



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

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

R.22-10-010

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S REPLY COMMENTS ON
ADMINISTRATIVE LAW JUDGE’S RULING REQUESTING PARTY COMMENTS
ON WORKSHOP QUESTIONS AND MODIFYING PROCEDURAL SCHEDULE**

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SUMMARY OF RECOMMENDATIONS

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

- Reject the proposals of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the Joint Investor-Owned Utilities (IOUs)) to allocate available Bioenergy Market Adjusting Tariff (BioMAT) program capacity based on community choice aggregator (CCA) load share, and to have the CCAs manage their own queues. Instead, the full BioMAT capacity allocations for each BioMAT period should remain available to both the IOUs and CCAs, and CCAs operating within the IOU territory should submit their projects to the IOU queue;
- Adopt the Joint IOUs' alternative proposal to have an independent third party manage the IOU/CCA queue in each IOU service territory through the Accion platform, with costs for the independent third party and Accion recovered by IOUs and CCAs through the public purpose program (PPP) charge;
- Reject The Public Advocates Office at the California Public Utilities Commission's (Cal Advocates') request to require all CCA BioMAT related filings to be submitted in the Renewables Portfolio Standard (RPS) proceeding, and instead apply the same filing rules to CCAs as is required of IOUs;
- Reject the Joint IOUs' statement that Commission BioMAT oversight of CCAs is needed because the CCAs lack any incentive to prevent disallowances. The CCAs have every incentive to prevent mismanagement of their contracts and subsequent disallowances;
- Reject the Joint IOUs' argument that CCAs not be permitted to recover CCA administrative and systems costs for their BioMAT power purchase agreements (PPAs);
- Adopt the Joint IOUs' proposal that CCA program administrators file quarterly reports instead of advice letters to report new BioMAT PPAs to the Commission; and
- Allow all load serving entities to at a minimum receive their load share equivalent credit for BioMAT resources for mid-term reliability and Integrated Resource Planning requirements.

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California Community Choice Association¹ (CalCCA) submits these reply comments in response to the *Administrative Law Judge’s Ruling Requesting Party Comments on Workshop Questions and Modifying Procedural Schedule*² (Ruling), dated May 25, 2023, seeking party comments on questions arising from the April 28, 2023, workshop to discuss implementation of Assembly Bill (AB) 843 (Stats. 2021, Ch. 234).

I. INTRODUCTION

CalCCA appreciates the opportunity to reply to party Opening Comments on the Ruling. As CalCCA noted in its Opening Comments, community choice aggregators (CCAs) seek to not “reinvent the wheel” through the California Public Utilities Commission (Commission’s)

¹ 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 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.

² *Administrative Law Judge’s Ruling Requesting Party Comments On Workshop Questions and Modifying Procedural Schedule*, Rulemaking (R.) 22-10-010 (May 25, 2023): <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M509/K544/509544258.PDF>.

implementation of AB 843.³ The CCAs also seek to be incorporated into the Bioenergy Market Adjusting Tariff (BioMAT) program with equivalent rules and oversight as is currently applied to the investor-owned utilities (IOUs), with minimal changes to the existing program.⁴

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDGE) (collectively, the Joint IOUs) and The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) are adamant that the program should not be overhauled to incorporate CCAs, and that CCAs should be subject to the same rules as the IOUs. However, in their Opening Comments, the Joint IOUs and Cal Advocates seek additional changes to the program to suit their needs to the detriment of the CCAs. Specifically, the Joint IOUs seek to carve out capacity allocations for CCAs based on load share and require CCAs to manage their own queues separate from the IOUs, which will unnecessarily limit the potential contracting opportunities in the BioMAT program. Cal Advocates seeks to have all CCA BioMAT submissions filed in the Renewables Portfolio Standard (RPS) proceeding, in a methodology different than what is required of the IOUs.

Instead of placing additional restrictions on CCAs, the Commission should instead focus on incorporating the CCAs into the current BioMAT program, including applying the same rules established for the IOUs to CCAs, and all in a streamlined manner. CalCCA therefore recommends that the Commission:

- Reject the Joint IOUs' proposals to allocate available BioMAT program capacity based on CCA load share, and to have the CCAs manage their own queues. Instead, the full BioMAT capacity allocations for each BioMAT period should remain available to both the IOUs and CCAs, and CCAs operating within the IOU territory should submit their projects to the IOU queue;
- Adopt the Joint IOUs' alternative proposal to have an independent third party manage the combined IOU/CCA queue in each IOU service territory through the

³ CalCCA Opening Comments at 2; Public Utilities Code § 366.20.

⁴ CalCCA Opening Comments at 2.

Accion platform, with costs for the independent third party and Accion recovered by IOUs and CCAs through the public purpose program (PPP) charge;

- Reject Cal Advocates' request to require all CCA BioMAT related filings to be submitted in the RPS proceeding, and instead apply the same filing rules to CCAs as is required of IOUs;
- Reject the Joint IOUs' statement that Commission BioMAT oversight of CCAs is needed because the CCAs lack any incentive to prevent disallowances. The CCAs have every incentive to prevent mismanagement of their contracts and subsequent disallowances;
- Reject the Joint IOUs' argument that CCAs not be permitted to recover CCA administrative and systems costs for their BioMAT Power Purchase Agreements (PPAs);
- Adopt the Joint IOUs' proposal that CCA program administrators file quarterly reports instead of advice letters to report new BioMAT PPAs to the Commission; and
- Allow all load serving entities (LSEs) to at a minimum receive their load share equivalent credit for BioMAT resources for mid-term reliability (MTR) and Integrated Resource Planning (IRP) requirements.

II. THE COMMISSION SHOULD REJECT THE JOINT IOUS' PROPOSALS TO ALLOCATE AVAILABLE BIOMAT PROGRAM CAPACITY BASED ON CCA LOAD SHARE AND TO HAVE CCAS MANAGE THEIR OWN QUEUES

The Commission should reject the recommendation by the Joint IOUs that each CCA be allocated a program procurement target equal to that CCA's share of the load in the IOU's respective service area.⁵ The Commission should also reject the Joint IOU proposal for each CCA to then manage its own BioMAT queue through its own Accion BioMAT program website.⁶ CalCCA acknowledges the change to the program by including CCAs, given that a BioMAT project can be located in both an IOU's electric service territory and a CCA's service area, and can therefore applications for a project can be submitted to either entity.⁷ However, the

⁵ See Joint IOU Opening Comments at 6.

⁶ See *id.* at 5.

⁷ See *id.* at 5-6.

Joint IOUs concerns regarding a potential “conflict of interest” or confidentiality are misguided and can be managed through tariff rules and the Accion platform.

First, the Joint IOUs’ recommendation that CCAs be allocated a program procurement target equal to that CCA’s share of the load in the IOU’s respective service area should be rejected. The Joint IOUs’ proposal would hamstring the CCAs’ ability to contract for the substantial remaining capacity (202.5 MW out of the total 250 MW capacity allocation) in the BioMAT program for which the IOUs have failed to contract over the past nine years. For example, based on our estimate, one of the smaller CCAs with a relatively small load share in PG&E’s service territory would be eligible to contract for less than 1 MW of contracts total despite that CCA having access to contract with several BioMAT projects. Given the IOUs failure to contract for the bulk of the BioMAT program capacity allocation, limiting the CCAs’ ability to contract with BioMAT projects is contrary to the goals of the program to “promote competition for entrants to the bioenergy market....”⁸

Instead, the Commission should adopt CalCCA’s proposal (as set forth in CalCCA’s Opening Comments) to retain the existing IOU queues, and to establish systems to ensure confidentiality of IOU and CCA project program participation requests (PPRs). CalCCA proposes that these systems be established through the Accion platform, which can ensure project applicants within an IOU’s service territory have access to both IOU and CCA platform sites to submit PPRs. Accion can establish one website to which both the IOU and CCA websites can link, and the main page can have a dropdown option with all LSEs within the IOU’s service territory (including the IOU and any participating CCAs). The applicant can choose the LSE for

⁸ *Order Instituting Rulemaking to Implement Assembly Bill 843 – the Bioenergy Market Adjusting Tariff Program*, R.22-10-010 (Oct. 26, 2022), at 3: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M509/K544/509544258.PDF>.

which it seeks to contract, which will direct the applicant to that LSE's specific Accion page.

Any submissions to that page will be firewalled off from the other LSEs (including the IOU) to maintain confidentiality of submissions.

III. THE JOINT IOUS' ALTERNATIVE PROPOSAL TO HAVE AN INDEPENDENT THIRD PARTY MANAGE THE QUEUE IN EACH IOU SERVICE TERRITORY SHOULD BE ADOPTED

The Joint IOUs propose as an alternative to allocating capacity to CCAs and CCAs managing their own queues, in which an independent third party will manage the overall queue in each IOU service territory. While CalCCA proposed a methodology in its Opening Comments to have the IOUs manage the queues in their service territories, CalCCA recommends that the Commission adopt the Joint IOUs' proposal to have an independent third party manage the queue. CalCCA agrees with the Joint IOUs that an independent third party can manage the queue, notifying the IOU or CCA that it can award contracts based on queue order in each period until the capacity targets for that period are exhausted. CalCCA recommends, however, that both the IOUs and participating CCAs retain authority to review and approve PPAs as complete. In other words, the independent third party will receive notification from an IOU or CCA that a PPR is complete and immediately place that project in the queue. The independent third party then only has the authority to notify the IOU or CCAs during a particular period that their applicant can be offered a PPA according to the rules in the tariffs (which as CalCCA proposed should be substantially identical for IOUs and CCAs (only changed for procedural reasons to enable incorporating CCAs)). Finally, CalCCA agrees with the Joint IOUs that all costs for the Accion system and the independent third party should be approved by the Commission and recovered through the IOU Public Purpose Program Adjustment Mechanisms.⁹

⁹ Joint IOU Opening Comments at 6.

IV. CAL ADVOCATES' REQUEST TO REQUIRE ALL CCA BIOMAT RELATED FILINGS TO BE SUBMITTED IN THE RPS PROCEEDING SHOULD BE REJECTED

Cal Advocates' proposal that the CCAs file their tariff, standard PPAs, and "all other required BioMAT filings" in the Commission's RPS proceeding is misplaced and contradictory to its argument that CCAs be "subject . . . to the same rules and requirements that govern the [IOUs]." ¹⁰ Instead, all filings necessary to implement AB 843 (including any CCA pro forma tariffs, PPAs, and ancillary documents) should be submitted in this rulemaking, while ongoing filings should be submitted either by Advice Letter or Application as determined by the Commission, with service to the RPS service list as is required of the IOUs.

First, Cal Advocates seeks to have one proceeding (the RPS proceeding) in which BioMAT issues are considered "holistically," to prevent the Commission and stakeholders from having to address each individual CCA filing in separate proceedings. ¹¹ The Commission can then issue a "single decision or fewer decisions disposing of numerous related CCA filings rather than having to issue separate dispositions for numerous individual filings." ¹² Cal Advocates' proposal misses the mark. By assuming that the CCA filings need to be "filed" in the actual RPS proceeding, Cal Advocates is requesting a procedure that departs from the current procedure required of the IOUs. As set forth in CalCCA's Opening Comments, the IOUs file for cost recovery through their Energy Resource Recovery Account (ERRA) Forecast Applications, and for a finding of prudent contract management in the ERRA Compliance Applications. CalCCA and the Joint IOUs have aligned on a streamlined process for CCA cost recovery through Tier 3 Advice Letters that will allow the IOUs to fold the Commission approved CCA cost

¹⁰ Cal Advocates Opening Comments at 1.

¹¹ *Id.* at 4.

¹² *Id.*

recovery/true-ups into their ERRA Forecast Applications. CalCCA and the Joint IOUs have similarly aligned on each individual CCA filing a Rule 2 Application for Commission review of BioMAT contract administration. Each CCA participating in BioMAT are separate entities, with separate BioMAT contracts, balancing accounts, workpapers, and staff for contract management. Consolidating the CCA BioMAT cost recovery or contract oversight will be like consolidating all three IOUs cost recovery/contract oversight into one filing. While Cal Advocates may be trying to simplify these processes by having the filings in the RPS proceeding, diverging from the current processes applicable to the IOUs, or from the process agreed upon by CalCCA and the Joint IOUs for CCA BioMAT participation, is inconsistent with the IOU processes and not workable. In addition, like the IOUs, the CCAs will send any filings related to the BioMAT program to the RPS service list, and therefore all BioMAT stakeholders will receive adequate notice of such filings.

In addition, Cal Advocates requests that the Commission order the CCAs to (1) file and serve a “notice of intent” to participate in the BioMAT program in this and the RPS proceedings 30 days after the issuance of the final decision, and (2) file their proposed tariffs and standard PPAS in the RPS proceeding 90 days after issuance of the final decision. Cal Advocates argues that this requirement will be consistent with the deadlines set in Decision (D.) 20-08-043 for the IOUs in the RPS proceeding to file revisions to their existing BioMAT documents. Cal Advocates therefore implies that the failure of a CCA to file the notice of intent and tariff/PPA within those deadlines will prevent a CCA from participating in the BioMAT program. What Cal Advocates fails to mention, however, is that the legislature required the IOUs to file tariffs to offer BioMAT contracts (“[e]very electrical corporation shall file the commission a standard

tariff for electricity purchased from [a bioenergy electric generation facility]”),¹³ while it explicitly allows CCAs to participate if they so choose (“[a] [CCA] may submit eligible bioenergy projects to the commission for cost recovery if open capacity exists . . . and the [CCA] submits an eligible tariff to the Commission. . . .”).¹⁴ The Commission should not set a deadline for individual CCAs to participate in the BioMAT program – instead, the Commission should approve the pro forma tariff, PPA, and ancillary documents submitted by the CCAs. When a CCA chooses to participate in the BioMAT program, the Commission should review an individual CCA’s implementation plan, and adopt the CCA’s tariff, PPA, and ancillary documents conforming to those previously approved by the Commission.

V. THE JOINT IOUS’ FLAWED SUGGESTION THAT CCAS LACK INCENTIVE TO PREVENT DISALLOWANCES IS INAPPROPRIATE AND UNNECESSARY GIVEN THE CCAS’ AND IOUS’ AGREEMENT FOR CCA RULE 2 APPLICATIONS TO ENSURE EQUIVALENT COMMISSION OVERSIGHT

The Commission should ignore the inflammatory statements by the Joint IOUs regarding the “troubling difference between the IOU and CCA program administration that bolsters the need for the [Commissions’] ongoing, robust review of the CCAs’ BioMAT program administration for prudence and compliance through formal proceedings.”¹⁵ The Joint IOUs “observe that the [Commission] may not be able to restrict the CCA from recovering disallowances in their CCA customers’ generation rates because the [Commission] does not have ratemaking jurisdiction over CCAs.”¹⁶ What is actually “troubling” about these statements is that CalCCA sought and received alignment with the IOUs on oversight of CCAs for the BioMAT program, agreeing that CCAs should seek cost recovery through Tier 3 Advice Letters when

¹³ Pub. Util. Code § 399.20(c) (emphasis added).

¹⁴ *Id.* § 399.20(f)(5)(A) (emphasis added).

¹⁵ Joint IOU Opening Comments at 15, n.9.

¹⁶ *Id.*

CalCCA actually believes that the Energy Division’s review through Tier 2 Advice Letters of CCA budget and true up proposals is sufficient. Similarly, CalCCA agreed to the IOUs’ insistence that the CCAs seek prudence review through the Rule 2 Application process, rather than an Advice Letter process, despite the relatively minimal information necessary to establish prudent contract administration for the BioMAT contracts.

In addition, why the Joint IOUs now insinuate that CCAs have no incentive to avoid disallowances is unclear. While the Commission does not have jurisdiction over CCA generation rates, a CCA as a non-profit will always avoid mismanagement and losses that can negatively impact its business and require CCAs to dip into reserves or raise its rates. In fact, CCAs, unlike IOUs, have no shareholders, and will not be able to recover losses. CCAs compete against the IOUs, and always seek to keep rates as low as possible for customers. The Joint IOUs’ inflammatory language should therefore be rejected and ignored.

VI. THE COMMISSION SHOULD REJECT THE JOINT IOUS’ ARGUMENT THAT CCAS NOT BE PERMITTED TO RECOVER BIOMAT ADMINISTRATIVE AND/OR SYSTEMS COSTS

The Joint IOUs’ argument that CCA BioMAT program administrative and/or system costs should be the responsibility of the individual CCA administering the program, “as is the case with the IOUs,”¹⁷ should be rejected. As set forth above, the Joint IOUs appear to agree with CalCCA that both Accion and independent third-party administrator costs should be recoverable through the IOU Public Purpose Program Charge (PPPC). However, the IOUs argue that administrative and system costs of the individual CCA are not recoverable through the PPPC. The IOUs’ assertion that they don’t recover any of these costs is misleading, as it is CalCCA’s understanding that they do recover their overall administrative/system costs through

¹⁷ *Id.* at 17.

their General Rate Cases (GRC). Those GRC costs that are related to IOU electric procurement functions are then allocated through the ERRRA proceeding to bundled load and “all benefiting customers” for procurement on behalf of all customers in the utility area.¹⁸ Given that CCAs do not have a GRC or anywhere else that they seek recovery of such costs at the Commission, CCAs should be able to seek recovery of such costs through their budget applications in their yearly BioMAT Advice Letter filing for cost recovery.

VII. THE COMMISSION SHOULD ADOPT THE JOINT IOUS’ PROPOSAL THAT CCA PROGRAM ADMINISTRATORS FILE QUARTERLY REPORTS INSTEAD OF ADVICE LETTERS TO REPORT NEW PPAS

The Commission should adopt the Joint IOUs’ proposal that CCA program administrators be directed to file quarterly reports listing new CCA BioMAT PPAs (that conform to the Commission-approved pro forma), rather than file via advice letter. This quarterly report methodology will conform to the current practice of the IOUs, and streamline the process.

VIII. ALL LSES SHOULD AT A MINIMUM RECEIVE THEIR LOAD SHARE CREDIT FOR BIOMAT RESOURCES FOR MID-TERM RELIABILITY AND OTHER IRP PROCUREMENT REQUIREMENTS

The Commission should, at a minimum, allow CCAs to claim a load share credit of all BioMAT resources, including those the particular CCA brings online through the BioMAT program, toward their IRP procurement requirements. These IRP requirements include those set forth in the MTR decision, D.21-06-035. While CalCCA asserted in its Opening Comments that CCAs with a BioMAT contract intend to claim the contract toward their individual MTR requirements, Commission IRP staff have recently indicated that given that all customers are charged for procurement, an LSE should not receive individual MTR credit for that resource.

¹⁸ This would include Cost Allocation Mechanism procurement as well as programs like BioMAT.

CalCCA asserts that at a minimum, an LSE should receive its load share credit towards MTR for the BioMAT resources that are paid by all benefitting customers.

IX. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of its proposals to incorporate CCAs into the BioMAT program and looks forward to an ongoing dialogue with the Commission and stakeholders.

Respectfully submitted,

A handwritten signature in blue ink that reads "Evelyn Kahl". The signature is written in a cursive, flowing style.

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CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

June 29, 2023