

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



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

R.22-10-010

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**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY COMMENTS ON  
ORDER INSTITUTING RULEMAKING TO IMPLEMENT ASSEMBLY BILL 843 –  
THE BIOENERGY MARKET ADJUSTING TARIFF PROGRAM**

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## SUMMARY OF RECOMMENDATIONS

California Community Choice Association (CalCCA) recommends that the California Public Utilities Commission (Commission):

- Adopt the Order Instituting Rulemaking’s (OIR’s) scoped issues, consistent with Assembly Bill (AB) 843 and the recommendations of CalCCA, the joint investor-owned utilities (Joint IOUs) and the Public Advocates Office (Cal Advocates), that community choice aggregators (CCAs) participating in the Bioenergy Market Adjusting Tariff (BioMAT) program be placed on a level playing field with the IOUs and that any CCA submission in this proceeding be subject to review by the Commission and the public;
  - Reject Cal Advocates’ recommendation to remove from scope the potential extension of the BioMAT program based on its argument that the Commission should not allow re-litigation of its decision to end the BioMAT program on December 31, 2025. The Commission has broad authority to modify its previous decisions pursuant to Public Utilities Code section 1708, and the Commission should consider extending the BioMAT program to December 31, 2030 given the recent addition by AB 843 of CCAs to the program;
  - Adopt the Joint IOUs’ recommendation for one Workshop, provided the Workshop is held in February and additional Workshops can be scheduled if necessary; and
  - Adopt the OIR’s proposed scoped item for the Commission to decide the processes for CCAs to submit BioMAT tariffs and/or contracts to the Commission.
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The California Community Choice Association<sup>1</sup> (CalCCA) submits these Comments in response to the *Order Instituting Rulemaking to Implement Assembly Bill 843 – the Bioenergy Market Adjusting Tariff Program* (OIR), issued October 26, 2022, pursuant to Rule 6.2 of the California Public Utilities Commission’s (Commission’s) Rules of Practice and Procedure, and the directives provided by the OIR.

**I. INTRODUCTION**

Community choice aggregators (CCAs) are focused on establishing a streamlined and collaborative process to ensure expedient implementation of Assembly Bill (AB) 843. Also crucial is the ability of CCAs to participate in the Bioenergy Market Adjusting Tariff (BioMAT) program under the same overall rules and cost recovery processes as the investor-owned utilities (IOUs). CalCCA looks forward to working with all parties to effectively meet these objectives.

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<sup>1</sup> California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Energy For Palmdale’s Independent Choice, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, 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, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

CalCCA specifically responds herein to the Opening Comments of the Joint IOUs and The Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and recommends that the Commission:

- Adopt the OIR’s scoped issues, consistent with AB 843 and the recommendations of CalCCA, the Joint IOUs and Cal Advocates, that CCAs participating in the BioMAT program be placed on a level playing field with IOUs and that any CCA submission in this proceeding be subject to review by the Commission and the public;
- Reject Cal Advocates’ recommendation to remove from scope the potential extension of the BioMAT program based on its argument that the Commission should not allow re-litigation of its decision to end the BioMAT program on December 31, 2025. The Commission has broad authority to modify its previous decisions pursuant to Public Utilities Code section 1708, and the Commission should consider extending the BioMAT program to December 31, 2030 given the recent addition by AB 843 of CCAs to the program;
- Adopt the Joint IOUs’ recommendation for one Workshop, provided the Workshop is held in February and additional Workshops can be scheduled if necessary; and
- Adopt the OIR’s proposed scoped item for the Commission to decide the processes for CCAs to submit BioMAT tariffs and/or contracts to the Commission.

**II. THE JOINT IOUS AND CAL ADVOCATES CORRECTLY STATE THAT THE COMMISSION MUST ENSURE EXISTING BIOMAT RULES AND COMMISSION OVERSIGHT APPLY EQUALLY TO IOUS AND CCAS**

CalCCA agrees with the Joint IOUs and Cal Advocates that CCAs participating in the BioMAT program must be placed on a level playing field with IOUs, and any CCA submission in this proceeding should be subject to review by the Commission and the public.<sup>2</sup> Indeed, AB 843 includes many sections requiring equal treatment of CCAs and IOUs with respect to Commission oversight and CCA BioMAT contracting. For example, AB 843 requires CCAs to base their tariffs and contract on the IOU’s approved tariffs and contracts, without modification.<sup>3</sup> AB 843 also provides the Commission with “ongoing review authority over any contracts of

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<sup>2</sup> Joint IOU Opening Comments at 2-3; Cal Advocates’ Opening Comments at 3-4.

<sup>3</sup> Public Utilities Code § 399.20(f)(5)(B).

[CCAs] submitted pursuant to this section consistent with its review of the contracts of electrical corporations entered into pursuant to this section.”<sup>4</sup> In short, the CCAs are not looking to “reinvent the wheel” or to receive any special treatment – rather, the CCAs look forward to a collaborative, streamlined process to allow CCAs to begin contracting with BioMAT projects under the same rules as the IOUs as soon as possible.

**III. CAL ADVOCATES’ ARGUMENT TO EXCLUDE FROM SCOPE THE POTENTIAL EXTENSION OF THE BIOMAT PROGRAM GIVEN DECISION (D.) 20-08-043’S ESTABLISHMENT OF A 2025 END DATE IGNORES THE COMMISSION’S AUTHORITY TO MODIFY ITS OWN DECISIONS**

The Commission should reject Cal Advocates’ argument to exclude from scope the potential extension of the BioMAT program which Cal Advocates states unnecessarily constitute “relitigation of recent revisions to the program.”<sup>5</sup> Cal Advocates states:

[t]he Commission already considered and extended the BioMAT program in D.20-08-043. Had the Legislature intended a CCA’s participation to require program extension, it would have done so; AB 843 did not extend the program so there is no need to relitigate this issue here.”<sup>6</sup>

While Cal Advocates is correct that AB 843 does not specifically address the extension of the program, the Commission has broad discretion pursuant to Public Utilities Code section 1708 to modify its own decisions.<sup>7</sup> To the extent the Commission decides that extending the BioMAT proceeding is appropriate, it has the authority to do so pursuant to section 1708. Cal Advocates argues that the Commission’s recent extension of the program to December 31, 2025 renders unnecessary extending it again. However, the Commission should determine whether the program should be extended, especially given the legislative direction to add CCAs as procuring

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<sup>4</sup> *Id.* § 399.20(f)(5)(K).

<sup>5</sup> Cal Advocates Opening Comments at 1.

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> Pub. Util. Code § 1708 provides that “[t]he Commission may at any time . . . rescind, alter, or amend any order or decision made by it.”

entities under the program. Accordingly, extending the BioMAT end date should remain in scope for the Commission's consideration.<sup>8</sup>

**IV. THE JOINT IOUS' RECOMMENDATION FOR ONE WORKSHOP SHOULD BE ADOPTED, PROVIDED THE WORKSHOP IS HELD IN FEBRUARY AND ADDITIONAL WORKSHOPS CAN BE SCHEDULED IF NECESSARY**

The recommendation of the Joint IOUs that a Workshop be held after the Prehearing Conference and issuance of the Scoping Memo and Ruling should be adopted.<sup>9</sup> However, the Commission should order the Workshop to be held in February 2023 (after the Prehearing Conference and the Scoping Memo being issued in January/February) instead of April 2023 (as recommended by the Joint IOUs). This schedule will allow for additional Workshops, if necessary, prior to the Proposed Decision being issued in Q3 2023, as set forth in the OIR.<sup>10</sup> CalCCA suggested in its Opening Comments that three Workshops may be necessary to address the various issues within scope. However, after discussing the Workshop schedule and proposed agenda with PG&E on behalf of the Joint IOUs, CalCCA agrees that beginning with one workshop is prudent, while leaving time for additional Workshops if necessary.

The Joint IOUs recommend a "BioMAT 101" format for the Workshop, to attain mutual understanding of how the BioMAT program functions to inform how CCA-based BioMAT procurement should be structured.<sup>11</sup> CalCCA recommends the following agenda for the first

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<sup>8</sup> Similarly, the Commission should reject Cal Advocates argument to exclude from scope considerations regarding the application of BioMAT pricing to CCAs. Cal Advocates states the "[t]his issue should not be included in the scope because AB 843 does not change the BioMAT pricing methodology." Cal Advocates Opening Comments at 2. Cal Advocates states that the Commission has already fulfilled its obligation to establish a BioMAT pricing methodology and therefore CCAs must be subject to that methodology. However, the Commission's obligation set forth in Public Utilities Code section 399.20 regarding BioMAT pricing is ongoing, and the Commission has the authority to modify and update its previous determinations on BioMAT pricing related to both CCAs and IOUs.

<sup>9</sup> See Joint IOU Opening Comments at 4.

<sup>10</sup> OIR at 7.

<sup>11</sup> Joint IOU Opening Comments at 4.

Workshop (and as stated above recommends additional Workshops if all of the items below cannot be addressed in the first Workshop):

1. BioMAT 101
  - a. Tariffs
  - b. Queue/tracking/program participation requests
  - c. Contracting
    - i. Pricing
  - d. Contract administration
  - e. Commission oversight
    - i. Contract approval
    - ii. Ongoing contract administration oversight
    - iii. Cost recovery to ensure just and reasonable rates
  - f. Programmatic improvement suggestions based on experience running BioMAT
2. Ideas for Incorporating CCAs into above aspects of BioMAT program
  - a. CCA Contracts
  - b. IOU queues/tracking/program participation requests
  - c. Commission oversight of CCA BioMAT contracts
    - i. Processes for
      - i. Contract approval
      - ii. Ongoing contract administration oversight
      - iii. CCA Cost recovery to ensure just and reasonable rates

**V. THE OIR PROPERLY PLACES WITHIN SCOPE THE PROCESSES FOR CCAS TO SUBMIT BIOMAT TARIFFS AND CONTRACTS TO THE COMMISSION**

CalCCA agrees with Cal Advocates that the process for CCA BioMAT filings must be designated by the Commission.<sup>12</sup> Depending on the documents being filed (*i.e.*, standard contracts, tariffs, etc.), the Commission will need to determine the appropriate processes to

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<sup>12</sup> Cal Advocates Opening Comments at 3-4.



ensure compliance with AB 843, Commission rules, and the due process rights of the public to review such filings.<sup>13</sup> As such, the OIR properly places within scope Commission determination of such processes.

## VI. CONCLUSION

For all the foregoing reasons, CalCCA requests the adoption of the recommendations set forth herein.

Respectfully submitted,

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CALIFORNIA COMMUNITY CHOICE  
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December 13, 2022

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<sup>13</sup> While Cal Advocates includes in its Opening Comments its legal argument as to why CCAs are not permitted by Commission rules to file Tier 1-3 Advice Letters, the Commission has required in several proceedings that CCAs submit such Advice Letters. For example, D. 22-07-008 (July 14, 2022) requires that CCAs wishing to obtain IOU data for Power Charge Indifference Adjustment (PCIA) forecasting purposes file a Tier 2 Advice Letter. In the Disadvantaged Communities Green Tariff/Community Solar Green Tariff context, the Commission requires CCAs to file Advice Letters for different approvals, including but not limited to: (1) a Tier 3 Advice Letter to propose an implementation plan (D.18-06-027, Ordering Paragraph 17, at 104 (June 22, 2028)); (2) a Tier 2 Advice Letter for approval of solicitation documents (Resolution E-5102 (Nov. 5, 2020)); (3) a Tier 2 Advice Letter for approval of a power purchase agreement (Resolution E-5102); and (4) a Tier 2 Advice Letter to implement program eligibility changes (Resolution E-5212, Ordering Paragraph 4 (Oct. 6, 2022)).