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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

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

1. Procedural Background

The Commission opened this proceeding via an Order Instituting Rulemaking (OIR) issued on August 1, 2018. Attached to the OIR was a proposal by the staff of the Commission's Energy Division: "Proposal to Update Avoided Cost Pricing for Qualifying Facilities of 20 MW or Less" (Staff Proposal). Comments on the Staff Proposal and the OIR's Preliminary Scoping Memo's list of issues were filed by The Utility Reform Network (TURN), Winding Creek Solar LLC (Winding Creek), Independent Energy Producers Association (IEP), Solar Energy Industries Association (SEIA), California Wind Energy Association (CalWEA), Green Power Institute (Green Power), the Commission's

Public Advocates' Office (Cal Advocates), California Association of Small and Multi-Jurisdictional Utilities (CASMU),[1] the ReMAT Developers,[2] and the Investor Owned Utilities.[3] Reply comments were filed by the Investor Owned Utilities and SEIA.

A prehearing conference (PHC) was held on September 27, 2018 to discuss the issues and to address the procedures and schedule for this proceeding. At the PHC, a number of parties requested that a workshop be held. (Transcript, v. PHC at 10-13.) No party requested or expressed a need for evidentiary hearings. (*Id.* at 6-7.) A workshop was held on October 18, 2018.

2. Issues

As stated in the OIR, the purpose of this proceeding is:

> In light of the *Winding Creek* Order,[4] this Rulemaking considers adoption of a New QF [Qualifying Facility] SOC [Standard Offer Contract] with price terms as specified in FERC's PURPA regulations at 18 C.F.R. § 292.304(d)(2) and available to any QF of 20 MW or less seeking to sell electricity in California pursuant to PURPA. (OIR at 7.)

The *Winding Creek* Order found the Commission's implementation of PURPA to be deficient because it does not offer a QF the option to choose energy

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[1] Consisting of Bear Valley Electric Service, Liberty Utilities (CalPeco Electric) LLC, and PacifiCorp.

[2] Consisting of Solar Electric Solutions, LLC, APT Solar Company, Division Solar, LLC, Poco Power, LLC,and ImMODO Development LLC.

[3] Consisting of Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company.

[4] *Winding Creek Solar, LLC v. Peterman, et al.*, 293 F. Supp. 3d 980 (N.D. Cal. 2017) (*Winding Creek Order*).

Footnote continued on next page

rates determined either at the time of contract execution or at the time the product is delivered.[5] Federal regulations require states' PURPA implementation to make these options available to QFs.

18 C.F.R. §§ 292.304(d)(2)(i) and (ii). Accordingly, the OIR stated that:

> The scope of this proceeding is intended to be narrow; we are considering adoption of (1) a New QF SOC containing avoided costs rates required by federal regulations, and (2) adoption of a price to be paid at the time of delivery where a QF has opted to sell as-available energy to the utility without a contract. (*Id.* at 8.)

The OIR specifically identified the following main issues to be addressed:

1. What is the appropriate avoided cost for energy where a QF elects to be paid a price determined at the time of contract execution?
2. What is the appropriate avoided cost for capacity where a QF elects to be paid a price determined at the time of contract execution?
3. What is the appropriate avoided cost for energy where a QF elects to be paid a price determined at the time of delivery?
4. What is the appropriate avoided cost for capacity where a QF elects to be paid a price determined at the time of contract delivery?
5. What is the appropriate avoided cost calculated at the time of delivery for as-available energy sold by a QF to the utility without a contract?
6. Does PURPA require that any of the non-price terms of the Standard Contract for QFs 20 MW or Less be modified before they are incorporated into the New QF SOC?

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[5] *Winding Creek* Order, 293 F. Supp. 3d at 990-91.

7. Are there any other issues that the Commission must address to adopt a New QF SOC that complies with PURPA? (*Id*. at 8-9.)

The parties identified two additional issues that relate to the contracts: 1) cost allocation, and 2) the duration of the contracts and how long they would be available. These issues also fall within the scope of the proceeding.

3. Need for Evidentiary Hearing

No party identified any material issues of fact that are in dispute, and no party requested evidentiary hearings. At the PHC, the parties generally concurred that written comments would be sufficient to resolve the issues presented in this proceeding.[6] Accordingly, evidentiary hearings are not needed.

4. Schedule

The schedule for this proceeding is set forth below. This schedule may be modified by the assigned Administrative Law Judge (ALJ) or Commissioner as needed to promote the efficient and fair resolution of this proceeding:

Comments	November 14, 2018
Reply Comments	November 28, 2018
Proposed Decision	First Quarter, 2019
Final Decision	First Quarter, 2019

Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code § 1701.5.

[6] Comments may include both policy and legal arguments.

At the October 18, 2018 workshop, several parties circulated and discussed a preliminary term sheet for a possible settlement. A settlement in this proceeding is encouraged. Parties may either submit a proposed settlement pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure, or may include a joint proposal in their November 14, 2018 comments.[7]

5. Category of Proceeding/*Ex Parte* Restrictions

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding. Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

6. Public Outreach

Pursuant to Pub. Util. Code § 1711(a), the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

In addition, the Commission served the OIR on the respondent investor-owned electric utilities and on the service lists for the following proceedings: R.04-04-025, R.15-02-020, and R.16-02-007. (OIR at 11.)

[7] If the parties choose to submit a proposed settlement pursuant to Rule 12.1, they are encouraged to file that proposal before November 28, 2018.

7. Intervenor Compensation

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation no later than 30 days after the prehearing conference.

8. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at http://consumers.cpuc.ca.gov/pao or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TYY), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

10. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Peter V. Allen is the assigned ALJ for this proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.

3. Evidentiary hearings are not needed.

4. The category of this proceeding is ratesetting.

Dated November 2, 2018, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN

Clifford Rechtschaffen
Assigned Commissioner