

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

Order Instituting Rulemaking Regarding  
Continued Implementation of the Public  
Utility Regulatory Policies Act and Related  
Matters.

Rulemaking 18-07-017  
(Filed July 26, 2018)

**REPLY COMMENTS OF THE REMAT SUPPORTERS  
ON ORDER INSTITUTING RULEMAKING**

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**I. INTRODUCTION**

In accordance with the “Order Instituting Rulemaking Regarding Continued Implementation of the Public Utility Regulatory Policies Act and Related Matters” filed July 26, 2018 (“OIR”) and Administrative Law Judge Allen’s email ruling on August 23, 2018, extending the due date for reply comments to September 24, 2018, the California Wind Energy Association (“CalWEA”), Solar Electric Solutions, LLC, JTN Energy, APT Solar Company, Division Solar, LLC, Poco Power, LLC, ImMODO Development LLC, Vejas Energy, LLC, Utica Water and Power Authority, and the Association of California Water Agencies<sup>1</sup> (collectively, the “ReMAT Supporters”) submit<sup>2</sup> these reply comments in response to opening comments filed by other parties regarding pricing options for qualifying facilities (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”) and the OIR’s pricing proposal prepared by Commission staff (the “Staff Pricing Proposal”).<sup>3</sup>

The ReMAT Supporters have reviewed the opening comments submitted by several other parties in this proceeding. Based on review of opening comments, the OIR, and the Staff Pricing

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<sup>1</sup> The Association of California Water Agencies (“ACWA”) is a statewide association that represents more than 445 public water agency members that collectively supply approximately 90 percent of the water that is delivered for agricultural, municipal and industrial uses in California.

<sup>2</sup> Pursuant to Commission Rule of Practice and Procedure 1.8(d), CalWEA has been authorized by the other ReMAT Supporters to file these reply comments on behalf of all of the ReMAT Supporters.

<sup>3</sup> See *Proposal to Update Avoided Cost Pricing for Qualifying Facilities of 20 MW or Less*, included as an Attachment to the OIR.

Proposal, the ReMAT Supporters recommend that the Commission proceed swiftly to adopt the pricing options set forth in the Staff Pricing Proposal for energy and capacity determined at the time of contract execution. As described in the OIR,<sup>4</sup> the Commission’s Renewable Market Adjusting Tariff program (“ReMAT Program”) has been suspended due to the shortcomings identified by federal district court in the *Winding Creek Order*.<sup>5</sup> To realize the benefits that originally prompted the Commission to adopt the ReMAT Program, the Commission must proceed swiftly to address the shortcomings identified in the *Winding Creek Order*, which will enable procurement under the ReMAT Program to resume.

As described further in CalWEA’s opening comments,<sup>6</sup> the Staff Pricing Proposal’s suggested pricing for energy and capacity determined at the time of contract execution, applied through a new standard offer contract (“New QF SOC”), addresses the shortcomings identified by federal district court in the *Winding Creek Order*, and, with a PURPA-compliant primary PURPA program, the Commission can seek to have the ReMAT Program injunction lifted. In addition, the Commission should:

- A. Adopt a cost allocation mechanism that allocates the net costs and benefits of executed New QF SOCs to all customers in the applicable investor-owned utility’s (“IOU”) service area; and
  - B. Ensure that the delivery term under the New QF SOC is PURPA-compliant.
- These positions are explained further below.

## II. COMMENTS

### **A. The Commission Should Adopt a Cost Allocation Mechanism that Allocates the Net Costs and Benefits of Executed New QF SOCs to All Customers in the Applicable IOU’s Service Area**

The Commission should adopt a cost allocation mechanism that allocates the net costs and benefits of executed New QF SOCs to all customers in the applicable IOU’s service area because

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<sup>4</sup> OIR at p. 7.

<sup>5</sup> *Winding Creek Solar, LLC v. Carla Peterman, et al.*, N.D. CA Case No. 13cv04934-JD, Findings of Fact and Conclusions of Law, and Order on Summary Judgment, December 6, 2017 (“*Winding Creek Order*”).

<sup>6</sup> *Comments of the California Wind Energy Association on Order Instituting Rulemaking*, R. 18-07-017, September 12, 2018 (“CalWEA Opening Comments”).

the IOUs are required to enter into New QF SOC for the entirety of their service area, not just the portion where the IOU provides bundled service. As described in the opening comments of Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”), “PURPA requires the IOUs to purchase from qualifying facilities but does not include a similar mandate for CCAs and DA service providers.”<sup>7</sup> When PURPA was enacted, utilities were vertically integrated, and the obligation for an IOU to procure energy and capacity from a qualifying facility was for the benefit of all customers within its service territory. Under California’s current retail supply structure, where significant portions of the load within an IOU’s service territory may be supplied by entities that were not contemplated when PURPA was enacted, such as Community Choice Aggregators (“CCA”) or Electric Service Providers (“ESP”), the asymmetry of the procurement obligation could lead to the IOUs’ bundled customers receiving a disproportionate share of the benefits and burdens of New QF SOC entered into by the IOUs. To correct the asymmetry introduced by the evolution of California’s retail service structure, the Commission should adopt a cost allocation mechanism that allocates the net costs and benefits of executed New QF SOC to all customers in the applicable IOU’s service area. Given the need to proceed swiftly, the Commission should utilize existing cost allocation frameworks to the extent possible.

**B. The Commission Should Ensure that the Delivery Term Under the New QF SOC is PURPA-Compliant**

As described in the OIR, the intent of the proceeding is to adopt a New QF SOC with associated pricing that “will be the foundation of the Commission’s PURPA compliance.”<sup>8</sup> The OIR also recognizes the need for the Commission to proceed swiftly by proposing that the proceeding should be resolved within six months.<sup>9</sup> To meet these dual goals, the OIR proposes that the New QF SOC would be based on the Standard Contract for QFs 20 MW or Less (“QF Settlement SOC”).<sup>10</sup> Because the non-price terms of the QF Settlement SOC have been in place

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<sup>7</sup> *Comments of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company On the Order Instituting Rulemaking Regarding Continued Implementation of the Public Utility Regulatory Policies Act (PURPA) and Related Matters*, R. 18-07-017, September 12, 2018 (“IOU Opening Comments”), at p. 9.

<sup>8</sup> OIR at p. 8.

<sup>9</sup> OIR at p. 10.

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

for an extended period of time and were not identified in the *Winding Creek Order* as a source of non-compliance with the requirements of PURPA, utilizing the non-price terms of the QF Settlement SOC for the New QF SOC is a reasonable approach and facilitates resolution of the proceeding within six months, as contemplated in the OIR.<sup>11</sup> To the extent that there are any changes to the non-price terms, such as the delivery term, the Commission should ensure that the revised terms under the New QF SOC are PURPA-compliant.

For example, some parties suggested in opening comments that a shorter delivery term would be appropriate for the New QF SOC. The QF Settlement SOC offers a maximum delivery term for new generating facilities of twelve years.<sup>12</sup> In contrast, the IOUs propose a maximum delivery term of three years.<sup>13</sup> The Solar Energy Industries Association also proposes a three-year delivery term for the New QF SOC.<sup>14</sup> As noted above, because the non-price terms of the QF Settlement SOC have been in place for an extended period of time and were not identified in the *Winding Creek Order* as a source of non-compliance with the requirements of PURPA, utilizing the same delivery term for the New QF SOC would be a reasonable approach. If the New QF SOC incorporates a delivery term that is shorter than QF Settlement SOC delivery term, the Commission must ensure that any shorter delivery term continues to be PURPA-compliant so that the Commission can demonstrate a PURPA-compliant primary PURPA option and seek to have the ReMAT Program injunction lifted.

### III. CONCLUSION

The Commission should proceed swiftly to adopt (1) the proposed energy and capacity pricing determined at the time of contract execution set forth in the Staff Pricing Proposal, and (2) PURPA-compliant terms, including delivery term, for the New QF SOC because these features will enable the Commission to present a PURPA-compliant primary PURPA option. The

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<sup>11</sup> The IOUs propose precisely the opposite, suggesting that this proceeding should be used to develop an entirely new standard offer contract. *See* IOU Opening Comments at p. 9. The Commission should reject this suggestion for the very reasons that the OIR proposes to utilize the non-price terms of the QF Settlement SOC – developing entirely new standard offer contract terms would introduce delays, threaten the OIR’s six-month goal for resolution of the proceeding, and introduce new issues that were not previously considered in the *Winding Creek Order*.

<sup>12</sup> *See* QF Settlement SOC §1.01.

<sup>13</sup> IOU Opening Comments at p. 4.

<sup>14</sup> *Comments of the Solar Energy Industries Association*, R. 18-07-017, September 12, 2018, at p. 10.

Commission must take these steps quickly, so that the Commission can utilize the PURPA-compliant primary PURPA option to seek to have the ReMAT Program injunction lifted and enable procurement under the ReMAT Program to resume. In addition, to ensure that all IOU customers share the benefits and burdens of PURPA procurement, the Commission should adopt a cost allocation mechanism that allocates the net costs and benefits of executed New QF SOC's to all customers in the applicable IOU's service area.

Respectfully submitted,

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