SJP), San Jose Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy Authority, Sonoma Clean Power Authority, Valley Clean Energy Alliance, shall be respondents to this proceeding.

Respondents are parties to the proceeding (*see* Rule 1.4(d)) and within 15 days of the effective date of this OIR, each respondent shall inform the Commission's Process Office of the contact information for a single representative; other representatives and persons affiliated with the respondents may be placed on the Information Only service list. The request must be sent to

the Commission's Process Office by e-mail (Process_Office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102). Please include the Docket Number of this rulemaking in the request.

6. Service of OIR

This OIR shall be served on all respondents. In addition, in the interest of broad notice, this OIR will be served on the official service lists for the following proceedings: R.15-02-020 and R.18-07-003 (Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program).

Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding, other than respondents. Instructions for obtaining party status or being placed on the official service list are given below.

7. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure.

Parties are instructed to only serve documents on the assigned Commissioner, advisors to the assigned Commissioner, and the assigned ALJ(s) by electronic copy and not by paper copy, unless specifically instructed to do otherwise.

8. Addition to the Official Service List

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents to this OIR automatically become parties to the proceeding (see Rule 1.4(d)) and will be immediately placed on the official service list.

We encourage all non-parties interested in following this proceeding to subscribe to this proceeding as described in Section 9 of this OIR rather than join the service list.

Any person will be added to the “Information Only” category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding.

(See Rule 1.9(f).) The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov). Please include the Docket Number of this rulemaking in the request.

Persons who file responsive comments thereby become parties to the proceeding (*see* Rule 1.4(a)(2)) and will be added to the “Parties” category of the official service list upon such filing. In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the “Information Only” category as described above; they will be removed from that category upon obtaining party status.

9. Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpub.ca.gov/>.

10. Intervenor Compensation

Intervenor compensation rules are governed by §§ 1801 et seq. of the Pub. Util. Code.

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by 30 days after the prehearing conference. Parties new to participating in Commission proceedings may contact the Commission's Public Advisor to learn more about the Intervenor Compensation process.

11. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825.

O R D E R

IT IS ORDERED that:

1. This Order Instituting Rulemaking is adopted pursuant to Rule 6.1 of the Commission's Rules of Practice and Procedure.
2. The preliminary categorization of this rulemaking is ratesetting.
3. The preliminary determination is that evidentiary hearings are not needed.
4. The preliminary scope of issues is as stated in Section 3.1.
5. The preliminary schedule for this rulemaking is set in Section 3.2.
6. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and all registered Community Choice Aggregators shall be respondents to this proceeding.
7. All respondents shall, and any other person may, file responses to this Order Instituting Rulemaking within 30 days of the issuance date of this Order Instituting Rulemaking.
8. The assigned Commissioner or Administrative Law Judge may make any revisions to the scheduling and filing determination made herein as necessary to

facilitate the efficient management of the proceeding, including organization of issues into additional tracks of the proceeding.

9. The Executive Director will cause this Order Instituting Rulemaking to be served on all respondents listed in Section 6, and the service lists for the following Commission proceedings: Rulemaking (R.) 15-02-020, R.18-07-003.

10. Any party that expects to claim intervenor compensation for its participation in this rulemaking must file its notice of intent to claim intervenor compensation within 30 days of the prehearing conference.

This order is effective today.

Dated October 20, 2022, at San Francisco, California.

ALICE REYNOLDS

President

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

Commissioners

(APPENDIX A)

ASSEMBLY BILL 843 CHANGES TO THE PUBLIC UTILITIES CODE

(AB 843, Aguiar-Curry. California Renewables Portfolio Standard Program: renewable feed-in tariff: Bioenergy Market Adjusting Tariff program: community choice aggregators.)

Section 399.20 was amended to read:

(5) (A) A community choice aggregator may submit eligible bioenergy projects to the commission for cost recovery if open capacity exists within an allocation category described in subparagraph (A) of paragraph (2) and the community choice aggregator submits an eligible tariff to the commission consistent with both of the following:

(i) The community choice aggregator files with the commission a standard tariff for electricity purchased from a bioenergy electric generation facility.

(ii) (I) The tariff provides for payment for every kilowatthour of electricity purchased from a bioenergy electric generation facility for a period of 10, 15, or 20 years, as authorized by the commission. The payment shall be the market price determined by the commission pursuant to subclause (II) and shall include all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the bioenergy electric generation facility is located.

(II) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with a bioenergy electric generation facility, considering those matters described in paragraph (2) of subdivision (d).

(iii) Any capacity procured by the community choice aggregator from a bioenergy project that is approved by the commission pursuant to this paragraph shall reduce the procurement targets for that allocation category ordered by the commission for the electrical corporation whose service territory encompasses the community choice aggregator pursuant to paragraph (2), or as modified pursuant to paragraph (3).

(B) Before acting pursuant to the authorization in subparagraph (A), a community choice aggregator shall develop standard contract terms and conditions that reflect the operational characteristics of the bioenergy electric generation facility and provide a streamlined contracting process. A community choice aggregator shall use the standard contract approved by the commission for use by the electrical corporation pursuant to subparagraph (B) of paragraph (2) to comply with this requirement, so long as all the

terms and conditions of the contract are not modified by the community choice aggregator.

(C) In implementing this paragraph, the commission shall do all of the following:

(i) Coordinate, to the maximum extent feasible, any incentive or subsidy programs for bioenergy with the agencies listed in subparagraph (A) of paragraph (3) in order to provide maximum benefits to ratepayers and to ensure that incentives are used to reduce contract prices.

(ii) Direct a participating community choice aggregator to authorize a bioenergy electric generation facility with an effective capacity of up to five megawatts to participate in the tariff made available pursuant to this paragraph if it meets the following conditions:

(I) It delivers no more than three megawatts to the grid at any time.

(II) It complies with the Electric Rule 21 tariff or other distribution access tariff of the electrical corporation whose service territory it is located in.

(iii) Ensure payment is made pursuant to clause (ii) of subparagraph (A) and no payment is made for any electricity delivered to the grid in excess of three megawatts at any time.

(D) The community choice aggregator may make the terms of the tariff available to owners and operators of a bioenergy electric generation facility in the form of a standard contract subject to commission approval. To comply with this requirement, the community choice aggregator may base its tariff on the electrical corporation's approved tariff, so long as all the terms and conditions of the tariff are not modified by the community choice aggregator.

(E) Every kilowatthour of electricity purchased from a bioenergy electric generation facility shall count toward meeting the community choice aggregator's renewables portfolio standard annual procurement targets for purposes of paragraph (1) of subdivision (b) of Section 399.15.

(F) The physical generating capacity of a bioenergy electric generation facility shall count toward the community choice aggregator's resource adequacy requirement for purposes of Section 380.

(G) In order to ensure the safety and reliability of bioenergy electric generation facilities, the owner of a bioenergy electric generation facility receiving a tariff pursuant to this paragraph shall provide an inspection and maintenance report to the community choice

aggregator at least once every other year. The inspection and maintenance report shall be prepared at the owner's or operator's expense by a California-licensed contractor who is not the owner or operator of the bioenergy electric generation facility. A California-licensed electrician shall perform the inspection of the electrical portion of the generation facility.

(H) The contract between the bioenergy electric generation facility receiving the tariff and the community choice aggregator shall contain provisions that ensure that construction of the bioenergy electric generating facility complies with all applicable state and local laws and building standards and utility interconnection requirements.

(I) Nothing in this paragraph changes the sole procurement responsibility of a community choice aggregator pursuant to paragraph (5) of subdivision (a) of Section 366.2.

(J) The commission may modify or adjust the requirements of this paragraph for any community choice aggregator with less than 100,000 customer accounts as individual circumstances merit.

(K) The commission has ongoing review authority over any contracts of community choice aggregators submitted pursuant to this section consistent with its review of the contracts of electrical corporations entered into pursuant to this section.

(END APPENDIX A)