

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-5288

October 12, 2023

R E S O L U T I O N

Resolution E-5288. Commission Motion Amending the Bioenergy Renewable Auction Mechanism (BioRAM) Program and Authorizing the Procurement and/or Extension of Eligible Contracts pursuant to Senate Bill 1109.

PROPOSED OUTCOME:

- Requires Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) to procure eligible BioRAM contracts through financial commitments of 5 to 15 years by December 1, 2023.
- Requires PG&E, SCE, and SDG&E to ensure that newly executed BioRAM contracts meet emissions limits equivalent to, or more stringent than the applicable best available retrofit control technology as determined by the local air district, prior to the start of the operating period of the new contract or contract extension.
- Requires PG&E, SCE, and SDG&E to extend existing BioRAM contracts for five years or more, if the facility was operating in 2022 and is not located in a federal severe or extreme nonattainment area for particulate matter or ozone.

SAFETY CONSIDERATIONS:

- This Resolution implements biomass provisions of Senate Bill 1109 (Caballero. 2022, ch. 364), which in part addresses biomass energy as a means to remove forest materials from high-hazard zones.
- Renewable Auction Mechanism standard contracts contain Commission approved safety provisions. There are not any expected incremental safety implications associated with approval of this Resolution.

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ESTIMATED COST:

- This Resolution is expected to result in new and/or extended energy procurement contracts which will lead to increased ratepayer costs through a non-bypassable charge established in D.18-12-003. Actual costs are unknown at this time.

By Energy Division's own motion.

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 procure from eligible Bioenergy Renewable Auction Mechanism (BioRAM) facilities that meet emissions limits equivalent to, or more stringent than the applicable best available retrofit technology, as determined by the local air pollution control district or air quality management district to meet their proportionate share of 125 megawatts (MW) of cumulative rated generating capacity through financial commitments of 5 to 15 years.

This Resolution also directs PG&E, SCE, and SDG&E to amend or extend their existing BioRAM contracts that were operative at any time in 2022, to procure from only eligible bioenergy resources that are not located in federal extreme or severe nonattainment zones for particulate matter or ozone.

BACKGROUND

Overview of the Emergency Proclamation, Senate Bill 859, Senate Bill 901, and the BioRAM program

Severe drought conditions and an epidemic infestation of bark beetles have caused tree mortality in several regions of California. On October 30, 2015, Governor Brown issued an Emergency Proclamation (Proclamation)¹ 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.

¹ Proclamation of State Emergency (October 30, 2015). Available at: [KM C454e-20151030092137 \(ca.gov\)](https://www.ca.gov/km/C454e-20151030092137)

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In response to the Proclamation, the Commission issued Resolution E-4770 on March 17, 2016, establishing the BioRAM program and requiring that each of the investor owned utilities (IOUs) enter into contracts to purchase their share of at least 50 megawatts (MW) of collective generating capacity 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.

On October 21, 2016, the Commission issued Resolution E-4805 to implement the IOU procurement requirements of SB 859 (stats. 2016, ch. 368).² Resolution E-4805 directed IOUs to 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 859³; 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.

In addition, the Commission adopted D.18-12-003⁴ to establish a methodology for calculating a non-bypassable charge to collect revenue from all customers to pay for BioRAM procurement by the IOUs through each utility's public purpose program charge which was also required by SB 859⁵.

² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB859

³ SB 859 required 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.

⁴ Decision 18-12-003: Established a non-bypassable charge for costs associated with tree-mortality biomass energy procurement <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M252/K547/252547425.PDF>

⁵ Public Utilities (Pub. Util.) Code § 399.20.3(f)

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In 2018, SB 901 (stats. 2018, ch. 626) was enacted.⁶ SB 901 revised the definition of HHZs and expanded the eligibility of Tier 1 and Tier 2 HHZs to 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. The legislation also established fuel or feedstock reporting requirements to be based on a monthly or annual basis, and allowed contracted bioenergy facilities to opt out of the mandated fuel or feedstock usage levels without creating an event of default provided written notice is given for that month. Facilities are paid the alternate price adopted in Commission Resolution E-4770 for months in which they opted out or missed the mandated fuel or feedstock targets.

On January 31, 2019, the Commission issued Resolution E-4977 to implement the key provisions of SB 901. Resolution E-4977 required the IOUs to amend their existing BioRAM contracts to a) add monthly opt-out and reporting optionality with revised payment terms for those facilities that choose to opt out of the mandated fuel and feedstock usage levels, b) remove the event of default from sellers not achieving the mandated fuel or feedstock usage levels, and c) include the expanded definition of eligible HHZ feedstock. Additionally, Resolution E-4977 required IOUs to offer five-year contract extensions or new contracts to eligible sellers that included the terms and conditions of BioRAM 2.

Overview of Senate Bill (SB) 1109

The California Legislature passed SB 1109 (Caballero 2022, ch. 364) on August 30, 2022 and Governor Newsom signed it into law on September 16, 2022.⁷ The portions of this bill that are implemented herein are Section 1, which amended Pub. Util. Code § 399.20.3, and Section 2, which amended Pub. Util. Code § 8388.

Appendix A contains the full text of Sections 1 and 2. Key provisions of Pub. Util. Code § 399.20.3, for purposes of this Resolution, are summarized below:

- Sub-division (b)(1): Requires the IOUs to procure their proportionate share of 125 MW from existing bioenergy projects that commenced operations prior to June 1, 2013, through financial commitments of 5 to 15 years, with

⁶ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB901

⁷ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1109

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at least 80 percent of the feedstock from byproducts of sustainable forestry management (which includes feedstock from Tier 1 and Tier 2 HHZs and does not include feedstock from lands that have been clear cut), and at least 60 percent of this feedstock shall be from Tier 1 and Tier 2 HHZs, on an annual basis by December 1, 2023.

- Sub-division (b)(2): States exemptions for utilities to procure share of 125 MW if the utility's financial commitments made pursuant to Chapter 368 of the Statutes of 2016 either were (1) a contract with a facility operator that was, on June 1, 2022, in a bankruptcy or other insolvency proceeding, or (2) a contract for a project that does not deliver energy to the utility.
- Sub-division (j): States that any new contracts for existing bioenergy resources or contract extensions of five years or longer must be from a resource that meets emission limits equivalent to, or more stringent than, the applicable best available retrofit control technology, as determined by the local air pollution control district or air quality management district.

Key provision 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 contracts that are operative at any time in 2022, and expire on or before December 31, 2028, to seek to amend those contracts or seek new contracts that include an expiration five years later than the expiration date so long as the contract extensions follow the feedstock requirements of subdivision (b) of Section 399.20.3, and the facilities are not located in federal severe or extreme nonattainment areas for particulate matter or ozone.

DISCUSSION

This Resolution implements key provisions of SB 1109, which requires the investor-owned utilities (IOUs) to collectively procure their proportionate share of 125 megawatts (MW) of cumulative rated generating capacity, through financial commitments of 5 to 15 years, from existing eligible bioenergy facilities that source at least 80 percent of their feedstock from byproducts of sustainable forest management and at least 60 percent of their feedstock from

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Tier 1 and Tier 2 high hazard zones (HHZ), on an annual basis. Eligible bioenergy resources must meet emissions limits equivalent to, or more stringent than the applicable best available retrofit control technology when the new operating period begins, as determined by the local air pollution control district or air quality management district.

Finally, this Resolution also implements the amended Pub. Util. Code § 8388, which requires, in part, the IOUs, and CCAs with BioRAM contracts to amend their existing contracts or execute new contracts to include an extension of five years so long as the eligible biomass facilities are not located in federal severe or extreme nonattainment areas for particulate matter or ozone.

Part 1: Five-to-Fifteen Year Contract Procurement Requirement

Amended Pub. Util. Code § 399.20.3 (b)(1) states:

In addition to the requirements of subdivision (f) of Section 399.20, by December 1, 2023, electrical corporations shall collectively procure, through financial commitments of 5 to 15 years, inclusive, their proportionate share of 125 megawatts of cumulative rated generating capacity from existing bioenergy projects that commenced operations before 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.

As noted above, the CPUC directed the IOUs⁸ to procure their proportional share of 125 MW of capacity from existing bioenergy projects in Resolution E-4805. The shares were determined based on their respective shares of peak, coincident demand resulting in the MW allocations in Table 1.

⁸ The Commission declined to require the small IOUs to procure pursuant to BioRAM program.

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**Table 1: MW Allocations for Electrical Corporations and Publicly Owned Utilities
Adopted in Resolution E-4805**

Entity	Allocation of MWs
PG&E	43
SCE	44
SDG&E	9
POUs with 100,000 or more customers	29
Total	125

The proportional shares were to be procured by December 1, 2016. In total, the IOUs procured 153 MW pursuant to Resolution E-4805.⁹ In addition, many of the executed contracts were amended and/or extended pursuant to Resolution E-4977.

SB 1109 extends the 125 MW procurement requirement such that by December 1, 2023 the IOUs shall be financially committed to active contracts of 5 to 15 years in length of their proportional share. To be consistent with previous CPUC BioRAM orders, IOUs are authorized to procure their allocated MW share included in Table 1. The procurement may be: 1) a BioRAM contract executed pursuant to E-4770, E-4805, or E-4977 with a financial commitment extending beyond December 1, 2023; 2) a new BioRAM contract via solicitations or bilateral contracting, or 3) an amended biomass contract that has most recent BioRAM terms and a term of 5 to 15 years in length. Any new contract or contract amendment pursuant to Part 1 must meet the requirements set in Part 3 of this Resolution.

In addition, SB 1109 adds Pub. Util. Code § 399.20.3 (b)(2):

Paragraph (1) shall not apply to a utility subject to subdivision (g) if both of the following apply:

(A) The utility, either directly or through a joint powers authority, entered into five-year financial commitments for its proportionate share of 125 megawatts of cumulative rated generating capacity from existing bioenergy projects pursuant to this section as it was enacted by Chapter 368 of the Statutes of 2016.

(B) The utility's financial commitments referenced in subparagraph (A) include,

⁹ 2017 RPS Annual Report to the Legislature

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(1) a contract with a facility operator that was, on June 1, 2022, in a bankruptcy or other insolvency proceeding, or (2) a contract for a project that does not deliver energy to the utility.

As noted above, procurement pursuant to BioRAM was previously conducted by IOUs and a share of the 125 MW was to be procured by local publicly owned utilities (POUs) pursuant to Senate Bill 859 which was enacted by Chapter 368 of the Statutes of 2016. SB 1109 adds Pub. Util. Code § 399.20.3 (b)(2) which provides that a utility may be exempt from the procurement order extension of Pub. Util. Code § 399.20.3 (b)(1) if it previously procured pursuant to SB 859 and meets the conditions of Pub. Util. Code § 399.20.3 (b)(2)(B).

Part 2: Five-to-Fifteen Year Contract Extension

Amended 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 Section 399.20.3, commission Resolution E-4770 (March 17, 2016), or commission Resolution E-4805 (October 13, 2016), and expires or expired on or before December 31, 2028, 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 2022, 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 amend existing contracts and extend contract term lengths by a minimum of five years. Eligible sellers are all counterparties to BioRAM contracts that were operative at any time in 2022 and expire or expired on or before December 31, 2028, except for sellers that operate facilities located in federal severe or extreme nonattainment areas for particulate matter or ozone. 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 Tier 1 and Tier 2 HHZs and not from lands that have been clear cut, and at least 60 percent of the feedstock must come

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from Tier 1 and Tier 2 HHZs.

In order to comply with this section, the IOUs must offer contract extensions or procure new contracts to eligible sellers, for a minimum of five years. 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.

We note that Pub. Util. Code § 8388 also includes small IOUs, CCAs, and POUs.¹⁰ In Resolutions E-4805 and E-4977, the Commission declined to require the small IOUs to procure pursuant to BioRAM program and found that SB 859 and SB 901 did not provide procurement direction for direct access providers. CCAs were authorized to contract with BioRAM eligible facilities in Resolution E-4977, but none of the CCAs or facilities pursued this option. Thus, neither the small IOUs nor CCAs have any BioRAM contracts that were operational in 2022. These smaller electricity providers, however, shall integrate biomass facilities that use forest fuels from HHZs into their energy portfolio and may have biomass contracts with eligible sellers. The Commission will coordinate with the California Energy Commission and the state's Wildfire and Forest Resilience Task Force to stay informed of their SB 1109 implementation progress.

Part 3: Best Available Retrofit Control Technology

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

For purposes of this section, any incremental procurement of electricity products from bioenergy resources by a new contract or contract extension of five years or longer in duration shall be from a resource that meets emission limits equivalent to, or more stringent than, the applicable best available retrofit control technology, as determined by the local air pollution control district or air quality management district. The determination shall be made before the start of the operating period under the new contract or contract extension.

¹⁰ This Commission does not have regulatory and procurement oversight over the POUs.

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Accordingly, IOUs procurement pursuant to requirements in Part 1 of this Resolution shall only be with from facilities that meet emission limits equivalent to, or more stringent than, the applicable best available retrofit control technology. SB 1109 does not provide numeric amounts for the emission limits or a definition for "best available retrofit control technology". For the purpose of implementing this eligibility requirement, the local air pollution control district or air quality management district established definition of "best available retrofit control technology" shall be used. In the case where there is no established definition, we adopt and incorporate the definition of "best available retrofit control technology" from Section 40406 of the Health Safety Code.

Section 40406 of the California Health Safety Code does include a definition which states:

As used in this chapter, "best available retrofit control technology" means an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source.

Pursuant to D.18-12-003, the Commission has been receiving reports of BioRAM facility non-compliance with applicable air quality district requirements and permit conditions. In order to improve the compliance of sellers with air quality district requirements, IOUs and other load serving entities (LSEs) seeking to contract with BioRAM facilities, prior to the start of the operation period of the new contract, should collect and summarize information regarding the compliance of each seller's facility with air quality district requirements, the number of instances of non-compliance during prior operation, and information regarding the current emissions limits of the facility in regards to the best available retrofit control technology as determined by the applicable local air pollution control district or air quality management district in which the facility is permitted. This compliance information should be for a minimum of 5 years and represent a good faith effort by the LSE to obtain and provide such information. In the case that the last contract period was less than 5 years the minimum applies, if it was greater than five years a longer period applies. This determination must clearly state whether the current facility emission limits are equivalent to or more stringent than, the applicable best available retrofit control technology. In cases where the seller facility emissions limits do not meet this requirement, the filing must include the steps taken by the seller to meet this requirement before the start of the operating period of the new contract. Upon review of the attestations and supporting documentation, the Director of Energy Division may approve the IOUs' contracts with the sellers as noted elsewhere in this Resolution.

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Implementation

The procurement directed in Part 1 of this Resolution must be executed by December 1, 2023. The IOUs shall request CPUC approval of executed or amended contracts via Advice Letter. For any incremental procurement by new contract or extension of five years but not to exceed fifteen years, the IOU shall show that the contracted facility's emissions are equivalent to or below the best available retrofit control technology, as determined by the applicable air pollution control district or air quality management district before the start of the operation period of the new contract. If the executed or amended BioRAM contract does not modify the standard BioRAM contract, and the contract price meets the per se reasonableness benchmark (see below), the IOU may request CPUC approval via a Tier 2 Advice Letter. If an IOU claims to meet the conditions of Section 399.20.3(b)(2) or to have already be meeting its proportional share, it shall file within 60 days of this Resolution's effective date a Tier 2 Advice Letter showing how it meets the conditions or procurement allocation identified in Part 1 of this Resolution.

For new contracts, contract amendments, and contract extensions authorized in Part 2 of this Resolution, IOUs shall file Tier 2 Advice Letters within 60 days of this Resolution which contain: a list of contracted and previously contracted BioRAM facilities that contains facilities' information (name, city location, and size (MW)) and contract end date as well as whether the facility is located in a federal severe or extreme nonattainment area for particulate matter or ozone.

Tier 2 Advice Letters must also contain a showing that the IOU has contacted all their contracted BioRAM facilities with contracts that were operative at any time in 2022, and expire or expired on or before December 31, 2028, so long as those facilities are not located in federal severe or extreme nonattainment areas for particulate matter or ozone.

Furthermore, if the IOU and the eligible seller do not wish to execute contract amendments or new contracts with an extended term length and the required fuel and feedstock requirements or do not agree on terms, then the Tier 2 advice letter shall include supporting documentation to show that all reasonable efforts were made by the IOU including an Independent Evaluator report on the negotiations with an attestation to those facts. For executed new contracts, contract amendments, and contract extensions authorized in Part 2 of this Resolution, PG&E, SCE and SDG&E shall each request CPUC approval via Advice Letter(s). The Advice Letter shall include a showing that includes a)

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summary of the facility's compliance with air quality district requirements within the prior contract term; b) current end date of existing Power Purchase Agreement (PPAs) with seller; and c) whether or not the facility is located in a federal severe or extreme nonattainment area for particulate matter or ozone.

If an agreement extending the contract term length or executing a new contract is not reached between the IOU and an eligible seller within 180 days of the effective date of this Resolution, the IOU must file a separate Tier 2 Advice Letter no later than 210 days showing compliance with Part 2 of this Resolution.

This Resolution maintains the per se reasonableness benchmark for BioRAM contracts as established in E-4977 for all executed and amended contracts authorized by this Resolution. As with previous BioRAM program and biomass contract extensions, the goal is to prevent protracted contract negotiations and contain costs by removing incentives to hold out for a higher price. The reasonableness benchmark is based on current BioRAM contract price if there is an existing contract or the weighted average of prices for existing BioRAM contracts and their extensions which is \$113/MWh¹¹. A Tier 3 Advice Letter must be filed if contract prices are executed above the per se reasonableness benchmark. Any procurement expenses incurred pursuant to this Resolution shall be collectible through the Tree Mortality non-bypassable charge.

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 and CCAs to amend certain BioRAM or procure new contracts for five to fifteen years. It implements the biomass provisions of SB 1109, which in part addresses biomass energy as a means to remove hazardous forest materials.

Additionally, BioRAM 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

¹¹ 2023 Padilla Report, Costs and Cost Savings for the RPS Program, p.18

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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.

Aside from Air District records, any facility relevant Occupational Safety and Health Administration (OSHA) or Water District reportable incidents, citations or violations should also be provided. Those aforementioned records should be provided for the last 5 years or more based on a good faith effort.

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. Any comments are due within 20 days of the date of its mailing and publication on the Commission's website and in accordance with any instructions accompanying the notice. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on September 8, 2023.

Comments were filed in a timely fashion on September 28, 2023, by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), California Biomass Energy Alliance (CBEA), and Green Power Institute (GPI).

The objective and timing of this Resolution is directed to implement specific provisions of SB 1109. 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.

Eligibility for Contract Extensions (non-BioRAM contracts)

PG&E¹² and CBEA¹³ both assert that the Draft Resolution incorrectly interpreted Pub. Util. Code § 8388 to include other biomass contracts that were operative at any time in 2022 and

¹² PG&E comments at 2

¹³ CBEA comments at 3

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expire on or before December 31, 2028. Section 8388 was amended and does not include any non-BioRAM contracts. Other biomass contracts that were operative at any time in 2022 and expire on or before December 31, 2028 are not eligible for an extension. The Resolution is amended such that only BioRAM contracts are eligible for a contract extension pursuant to Part 2.

Default Pricing

CBEA asserts that this Resolution does not address the default price for sellers who do not meet the BioRAM HHZ feedstock requirements pursuant to SB 901 and established in Res. E-4805 and E-4977, currently set at \$89.23/MWh. CBEA's comments argue that the current default price is no longer reasonable given inflationary pressures and conclude that some facilities may decline a contract extension if this price is not increased to \$103.55/MWh based on a 1.5 percent escalation for ten years, given the stated objective of SB 1109 is to keep BioRAM facilities in operation. We disagree with CBEA's assertion regarding the objective of SB 1109 and refer to the original intent of the BioRAM program to utilize biomass fuel sourced from High Hazard Zones as feedstock in response to increased tree mortality in California. Sellers with facilities enrolled in this program are strongly encouraged to use HHZ fuel, therefore the default price will not be changed, and this Resolution is not amended for this purpose.

FINDINGS

1. SB 1109 extends the 125 megawatt procurement requirement for generation from eligible BioRAM facilities to December 1, 2023.
2. Resolution E-4805 previously determined each investor-owned utilities respective share of the 125 MW of capacity from existing bioenergy projects ordered in Senate Bill 859 (2016).
3. To be consistent with previous CPUC BioRAM orders, the CPUC should authorize Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric to procure their allocated MW share included Table 1 of this Resolution via solicitations or bilaterally from biomass facilities that commenced operation prior to June 1, 2013 and should request CPUC approval of executed contracts via Advice Letter.
4. A utility which previously procured pursuant to SB 859 should be exempt from the

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procurement order extension of SB 1109 if the conditions of Pub. Util. Code § 399.20.3 (b)(2)(B) are met.

5. SB 1109 requires extension or new contracts from eligible BioRAM contracts if facilities meet certain criteria.
6. Sellers that should be eligible for new BioRAM contracts and extensions to BioRAM contracts are all counterparties to BioRAM contracts which were operative at any time in 2022 and the contract expires or expired on or before December 31, 2028.
7. Sellers that operate facilities with emissions limits that are not equivalent to or more stringent than, the applicable best available retrofit control technology, as determined by the local air pollution control district or air quality management district in which they are permitted, are not eligible for contract amendments or new contracts described in Part 1 of this Resolution.
8. It is reasonable to adopt the definition of "best available retrofit control technology" from Section 40406 of the Health Safety Code, unless the local air pollution control district or air quality management district has an adopted definition.
9. Sellers that operate facilities located in federal severe or extreme nonattainment areas for particulate matter and ozone are not eligible for the contract extensions or new contracts described in Part 2 of this Resolution pursuant to Section 8388 of the Public Utilities Code.
10. New or amended contracts executed pursuant to this Resolution that extend the contract term length must follow the feedstock requirements consistent with Pub. Util. Code § 399.20.3(b) which are that 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 Tier 1 and Tier 2 HHZs and not from lands that have been clear cut, and at least 60 percent of the feedstock must come from Tier 1 and Tier 2 HHZs.
11. The Commission should authorize the IOUs to extend their existing BioRAM contracts for five years or more, provided they meet the requirements set in this Resolution.

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12. The Commission should authorize the IOUs and sellers to execute incremental BioRAM capacity pursuant to Part 1 of this Resolution and Section 399.20.3 on the condition that facility emissions meet or are below the emissions limit based on the best available retrofit control technology at the time of operation under the new contract as determined by the local air control board or air quality management district in which the seller is permitted.
13. Extensions of BioRAM contracts pursuant to Part 2 of this Resolution and Section 8388 must not be located in federal sever or extreme nonattainment areas for particulate matter or ozone and are not subject to the requirements of best available retrofit control technology.
14. It is reasonable that the IOUs verify that the contracted facilities have emissions limits equivalent to, or more stringent than the best available retrofit control technology, as determined by the local air control district or air quality management district and provide information about their verification processes and findings to the Director of the Energy Division on request.
15. It may be reasonable that IOUs and sellers agree to not move forward with a contract extension or parties do not agree on terms for a new contract or amendment.
16. 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.
17. 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.
18. 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 a per se reasonableness benchmark for contract prices for new BioRAM contracts executed pursuant to this Resolution should be no higher than \$113/MWh.
19. 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.

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THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are ordered to execute new BioRAM contracts by December 1, 2023, for the capacity (megawatt) amount equal to or above their respective proportional share included in Table 1 of this Resolution. The new contracts shall have term lengths of 5 to 15 years; shall only be executed with facilities that commenced operation prior to June 1, 2013; and will have emissions equivalent to or lower than the applicable best retrofit control technology, as determined by the local air management district, prior to the start of the operating period of new contract. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are ordered to request CPUC approval of the new or amended contracts via Advice Letter.
2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall file a Tier 2 Advice Letter within 30 days of this Resolution's effective date if requesting an extension for Ordering Paragraph 1 of this Resolution.
3. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall file within 60 days of this Resolution's effective date a showing that it meets the conditions of Public Utilities Code §399.20.3(b)(2) via Tier 2 Advice Letter if it claims exemption from Ordering Paragraph 1 of this Resolution.
4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall file within 60 days of this Resolution's effective date a showing that it meets the conditions of Public Utilities Code §399.20.3(b)(1) via Tier 2 Advice Letter if it claims it does not need to execute or amend any contracts to meet Ordering Paragraph 1 of this Resolution.
5. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are ordered to amend existing BioRAM contracts or execute new contracts if the BioRAM contract expires or expired on or before December 31, 2028, the facility was operative in 2022, and the facility is not located in federal severe or extreme nonattainment areas for particulate matter or ozone. The amended or new contract must have an expiration date no five years

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or more later than the expiration date in the current (or most recent) contract and follow the feedstock requirement of subdivision (b) of Section 399.20.3.

6. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company are authorized to use a CPUC approved BioRAM standard contract and any of the procurement methods specified herein to procure capacity ordered by this Resolution.
7. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are ordered to file Tier 1 advice letters within 60 days of this Resolution containing:
 - a. a list of all the IOU's current biomass contracts, as well as any that were operating in 2022 but have since terminated, that contains contracted facility's name, location, and size (megawatts); contract's termination date and whether they are located in a federal severe or extreme nonattainment zone for particulate matter or ozone;
 - b. a showing that the buyer has contacted all their contracted BioRAM facilities; and
 - c. if applicable, an attestation that a buyer and the eligible seller do not wish to execute contracts with an extended term length 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.
8. Pacific Gas and Electric Company, ~~Southern California Edison Company~~, and San Diego Gas & Electric Company are ordered to file Advice Letters requesting approval of contract amendments or new contracts pursuant to Public Utilities Code § 8388 as described in Part 2 of this Resolution that contain:
 - a. Contract amendments with extended term lengths or new contracts with term lengths for a minimum of five years provided they meet the requirements set in this Resolution;
 - b. an explanation for why each amendment or new contract meets the criteria of Public Utilities Code § 8388; and
 - c. information regarding whether the facility is located in a federal extreme or severe nonattainment area for particulate matter or ozone.
9. Pacific Gas and Electric Company, Southern California Edison Company and

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San Diego Gas & Electric Company are ordered to request CPUC approval via Tier 3 Advice Letters instead of a Tier 2 Advice Letters if they execute a new or amended biomass contract pursuant to this Resolution and the price of that contract or amendment 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 an existing BioRAM contract; and
 - b. \$113 per megawatthour if the current contract is not a BioRAM contract.
10. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company are ordered to file a Tier 2 Advice Letter no later than 210 days showing compliance with Part 2 of this Resolution if an agreement(s) extending the contract term length or executing a new contract(s) pursuant to Part 2 of this Resolution is not reached between the IOU and eligible seller(s) within 180 days of the effective date of this Resolution.

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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 October 12, 2023; the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON

Rachel Peterson
Executive Director

ALICE REYNOLDS

President

GENEVIEVE SHIROMA

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

Commissioner Darcie Houck,
being necessarily absent, did not
participate.

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Appendix A

**Text of Senate Bill 1109, Sections 1 and 2 (Additions to
Statute made by SB 1109 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 (6) 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) (1) In addition to the requirements of subdivision (f) of Section 399.20, by December 1, 2023, electrical corporations shall collectively procure, through financial commitments of 5 to 15 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.

(2) Paragraph (1) shall not apply to a utility subject to subdivision (g) if both of the following apply:

(A) The utility, either directly or through a joint powers authority, entered into five-year

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financial commitments for its proportionate share of 125 megawatts of cumulative rated generating capacity from existing bioenergy projects pursuant to this section as it was enacted by Chapter 368 of the Statutes of 2016.

(B) The utility's financial commitments referenced in subparagraph (A) include, (1) a contract with a facility operator that was, on June 1, 2022, in a bankruptcy or other insolvency proceeding, or (2) a contract for a project that does not deliver energy to the utility.

(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 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

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meeting the electrical corporation's proportionate share allocated pursuant to paragraph

(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.

(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 non bypassable 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.

(j) For purposes of this section, any incremental procurement of electricity products from bioenergy resources by a new contract or contract extension of five years or longer in duration shall be from a resource that meets emission limits equivalent to, or more stringent than, the applicable best available retrofit control technology, as determined by the local air pollution control district or air quality management district. The determination shall be made before the start of the operating period under the new contract or contract extension.

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 Section 399.20.3, commission Resolution E-4770 (March 17, 2016), or commission Resolution E-4805 (October 13, 2016), and expires or expired on or before December 31, 2028, 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

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the contract that was operative in 2022, 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