

PUBLIC UTILITIES COMMISSION

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VIA E-MAIL

December 15, 2017

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**Subject: Re-MAT Program: *Winding Creek Solar LLC v. Florio, et al.*
Case 3:13-cv-04934-JD (N.D. Cal.)**

On December 6, 2017, Judge Donato of the U.S. District Court for the Northern District of California (the Court) issued an order granting summary judgment in favor of Winding Creek Solar LLC (Winding Creek) on the plaintiff's first four requests for declaratory and injunctive relief with respect to Pacific Gas and Electric Company's (PG&E) Renewable Market Adjusting Tariff (Re-MAT) program, in Case No. 13-cv-04934-JD. Each of the utilities implementing Re-MAT – PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) – must not execute any new Re-MAT contract and must not hold any new Re-MAT program periods, and must not accept any new Re-MAT applications, effective immediately, pending further Commission action or court order.

Judge Donato's order grants the following of Winding Creek's requests for relief, as such requests are quoted below from Winding Creek's Second Amended Complaint:

- a. *Declaring that the Orders [the CPUC decisions establishing and implementing the Re-MAT program, D.12-05-035, D.13-01-041, and D.13-05-034] violate the Supremacy*

- Clause of the U.S. Constitution insofar as they place numerical limits on utilities' obligations to enter into contracts purchasing electricity from qualifying facilities;*
- b. Declaring that the Orders violate the Supremacy Clause of the U.S. Constitution insofar as they establish a price different than the utility's avoided costs calculated for the length of the contract term at the time the contractual obligation is incurred;*
 - c. Enjoining Defendants [CPUC] from continuing to apply the Re-MAT program as set forth in the Orders;*
 - d. Enjoining Defendants to issue new Orders implementing PURPA [the Public Utility Regulatory Policies Act of 1978] in a manner consistent with federal law;*

See Winding Creek Solar LLC v. Peevey, No. C 13-04934, 2017 U.S. Dist. LEXIS 201893, at *37 (N.D. Cal. Dec. 6, 2017). Although Winding Creek sought a Re-MAT contract under Re-MAT's peaking as-available "product type," the Court's order found that Re-MAT's pricing mechanism does not satisfy the avoided-cost pricing requirement under PURPA. *Id.*, at *26. Accordingly, PG&E, SCE, and SDG&E must not sign new Re-MAT contracts, must suspend holding any ReMAT program periods, and must not accept any ReMAT applications, pending next steps.

The Court's order does not affect the validity of already-executed Re-MAT contracts, and existing Re-MAT contracts must continue with their full force and effect. The Commission is evaluating the implications for the Bioenergy Market Adjusting Tariff (BioMAT) programs.

My order contained herein formalizes the informal directive to the utilities contained in Legal Division's emails to the utilities on December 11, 2017, attached hereto.

Sincerely,



Timothy Sullivan
Executive Director

Attachments

cc: Service Lists of R.15-02-020; R.11-05-005; R.06-05-027; R.06-02-012; R.04-04-026;
R.01-10-024; A.08-11-001; R.06-02-013; R.04-04-003; R.04-04-025; R.99-11-022
Commissioners and Advisors
Acting Chief Administrative Law Judge Anne E. Simon
Administrative Law Judge Robert M. Mason III
Administrative Law Judge Nilgun Atamturk
Edward Randolph, Director, Energy Division
Judith Ikle, Energy Division
Cheryl Lee, Energy Division
Arocles Aguilar, Legal Division
Christine J. Hammond, Legal Division