

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



FILED

11/06/23

04:59 PM

R2210010

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 THE PROPOSED DECISION**

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November 6, 2023

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SUMMARY OF RECOMMENDATIONS

California Community Choice Association (CalCCA) responds herein to the Opening Comments of parties to the *Proposed Decision Implementing Assembly Bill 843 – Setting Rules to Enable Community Choice Aggregators to Participate in the Bioenergy Market Adjusting Tariff Program* (PD), and recommends that the California Public Utilities Commission (Commission):

- ✘ Reject the assertion of the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) of cost shifting justifying removing the PD’s third-party administrator requirement as erroneous given the intent of Assembly Bill (AB) 843 incorporating community choice aggregators (CCAs) into the Bioenergy Market Adjusting Tariff (BioMAT) program was to remedy the existing cost shift resulting from unbundled customers paying for BioMAT while CCAs were not being able to participate, and given Cal Advocates’ admission that the third-party administrator is “necessary” to incorporate CCAs into BioMAT;
- ✘ Reject the contracting proposals of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (Joint IOUs) for the Accion webpages and the third-party contractor to ensure CCAs retain contractual privity with entities administering the BioMAT program for which CCAs must prove prudent contract management;
- ✘ Reject Cal Advocates’ recommendation to modify Finding of Fact 7 to prevent “confusion” regarding whether the public can protest the CCAs’ BioMAT Advice Letters given Cal Advocates’ unfounded concerns that are actually clarified through the existing PD language recognizing Industry Rules 5, 7, and 9 describing requirements for Advice Letter submissions and resolution of protests;
- ✘ Reject Cal Advocates’ request for removal of the supplemental testimony process in the event the Commission fails to timely rule on a CCAs’ February 1 cost forecast Advice Letter, and instead adopt the process and timeline for supplemental testimony set forth in CalCCA’s Opening Comments;
- ✓ Adopt the Joint IOUs’ requested clarification that BioMAT applicants can only submit one application per project to the BioMAT queue; and
- ✓ Adopt the Joint IOUs’ request for CCAs to provide a comparison of their proposed tariffs to the IOU approved tariffs, but clarify that the comparison only has to be to one IOU’s tariff (given formatting differences among the IOUs).

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California Community Choice Association¹ (CalCCA) submits these reply comments, pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, on the *Proposed Decision Implementing Assembly Bill 843 - Setting Rules to Enable Community Choice Aggregators to Participate in the Bioenergy Market Adjusting Tariff Program*² (PD or Proposed Decision), mailed October 10, 2023. These reply comments respond to party Opening Comments submitted October 30, 2023.³

I. CAL ADVOCATES’ ASSERTION OF COST SHIFTING JUSTIFYING REMOVING THE THIRD-PARTY ADMINISTRATOR REQUIREMENT IS ERRONEOUS AND SHOULD BE REJECTED

The Commission should reject the argument of the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) that the PD violates Public Utilities Code Section 366.3’s prohibition on cost shifting “by requiring bundled customers to pay, via the [non-bypassable charge (NBC)], for a third-party administrator only made necessary by CCA participation.”⁴ Cal Advocates’ argument is erroneous and must be wholly rejected for two reasons: (1) Section 366.3 not only prohibits cost shifting to bundled customers, but also requires the Commission to ensure that unbundled

¹ California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert 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 Rulemaking (R.) 22-10-010, *Proposed Decision Implementing Assembly Bill 843 - Setting Rules To Enable Community Choice Aggregators To Participate in the Bioenergy Market Adjusting Tariff Program* (Oct. 10, 2023): <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M520/K541/520541653.PDF>.

³ All references to Opening Comments herein are to party opening comments submitted in this proceeding on October 30, 2023.

⁴ Cal Advocates’ Opening Comments, at 10.

customers do not incur costs that were not incurred on their behalf, which is the exact situation Assembly Bill (AB) 843 remedied by allowing community choice aggregators (CCA) to participate in the BioMAT program; and (2) AB 843 requires CCAs to replicate the IOUs' approved tariffs for BioMAT participation, resulting in the need for a third-party administrator (and thus the incursion of associated costs which must be recovered from all customers) to ensure confidentiality between load-serving entities (LSE) negotiating BioMAT contracts.

First, Cal Advocates' assertion of cost shifting resulting from costs for the third-party administrator being incurred by bundled customers is erroneous. Cal Advocates does note that the PD authorizes collection of these costs through the non-bypassable charge (NBC), resulting in both bundled and unbundled customers incurring the costs.⁵ What Cal Advocates fails to note, however, is that the prohibition on cost shifting is not a one-way street. Public Utilities Code section 366.3 prohibits unbundled customers from experiencing cost increases as a result of a cost allocation that were not incurred on their behalf.⁶ As recognized by Energy Division staff prior to the passage of AB 843, given BioMAT costs have been and continue to be collected through the NBC, unbundled customers have actually been paying for BioMAT even though CCAs have not been permitted to participate.⁷ This cost shift to unbundled customers was remedied in AB 843, which is being implemented in this proceeding. Therefore, what Cal Advocates fails to recognize is that AB 843 allowing CCAs to participate in the BioMAT program actually remedies a previous cost shift violation resulting from unbundled customers paying for the BioMAT program even though CCAs were not allowed to participate.

Second, while Cal Advocates' claims that the third-party administrator results in cost shifting to bundled customers because "the third-party administrator [is] only made necessary by CCA participation," its remedy – requiring CCAs to pay the administrative costs while IOUs would recover those same costs through the NBC – will only continue the cost-shifting to unbundled customers that

⁵ *Id.* at 9.

⁶ Pub. Util. Code § 366.3 ("The Commission shall also ensure that departing load does not experience any costs increases as a result of an allocation of costs that were not incurred on behalf of departing load").

⁷ See R.18-07-003, *Administrative Law Judge's Ruling Requesting Comments on the Bioenergy Market Adjusting Tariff Staff Proposal, Attachment A, "Bioenergy Market Adjusting Tariff (BioMAT) Staff Proposal"* (Mar. 10, 2020) (recommending BioMAT program costs be recovered through a NBC to all customers in each IOU's service territory, and recommending that "because all [LSE's] would pay for BioMAT procurement, staff recommends that all LSEs be able to enter into BioMAT contracts"); see also D.20-08-043, *Decision Revising the Bioenergy Market Adjusting Tariff Program*, R.18-07-003 (Sept. 1, 2020), at 11-18 (allocating BioMAT program costs through the NBC to all customers in each IOU's service territory, but denying CCA BioMAT participation because Section 399.20 only allowed IOU cost recovery).

AB 843 was intended to remedy. Cal Advocates recommends suballocating capacity to CCAs and letting them “go it alone,” as previously recommended by Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (Joint IOUs) but rejected in the PD and no longer requested in the Joint IOUs’ Opening Comments.⁸ If the Commission does not adopt the suballocation, Cal Advocates recommends requiring unbundled customers to pay the costs of the third-party administrator.⁹ As noted herein, both of Cal Advocates’ recommendations will continue the unlawful cost shifting to unbundled customers and must be rejected. Indeed, Cal Advocates admits that the third-party administrator is “necessary” for CCA incorporation.¹⁰ Therefore, the PD’s recommendation to adopt a third-party administrator to ensure confidentiality amongst parties with costs incurred by both bundled and unbundled customers prevents any cost shifting, is consistent with AB 843, and should be adopted.

II. THE JOINT IOUS’ CONTRACTING PROPOSALS FOR THE ACCION WEBPAGES AND THE THIRD-PARTY CONTRACTOR SHOULD BE REJECTED

The Commission should reject the recommendations of the Joint IOUs that the CCAs contract directly with Accion for the development of CCA program webpages, and that a “lead IOU” enter into the third-party administrator contract (without the other IOUs or CCAs). As noted in CalCCA’s Opening Comments, each LSE participating in the BioMAT program should have contractual privity with both Accion and the third-party administrator.¹¹ Given that CCAs are subject to the prudent contract administrator standard for their BioMAT power purchase agreements, any participating CCA should have contractual rights vis a vis the parties administering terms of those contracts (which include both Accion through the CCA BioMAT webpages, and the third-party administrator). Therefore, the Joint IOUs’ recommendations regarding contracting for the Accion webpage contracts and the third-party administrator should be rejected. The Commission should adopt CalCCA’s recommendations to allow CCAs to join the IOU contracts once their Tier 1 Advice Letters are filed, as well as the timeline set forth in CalCCA’s Opening Comments for execution of the contracts.¹²

⁸ See Joint IOUs Opening Comments. at 1-6 (supporting the PD, providing recommendations regarding the third-party administrator, and omitting any additional recommendation for the allocation).

⁹ See Cal Advocates’ Opening Comments, at 10-11; see PD, at 32 (rejecting the IOUs’ request for queue allocations to each CCA and instead requiring a third-party administrator to oversee the combined IOUs’ and CCAs’ queues).

¹⁰ See *id.*, at 10 (stating that the third-party administrator is “only made necessary by CCA participation”).

¹¹ CalCCA Opening Comments, at 7-8.

¹² *Id.* at 9-11.

III. CAL ADVOCATES' CONCERNS REGARDING OPPORTUNITIES TO PROTEST THE CCA BIOMAT ADVICE LETTERS ARE UNFOUNDED AND SHOULD BE REJECTED

Cal Advocates' recommendation that the Commission remove references to GO 96-B, Industry Rule 9 to prevent "potential confusion" regarding whether the public can protest CCA Advice Letters is unfounded and should be rejected.¹³ As noted in CalCCA's reply comments on the Order Instituting Rulemaking in this proceeding, the Commission has long required CCAs to submit Advice Letters, with the opportunity for public protest, for Commission programs in which CCAs participate.¹⁴ The language Cal Advocates suggest deleting from the PD, Finding of Fact 7 actually recognizes that Industry Rules 5, 7 and 9 all describe the requirements for submissions and resolution of protests, including to CCA advice letters. Therefore, Cal Advocates' request should be rejected as unfounded and unnecessary.

IV. CAL ADVOCATES' REQUEST FOR REMOVAL OF THE SUPPLEMENTAL TESTIMONY PROCESS SHOULD BE REJECTED

The Commission should reject Cal Advocates' recommendation to remove the option for CCAs to submit supplemental testimony regarding its BioMAT cost forecast prior to the October update if the Commission has not ruled on its February 1 Advice Letter.¹⁵ While CalCCA agrees that a timely ruling on the February 1 Advice Letter would be ideal, if the Commission has not ruled then the supplemental testimony option is a fair and logical method to incorporate CCA costs into that year's ERRRA forecast for cost recovery. Such supplemental testimony will include the same information as was submitted in the February 1 Advice Letter (for which parties would have had an opportunity to protest). Cal Advocates' claims that parties will not have the same opportunity to protest the costs, which it claims could include costs for the intervening months, is unfounded.

The Commission should also reject Cal Advocates' recommendation to clarify that if the Commission does not rule on the February 1 Advice Letter, the CCA should include those costs in its Advice Letter in the subsequent year.¹⁶ Requiring a CCA to hold over costs for recovery in a subsequent year unfairly results in cost recovery for CCAs being delayed. In addition, Cal Advocates' position undermines CalCCA's proposal made in Opening Comments to accommodate a CCA joining the BioMAT program in 2024, which will likely necessitate supplemental testimony if the CCA joins after

¹³ See Cal Advocates Opening Comments, at 1-3.

¹⁴ See R.22-10-010, *California Community Choice Association's Reply Comments on Order Instituting Rulemaking to Implement Assembly Bill 843 – The Bioenergy Market Adjusting Tariff Program* (Dec. 13, 2022), at 6, n.13 (describing the proceedings in which the Commission required CCAs to submit advice letters to participate, subject to public protest).

¹⁵ Cal Advocates' Opening Comments, at 4-9.

¹⁶ *Ibid.*

February 1, 2024, which is likely given the schedule for AB 843 implementation. Instead, the PD's methodology, with the modifications to the timeline set forth in CalCCA's and the Joint IOUs' Opening Comments (requesting that the supplemental testimony be submitted no later than the first business day of October), for supplemental testimony in the event the Commission has not ruled on a CCA February 1 Advice Letter, should be adopted.

V. THE JOINT IOUS' REQUEST FOR CLARIFICATION THAT BIOMAT APPLICANTS CAN ONLY SUBMIT ONE APPLICATION PER PROJECT TO THE BIOMAT QUEUE SHOULD BE ADOPTED

CalCCA supports the Joint IOUs' proposed modification to Conclusion of Law (CoL) 7 to declare that BioMAT applicants can only submit one application per project to the BioMAT queue.¹⁷ Prohibiting BioMAT applicants from submitting multiple applications for the same project is necessary to ensure each project from an applicant only occupies one space in the BioMAT queue. Therefore, the Joint IOUs' request for clarification of CoL 7 should be adopted.

VI. THE JOINT IOUS' REQUEST FOR CCAS TO PROVIDE A COMPARISON OF THEIR PROPOSED TARIFFS TO THE IOU APPROVED TARIFFS SHOULD BE ADOPTED

CalCCA agrees with the Joint IOUs' request for the CCAs to provide a comparison of their proposed tariffs to the IOU approved tariffs when the joint CCAs submit their pro forma program documents.¹⁸ CalCCA requests that the Joint IOUs' request be clarified to require the comparison only to one of the IOUs' tariffs (as there are slight formatting differences between each IOU tariff).

VII. CONCLUSION

CalCCA appreciates the opportunity to submit these reply comments and requests adoption of the recommendations proposed herein.

Respectfully submitted,



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CALIFORNIA COMMUNITY CHOICE
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November 6, 2023

¹⁷ Joint IOU Opening Comments, at 7-8.

¹⁸ *Id.*, at 2.