

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

Joint Application to Establish Non-Bypassable Charge (“NBC”) for Above-Market Costs Associated with Tree Mortality Power Purchase Agreements (“Tree Mortality”) in Compliance with Senate Bill 859 and Resolution E-4805.

Application 16-11-005

**COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION ON THE PROPOSED DECISION OF ALJ  
DOHERTY ESTABLISHING A NON-BYPASSABLE CHARGE  
FOR COSTS ASSOCIATED WITH TREE MORTALITY BIOMASS  
ENERGY PROCUREMENT**

**INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION**

Steven Kelly, Policy Director  
PO Box 1287  
Sloughhouse, CA 95683  
Telephone: (916) 448-9499  
Facsimile: (916) 448-0182  
Email: [steven@iepa.com](mailto:steven@iepa.com)

Dated: November 28, 2018

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The Independent Energy Producers Association (IEP) submits these comments on the Proposed Decision (PD) of ALJ Doherty establishing a non-bypassable charge for costs associated with tree mortality biomass energy procurement.

IEP supports the PD overall. The PD creates a tree mortality non-bypassable charge (TM NBC) and applies such charge to all procurement conducted pursuant to Resolution E-4770 and Resolution E-4805.

IEP is concerned, however, that Ordering Paragraph 10 of the PD risks becoming a barrier to tree mortality biomass energy procurement by creating the conditions in which the utility-counterparty to a tree mortality biomass contract is at risk of less than full cost recovery of its costs. Ordering Paragraph 10 creates this condition by requiring the utility to return to the Commission via an application to recover the costs of tree mortality energy procurement that are incurred (i.e. the contract is not terminated) yet not recovered via the approved TM NBC. This condition may occur where evidence is presented that a contracted biomass facility fails to

comply with statutory or contract requirements, regulatory requirements not governed by the Commission, yet the contract remains in effect.<sup>1</sup> Specifically, Ordering Paragraph 10 states “If a tree mortality (TM) contract cannot be terminated even though non-compliance with statutory or contract requirements is evident, a utility counterparty may separately apply to the Commission for recovery of those [TM NBC] costs.”

The PD lacks clarity as to what exactly “non-compliance” means with regards to regulatory requirements, including those not governed by the Commission. Moreover, the PD lacks specificity as to what the standard of review will be to assess whether non-compliance is “evident.” Ultimately, due to the lack of clarity and specificity with regards to these standards of performance and review, the utility is at risk of less than full cost recovery of contracts even in situations where the contract is not terminated.

Where a contract authorized pursuant to Resolution E-4770 or Resolution E-4805 remains in effect, the utility should be entitled to full cost recovery of the costs that it incurs. As a practical matter, the utility typically is at risk of less than full cost recovery if it fails to act properly or administer a contract reasonably. The PD implies a significant change in that standard. Moreover, as a matter of contract administration, the utility should not be subject to double-jeopardy with regards to cost-recovery, nor should the facility be subject to the regulatory uncertainty implied by Ordering Paragraph 10. Accordingly, IEP suggests an amendment to Ordering Paragraph 10 as follows:

10. If a tree mortality (TM) contract cannot be terminated even though non-compliance with statutory or contract requirements is evident, a utility counterparty may ~~separately apply to the Commission for recovery of those costs~~ until such time as the contract is

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<sup>1</sup> Ordering Paragraphs 7, 8, and 9 create this condition for each of the IOUs, respectively.

terminated. This order does not apply in the event that a tree mortality facility opts out of the mandated fuel or feedstock usage levels or misses the mandated fuel or feedstock targets, and that facility is paid the alternate price adopted by the Commission in Resolution E-4770 for all megawatt-hours generated during that month.

Respectfully submitted November 28, 2018 at San Francisco, California.

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end of the name.

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