



PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**
08/21/20
03:15 PM

August 21, 2020

Agenda ID #18731
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 18-07-003:

This is the proposed decision of Administrative Law Judge Manisha Lakhnpal. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's September 24, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:avs

Attachment

Decision PROPOSED DECISION OF ALJ LAKHANPAL (Mailed 8/21/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Continue Implementation and
Administration, and Consider Further
Development, of California
Renewables Portfolio Standard
Program.

Rulemaking 18-07-003

**DECISION RESUMING AND MODIFYING THE RENEWABLE
MARKET ADJUSTING TARIFF PROGRAM**

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DECISION RESUMING AND MODIFYING THE RENEWABLE MARKET ADJUSTING TARIFF PROGRAM

Summary

Today's decision modifies aspects of the Renewable Market Adjusting Tariff (ReMAT) Program to bring it into compliance with both the Public Utility Regulatory Policies Act of 1978 and § 399.20 of the Public Utilities Code. We hereby adopt an electricity pricing methodology to calculate a fixed rate available to qualifying renewable generators that is based on a weighted average of the utilities' recent executed long-term Renewables Portfolio Standard (RPS) contracts, which include time-of-delivery adjustment periods and factors. We also modify the ReMAT Program to eliminate caps on procurement during bimonthly Program Periods and instead authorize procurement at the authorized rate on a first-come, first-served basis until each electric utility fulfills its proportionate share of procurement under § 399.20, along with additional changes. These modifications do not affect ReMAT contracts that have already been executed.

The California Public Utilities Commission is thus resuming the ReMAT Program, which has been suspended since December 2017. Since the ReMAT Program was suspended, federal courts have clarified the requirements of the Commission's implementation of the Public Utility Regulatory Policies Act of 1978, and the Federal Energy Regulatory Commission issued new rules on state implementation, which will become effective 120 days from the date of publication in the Federal Register.

This decision does not resolve outstanding petitions for modification to the ReMAT Program, and this proceeding will consider further changes to the ReMAT Program in light of the petitions, as data on the newly revised ReMAT

Program's performance becomes available, as data on other RPS procurement becomes available, and to consider other changes scoped in this proceeding.

This proceeding remains open.

1. Factual and Procedural Background

This decision modifies the Renewable Market Adjusting Tariff (ReMAT) Program as it had been approved in Decision (D.) 12-05-035, D.13-01-041, and D.13-05-034. The ReMAT program is implemented pursuant to Public Utilities Code § 399.20¹ and the Public Utility Regulatory Policies Act of 1978 (PURPA).²

1.1. Establishment of the ReMAT Program

In 2006, as part of California's Renewables Portfolio Standard (RPS), the Legislature added § 399.20 to the Public Utilities Code.³ In 2007, the California Public Utilities Commission (Commission) implemented § 399.20 and established a feed-in tariff (FiT) program requiring utility purchases from a limited class of public water and wastewater facilities (the § 399.20 FiT Program).⁴ The § 399.20 FiT Program was later expanded to include renewable generators of 1.5 megawatts or less.⁵ In 2007 § 399.20 required that the tariff price shall be the market price as determined by the Commission pursuant to § 399.15(c), or the

¹ Unless otherwise provided, all statutory references are to the California Public Utilities Code.

² PURPA is codified generally at 16 U.S.C. §§ 824a-3 and 2601. The federal regulations implementing PURPA are found at 18 C.F.R. Subchapter K starting at Part 290.

³ See 2006 Cal. Legis. Serv. Ch. 731 (A.B. 1969).

⁴ See D.07-07-027, as modified by D.08-02-010.

⁵ See D.12-05-035 as conformed by D.13-01-041 at 7 (the conformed version of D.12-05-035 is Attachment A of D.13-01-041).

Market Price Referent (MPR).⁶ The 399.20 FiT Program had a State-wide procurement limit of 250 megawatts.⁷

In 2008, 2009, and 2011, the Legislature further amended § 399.20.⁸ The most significant amendment eliminated the cross-reference to § 399.15, so the price was no longer tied to the MPR.⁹ Public Utilities Code § 399.20 directed the Commission to consider the following: (1) the long-term market price for fixed price products determined by the utilities' general procurement activities; (2) the long-term ownership, operating and fixed-price fuel costs for fixed-price electricity from new generation facilities; and (3) the value of different products, including baseload, peaking, and as-available electricity.¹⁰

The amendments also changed the facilities eligible for the tariff. The size of a facility was increased to 3 megawatts, and the facility must be interconnected to a utility and "strategically located" on the grid to optimize delivery to consumer demand.¹¹ The required procurement was increased to a statewide cap of 750 megawatts.¹²

⁶ See *id.* at 7-9 & 17-19. See also 2006 Cal. Legis. Serv. Ch. 731 (A.B. 1969), at 3; D.07-07-027 at 16.

⁷ See *id.* at 5, 83-84.

⁸ See D.12-05-035 as conformed by D.13-01-041 at 5-7. See also, *e.g.*, SB 32 (Negrete McLeod, 2009) and SB 2 (1x) (Simitian, 2011).

⁹ See D.12-05-035 as conformed by D.13-01-041 at 17-19; 2011 Cal. Leg. Serv. 1st Ex. Sess. Ch. 1 (S.B. 2) at 34.

¹⁰ See § 399.20(d)(2)(A)-(C).

¹¹ See §§ 399.20(b), 399.12(e); Cal. Pub. Res. Code § 25741.

¹² See § 399.20(e).

The Commission issued D.12-05-035, D.13-01-041, and D.13-05-034 to implement the 2008-2011 statutory amendments to § 399.20. These decisions established the ReMAT program,¹³ which launched in October 2013.

1.2. Federal Challenge to the ReMAT Program

In 2013 Winding Creek Solar LLC (Winding Creek) commenced a federal complaint alleging that the ReMAT Program did not comply with PURPA in two respects: ReMAT's caps on procurement violated PURPA's mandatory purchase obligation and ReMAT's Price Adjustment Mechanism is not based on the utilities' avoided cost.¹⁴ On December 6, 2017, a federal district court granted Winding Creek's summary judgment motion and granted the relief Winding Creek requested, which, among other things, enjoined the further implementation of D.12-05-035, D.13-01-041, and D.13-05-034.¹⁵ In response, the Commission suspended the ReMAT program in December 2017. On cross-appeals, the United States Court of Appeals for the Ninth Circuit affirmed the district court order, determining that, while ReMAT's Price Adjustment Mechanism "sets a market-based rate," it does not set a rate "based on the utilities' avoided cost."¹⁶

1.3. Procedural Background of Current Changes to ReMAT Program

On November 9, 2018, an *Assigned Commissioner's Scoping Memo and Ruling* was issued with the scope of issues for consideration in this rulemaking.

¹³ See D.12-05-035, at 2.

¹⁴ See *Winding Creek Solar, LLC v. Peevey* (N.D. Cal. 2017) 293 F.Supp.3d 980, 983, 989-90 (*Winding Creek Order*), aff'd sub nom. *Winding Creek Solar, LLC v. Carla Peterman, et al.* (9th Cir. 2019) 932 F.3d 861.

¹⁵ 293 F.Supp.3d at 983.

¹⁶ 932 F.3d at 862.

One of the issues is “[r]evisiting and possibly revising the RPS feed-in tariffs,” including the ReMAT program.¹⁷ Another issue is “revising, as needed, all RPS procurement methods and tariffs, such as ... ReMAT...”¹⁸

To comply with federal court orders, on June 26, 2020, an assigned Commissioner and assigned Administrative Law Judge (ALJ) ruling (Ruling) was issued with a *Staff Proposal for Modification to the ReMAT Program* (Staff Proposal)¹⁹ to modify and promptly restart the ReMAT program.²⁰ The Staff proposal set forth proposed modifications, such as replacing ReMAT’s adjusting pricing mechanism with an administrative determination of prices by ReMAT Product Category with a time-of-delivery adjustment, and eliminating the bi-monthly program periods and program period caps. The Staff Proposal is discussed further below.

The Ruling invited parties in this proceeding to comment on the modifications in the Staff Proposal. The Ruling was also served on and invited comment from parties in Rulemaking (R.) 11-05-005, the predecessor to this rulemaking on the continued implementation and administration of California’s RPS program, and in R.18-07-017, the Commission’s rulemaking on PURPA implementation in which the Commission recently adopted a New Standard Offer Contract for Qualifying Facilities of 20 megawatts or Less (New QF SOC).²¹

¹⁷ Scoping Memo at 4 (Nov. 9, 2018).

¹⁸ *Id.* at 5.

¹⁹ The Staff Proposal is attached to the Ruling as an Attachment.

²⁰ *Assigned Commissioner’s and Assigned Administrative Law Judge’s Ruling Seeking Comment on Proposed Modifications to the Renewable Market Adjusting Tariff Program*, R.18-07-003 (June 26, 2020).

²¹ D.20-05-006, *Decision Adopting a New Standard Offer Contract for Qualifying Facilities of 20 Megawatts or Less Pursuant to the Public Utility Regulatory Policies Act of 1978* (issued May 15, 2020).

On July 13, 2020, Winding Creek Solar, LLC (Winding Creek) filed opening comments on the Ruling and Staff Proposal. On July 21, 2020 the following parties filed opening comments: the Public Advocates Office (Cal Advocates), California Energy Storage Association (CESA), Clean Coalition, Green Power Institute (GPI), Orange Grove Irrigation District (OCID), Pacific Gas and Electric Company and Southern California Edison Company (PG&E/SCE), the ReMAT Coalition, San Diego Gas & Electric Company (SDG&E), and Vote Solar and Solar Electric Solutions (Joint Solar Parties).

On July 22, 2020, Winding Creek filed reply comments. On July 28, 2020 Cal Advocates, GPI, PG&E/SCE, and SDG&E filed reply comments.

2. Summary of Staff Proposal to Modify the ReMAT Program

The Staff Proposal forwards the following modifications to the ReMAT Program as it was adopted in D.12-05-035, D.13-01-041, and D.13-05-034:

2.1. Staff Proposes Methodology for Determining Utility Avoided Costs Using the Market Price of Electricity

In order to comply with the *Winding Creek Order*, Staff proposes to abandon the two-month Price Adjustment Mechanism adopted in D.12-05-035, D.13-01-041, and D.13-05-034 (the ReMAT Decisions), where the starting price was based on the Renewable Auction Mechanism (RAM) program and adjusted on a bimonthly basis according to the conditions set forth in the ReMAT Decisions. Staff proposes instead that the ReMAT Program use administratively set fixed avoided-cost rates for long-term contracts for the purchase electricity in each of ReMAT's Product Categories (baseload deliverability, as-available deliverability with a peaking profile, and as-available delivery with a non-peaking profile). The market price will be determined by calculating the

weighted average price of all non-state mandated²² recent long-term RPS contracts, calculated by the representative Product Category, that were executed between 2013 and 2019 by the three large investor-owned utilities directed to offer ReMAT contracts. The averages are to be weighted according to the generator capacity of the facilities in the applicable Product Category data set.

2.2. Staff Proposes Using Updated Commission-Approved Time of Day Periods and Factors

In addition, Staff proposes applying to the fixed ReMAT price the most recent Commission-approved time-of-day (TOD) periods and factors for each utility, rather than continuing to use outdated periods and factors. Staff proposes that the utilities update their ReMAT tariffs and standard contracts to reflect the most recent Commission-approved TOD periods and factors.²³

2.3. Staff Proposes Annually Adjusting ReMAT's Price of Electricity

Staff further proposes that the weighted average price per megawatt-hour (MWh) be adjusted each year by Energy Division's issuance of a draft Resolution beginning in May 2021, after receiving Investor Owned Utilities' (IOU) annual reporting on RPS procurement costs for the preceding calendar year pursuant to § 913.3(a)(1). For each annual update, Energy Division will use a continuously rolling weighted average of the prior years' contracts (by Product Category). Thus, for example, in May 2021, Energy Division will update the prices for each Product Category by calculating a new weighted average using the IOUs' RPS contracts in the years 2014 through 2020.

²² The data set excludes state-mandated RPS procurement contracts, such as ReMAT contracts executed prior to the 2017 suspension of the ReMAT program.

²³ The Commission's most recently updated periods and factors were approved in D.19-12-042, the *Decision on 2019 Renewables Portfolio Standard Procurement Plans*.

Where annual adjustments using this methodology would improperly reveal otherwise confidential market prices of contracts, for example, by means of reverse calculations to isolate and reveal confidential contract prices, Staff proposes that Energy Division will not update the price for the applicable Product Category and will instead retain the prior year's ReMAT price.

Once calculated and a ReMAT contract executed, the avoided-cost rate under the ReMAT contract will be a fixed rate for the term of the contract.

2.4. Staff Proposes Eliminating ReMAT's Bimonthly Program Periods and Period Caps

Staff proposes that the bi-monthly program periods and 5 megawatts program period procurement cap per Product Category, which were adopted in D.12-05-035, be eliminated. Staff states that the reasons for establishing these requirements under the prior ReMAT program design are no longer applicable when the avoided-cost rate is administratively set, because the bi-monthly program periods and 5 megawatts program period procurement cap were used to adjust the price up or down according to market signals. Instead, with Staff's proposed methodology for calculating avoided-cost rates using actual market-based RPS contracts, competitive market prices are captured in the data sets used.

2.5. Staff Proposes Continuing ReMAT's Existing Program Queue Methodology

Staff proposes that the utilities retain the existing queues and existing queue methodology to ensure compliance with the first-come, first-served requirement of the tariff in Section 399.20(f).

3. Discussion and Analysis

After careful consideration of the parties' comments and applicable laws, regulations, caselaw, and orders of the Federal Energy Regulatory Commission

(FERC), we adopt the Staff's Proposal to modify the ReMAT Program. Staff's Proposal provides the most transparent, verifiable, and the most reasonable methodology for determining the California utilities' avoided costs to procure under the ReMAT program.

Parties offered widely varied alternatives for changing the ReMAT Program's pricing method, but none of the proposals correctly considered all the pertinent legal and practical constraints of, and discretion afforded to, the Commission under applicable law. After considering the comments and reply comments of parties, we determine that the modifications approved here are the most reasonable means available today to both make the ReMAT Program compliant with federal law and give effect to § 399.20.

3.1. The ReMAT Program Is a PURPA Program

The ReMAT Program must be implemented pursuant to PURPA because the Commission is setting the wholesale price for the purchase of electricity. Cal Advocates opines that the ReMAT program does not need to comply with PURPA because the Commission is already satisfactorily complying with all the requirements of PURPA with the adoption of the New QF SOC.²⁴ PG&E/SCE counter that ReMAT must be a PURPA program because it is a mandatory state program.²⁵

Neither party is completely correct under the Federal Power Act (FPA) and PURPA. Under the FPA, the FERC has exclusive jurisdiction to set rates for wholesale sales and purchases of power.²⁶ The FPA allows one exception to this

²⁴ Cal Advocates Comments at 1-2, 5. *See also* Cal Advocates Reply Comments at 2; and GPI Reply Comments at 12.

²⁵ PG&E/SCE Reply Comments at 3.

²⁶ 16 U.S.C. § 824(a) & (b).

rule and permits states to set or approve wholesale prices for purchases from Qualifying Facilities (QFs) pursuant to PURPA.²⁷ FERC affirmed this tenet in its 2010 order, *Cal. Pub. Utils. Comm'n (CPUC)*, explaining that where the state sets or approves wholesale power purchase agreement prices under a mandatory state program, then such a program can only operate pursuant to PURPA.²⁸

In turn, § 399.20 requires the Commission to set the wholesale rate: “The payment [for electricity] shall be the market price *determined by the commission*,” and the “commission shall establish a methodology to determine the market price of electricity ...”²⁹ Because § 399.20 requires the Commission to set or approve the wholesale rate, the Commission may do so only pursuant to PURPA.

Cal Advocates correctly observes that the New QF SOC brings the Commission into full compliance with the requirements of states to implement PURPA. The New QF SOC offers the following to QFs with a capacity of 20 megawatts or less: the required suite of pricing calculation options,³⁰ a legally enforceable obligation at the QF’s election,³¹ regardless of the QF’s technology or generation profile, and without a limit on procurement.³²

²⁷ 16 U.S.C. § 824a-3(f).

²⁸ *CPUC*, 133 FERC 61,059 at P 5 (2010) (affirming *Cal. Pub. Utils. Comm'n*, 132 FERC ¶ 61,047 at PP 65, 67 (2010) that “state commission may, *pursuant to PURPA*, determine avoided cost rates for qualifying facilities (QF)” (emphasis added).

²⁹ § 399.20(d)(1) & (2).

³⁰ 18 C.F.R. § 292.304(d)(1), (d)(2)(i), & (d)(2)(ii) (2020).

³¹ *Id.*

³² The New QF SOC is available to QFs 20 MW or less unless and until it is suspended by the Commission’s Executive Director if justified by, *e.g.*, changes to FERC’s PURPA Regulations or the Executive Director’s determination that the New QF SOC is no longer necessary.

D.20-05-006, at 58 and 72 (OP 11).

Because the Commission has satisfied the requirements of a state's implementation of PURPA, it does not follow that other electric procurement programs are not PURPA programs. ReMAT is a PURPA program because the Commission is setting the wholesale avoided-cost rate at which the utility must procure electricity, and no further briefing is required to affirm this well-settled law.³³ But ReMAT does not need to *by itself* satisfy all of the PURPA requirements imposed on states, because the New QF SOC already fulfills these requirements and without a limit on procurement.³⁴ FERC endorsed this framework in *CPUC* when it found that multi-tier rates are consistent with PURPA, even as certain state-mandated programs are not available to all QFs.³⁵ Once having satisfied PURPA's state implementation requirements, a state may pursue other alternative PURPA programs that are available only to a limited set of QFs.³⁶

³³ See Cal Advocates Reply Comments at 2.

³⁴ PG&E/SCE suggest that ReMAT may have to satisfy all of the pricing options. It does not since the New QF SOC satisfies all of the pricing option requirements, and the New QF SOC is available to any QF without caps on procurement.

³⁵ *CPUC* concerned a separate tier of avoided-cost rates under PURPA for combined heat and power generators that met a higher efficiency standard under California statutory law than would otherwise be required under the PURPA Regulations. Accordingly, FERC in *CPUC* sanctions a state's implementation of multiple PURPA programs where some of those programs might not be available to all QFs. Accordingly, once a state properly implements all of the requirements of PURPA through one program (sometimes called the "primary PURPA program"), then an additional PURPA program need not *by itself* meet all of the PURPA requirements nor be available to all QFs.

³⁶ The U.S. Court of Appeals for the Ninth Circuit endorsed *CPUC* and multi-tier pricing to accommodate multiple PURPA programs in *Californians for Renewable Energy v. CPUC*, 922 F.3d 929, 936-38 (9th Cir. 2019) (*CARE*).

3.2. ReMAT Is a Valid PURPA Program That Is an Alternative to California's New QF SOC Program

In *CPUC*, FERC clarified that a state's determination of a utility's avoided cost based on "all sources" able to sell, in the context of a mandatory state program, meant that those sources able to participate in such mandatory state program are relevant to determining avoided costs with respect to that mandatory program.³⁷ PG&E/SCE argue that multi-tier pricing upheld in *CPUC* is no longer available to states because FERC, they allege, adopted new PURPA Regulations that effectively overturn the FERC's rationale in *CPUC*.³⁸ On this basis, PG&E/SCE argue that use of the New QF SOC is the sole appropriate means of implementing the ReMAT program.

PG&E/SCE's interpretation of Order 872 is not dispositive. We can see nowhere in Order 872 that FERC explicitly or implicitly rejects or disturbs its extensively articulated reasoning in *CPUC*. PG&E/SCE cite to certain language in Order 872 to reach their conclusion: by expressly sanctioning the use of competitive solicitations as one potential method to set avoided-cost rates, FERC requires that such solicitation be "open to all sources."³⁹ But this language was used only in the context of discussing the minimum requirements for using competitive solicitations to set avoided-cost rates. The "all sources" language should not be extracted from this specific context, and then applied to

³⁷ *CPUC* at PP 26 & 27 ("SoCal Edison supports the proposition that, where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement.").

³⁸ PG&E/SCE Reply Comments at pp. 6-8, citing to FERC's Order 872, *Final Rule: Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 172 FERC ¶ 61,041 (July 16, 2020) (Order 872).

³⁹ Order 872 at PP 413, 427, 433.

California's avoided-cost methodologies that are *not* competitive solicitations. Order 872's language that PG&E/SCE excerpts for this point is inapposite. Moreover, Order 872 does not address the potential use of competitive solicitations in the specific situation in ReMAT and in *CPUC* – where a limited category of QF sources are eligible for a “multi-tier” PURPA program.

PG&E/SCE proceed to highlight other, inapposite paragraphs of Order 872 to support their argument that *CPUC* will have no force after the new PURPA Regulations become effective. They appear to read paragraph 123 of Order 872 as FERC's response to a party's request for clarification of *CPUC*, but paragraph 123 appears to refer to another party's comments on another subject matter.⁴⁰ Since Order 872 does not explicitly reverse FERC's long-standing determinations in *CPUC*, and in light of the clear language in *CARE* affirming *CPUC* and multi-tier pricing,⁴¹ we decline to rely on PG&E/SCE's uncertain arguments to avoid FERC's earlier clear directive.⁴²

3.3. The Use of Recent Wholesale RPS Contracts Is Reasonable to Determine Utility Avoided Costs Under ReMAT

Staff's Proposal to use the IOUs' recent wholesale RPS contracts is the most reasonable methodology to set the wholesale price of electricity for the ReMAT

⁴⁰ PG&E/SCE Reply Comments at 7-8, quoting Order 872 at PP 113 and 123.

⁴¹ *CARE*, 922 F.3d at 922 (acknowledging FERC ruling in *CPUC* that: “Avoided cost rates may also ‘differentiate among qualifying facilities using various technologies...’”).

⁴² PG&E/SCE make an isolated point, “There cannot be two completely different calculations of avoided costs for the same type, size and location of a solar [facility], such as two 1 MW facilities that sit side-by-side.” PG&E/SCE Reply Comments at 7, quoting Winding Creek's district court briefing. This statement is belied by the fact that PG&E/SCE themselves reference, that such a single QF can elect at least four avoided-cost pricing calculations in California: a ReMAT price, a QF Settlement Standard Contract price, a New QF SOC price, or even a bilaterally negotiated contract price.

program under both federal and state law and under the present circumstances, and we adopt it here.

FERC's PURPA Regulations⁴³ set forth factors that states must, "to the extent practicable," be accounted for when determining the utility's avoided cost.⁴⁴ First among them, as set forth in 18 C.F.R. § 292.304(e)(1), is the data provided pursuant to 18 C.F.R. § 292.302(b), (c), or (d).

We hereby determine that the use of the three large electric IOUs' recent long-term RPS contracts is the best data to calculate avoided costs in the ReMAT program at this time. The Staff Proposal states that "[r]ecent purchases by IOUs under the RPS program present the best option at this time as the means of determining avoided cost rates for procurement under Section 399.20."⁴⁵ We agree with this reasoning because data on such recent IOU purchases are "based on recent actual executed contracts"⁴⁶ rather than uncertain forecasts. FERC recently issued revised PURPA Regulations in Order 872, where the rulemaking's "record overwhelmingly supports our conclusions that long-term forecasts of avoided energy costs are inherently less accurate" than calculating actual avoided costs at the time the energy is delivered.⁴⁷ This is a conclusion the Commission continues to encounter, and we now follow FERC's direction that

⁴³ The FERC's regulations implementing PURPA that are pertinent to avoided-cost pricing and a state's implementation of PURPA are found at 18 C.F.R. Part 292.

⁴⁴ 18 C.F.R. § 292.304(e) (2020). Order 872 modifies, among other Regulations, 18 C.F.R. § 292.304(e) but not in a manner that affects the mandatory considerations discussed in this Decision. The citations to 18 C.F.R. § 292.304(e) and its subsections appear substantively identically in the new Regulations adopted by Order 872 and different only by being re-numbered.

⁴⁵ Ruling at A-2.

⁴⁶ *Id.*

⁴⁷ FERC Order 872 at PP 253 & 254.

long-term forecasts are problematic indicators of the utilities' avoided costs and that actual market-based energy prices are better indicators.⁴⁸

Using the utilities' executed RPS contracts provides additional benefits, such as transparency and verifiability. These contracts are listed in Energy Division's database containing information on the IOUs' RPS contracts, where "the public can track RPS contracts and development status of all renewable energy projects executed by the three large IOUs."⁴⁹ Moreover, the RPS database for the period 2013 to 2019, inclusive, presents a robust dataset representing "a range of eligible renewable technologies, project sizes, and dispatchability, reliability, and other factors in 18 C.F.R. § 292.304(e) that should be considered when setting avoided cost rates."⁵⁰ Duly applying, to the extent practicable, FERC's other factors in 18 C.F.R. §292.304(e), which are discussed in this decision further below, Staff's proposal represents the most reasonable means of setting ReMAT rates.

We acknowledge that there are other methodologies for determining the utilities' avoided cost, but the Commission here exercises its broad discretion to implement PURPA and determine avoided costs.⁵¹ As FERC stated clearly,

. . . "states are allowed a wide degree of latitude in establishing an implementation plan for section 210 of PURPA, as long as such plans are consistent with our regulations. . . ." In this regard, the determinations that a state commission makes to implement the rate provisions of section 210 of PURPA are by their nature fact-specific and include consideration of many factors, and we are reluctant to second

⁴⁸ See, e.g., *Indep. Energy Producers Ass'n v. CPUC*, 36 F. 3d 848, 858 (9th Cir. 1994) (*IEP*).

⁴⁹ Ruling at A-3.

⁵⁰ *Id.*

⁵¹ See *FERC v. Mississippi*, 456 U.S. 742, 751 (1982); see also *IEP*, 36 F. 3d at 856.

guess the state commission's determinations; our regulations thus provide state commissions with guidelines on factors to be taken into account, "to the extent practicable," in determining a utility's avoided cost of acquiring the next unit of generation.

CPUC, 133 FERC ¶ 61,059, at P 24 (citations omitted). Most recently in Order 872, FERC affirmed the long-standing latitude afforded to states to determine avoided costs and again declined to prescribe any one method of setting avoided-cost rates.⁵²

The Joint Solar Parties acknowledges the soundness of Staff's proposed methodology,⁵³ and OCID supports it.⁵⁴ For the reasons discussed herein, we must reject parties' other proffered methodologies as inconsistent with PURPA, FERC's PURPA Regulations, state statutory law, or caselaw, or else not presenting a comparable transparent, verifiable methodology using actual market rates for determining ReMAT's prices. We conclude that the methodology of using a weighted average of recent RPS contract prices – with the automatic updating of the ReMAT price as more recent market-price data becomes available – best satisfies all legal requirements at this time and adopt Staff's methodology.

⁵² Order 872 at P 714; 18 C.F.R. §292.304(e).

⁵³ Joint Solar Parties Comments at 4 (acknowledging the soundness of Staff's proposed methodology while preferring a "straightforward auction methodology that was used by the Commission in the Renewable Auction Mechanism (RAM) programs). It is not clear that an auction process is permissible under § 399.20(f)(1), which requires that the tariff be offered on a first-come, first-served basis.

⁵⁴ OCID Comments at 3-4.

3.4. Staff's Pricing Methodology Conforms with the Considerations Mandated by FERC's PURPA Regulations

In addition to the factor in 18 C.F.R. § 292.304(e)(1) (2020), discussed above, other factors that states must, "to the extent practicable," account for when setting avoided-cost rates, include the factors at 18 C.F.R. § 292.304(e)(2)-(4) (2020):

- (2) The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods [...]
- (3) The relationship of the availability of energy or capacity from the qualifying facility as derived in paragraph (e)(2) of this section, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
- (4) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

The first two of these factors are inherently reflected in the Staff's pricing methodology, which uses actual, market-based competitive contracts and applies Time-of Day (TOD) periods and factors to calculate utilities' avoided costs. TOD periods identify the periods of daily and season peak and off-peak periods, and TOD factors adjust the energy payment according to TOD periods, to account for the higher value of energy delivered during times of peak demand and lower value on energy delivered during times of off-peak demand. Moreover, periods of peak or off-peak demand are defined in part by the times when the utility can or cannot avoid incremental costs, because such periods will determine whether a utility will need to acquire additional resources.

As for the 18 C.F.R. § 292.304(e)(4) factor, such consideration is not practicable at this time. We do not have useful data to determine costs or savings from variations in line losses by purchasing from ReMAT QFs, as compared with purchases from other generation facilities. We do note, however, that § 399.20(b)(3)(A) prompts an indirect consideration of costs and savings from variations in line losses because facilities eligible to participate in ReMAT must be “strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity at the facility to load centers.”⁵⁵

To the extent practicable, we have accounted for 18 C.F.R. § 292.304(e)’s factors when reviewing Staff’s pricing methodology, and we are satisfied that Staff’s pricing methodology reasonably incorporates these factors.

3.5. Staff’s Pricing Methodology Complies with § 399.20

§ 399.20(d) requires utilities to file with the Commission a tariff that provides for payment for every kilowatt hour of electricity purchased from an eligible renewable generation facility.⁵⁶ To determine this payment amount, the Commission is required to “establish a methodology to determine the market price of electricity.”⁵⁷ The Commission’s pricing methodology requires the commission to consider certain factors.

⁵⁵ § 399.20(b)(3)(A).

⁵⁶ § 399.20(d)(1).

⁵⁷ § 399.20(d)(2).

3.5.1. The Market Price of Electricity

The price under § 399.20 must be the “market price” that “correspond[s] to the length of contracts with an electric generating facility.”⁵⁸ In fulfilling this requirement, the commission must *consider* (“... in consideration of ...”) the following factors:

- (A) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation’s general procurement activities as authorized by the commission.
- (B) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-priced electricity from new generating facilities.
- (C) The value of different electricity products including baseload, peaking, and as-available electricity.⁵⁹

Hence, in determining a methodology to determine the market price for electricity we consider the factors in § 399.20(d)(2). Staff’s proposed pricing methodology considers § 399.20(d)(2)(A) and reflects the “long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation’s general procurement activities as authorized by the commission.”⁶⁰ The 69 RPS contracts listed in Table 3 of the Staff Proposal were procured at market-based prices for renewable electricity under long-term⁶¹ contracts at fixed prices and were procurement activities overseen by and authorized by the

⁵⁸ § 399.20(d)(2).

⁵⁹ § 399.20(d)(2)(A)-(C). *See also* Report of the Assembly Committee on Utilities and Commerce on SB 2 (X1) (March 3, 2011 hearing) at 5 (“This bill *requires the CPUC to consider specific findings when developing the feed-in tariff for renewable facilities that are less than 3 MW in size.*” (emphasis added)).

⁶⁰ 399.20(d)(2)(A).

⁶¹ The Commission has defined “long-term” in California’s RPS program as 10 years or more. *See* § 399.13(b).

Commission. We note that 65 of the 69 contracts in Table 3 are with new facilities as referenced in § 399.20(d)(2)(B); the four contracts with existing facilities are Geysers (2013), Geysers (2014), Sonoma Landfill (2015), and Kekawaka Creek Hydro (2013).

PG&E/SCE argue that the price “determined pursuant to an electrical corporation’s general procurement activities as authorized by the commission” requires that the § 399.20 price be based on “all resources and all contracts” procured by the utility.⁶² We disagree. First of all, § 399.20(d)(2)(A) is a required *consideration*, and we duly consider this factor here. Next, contrary to the assertion of PG&E/SCE, “general procurement activities” is not defined as requiring all procurement activities, both RPS and non-RPS. In consideration of this factor, we note that the Public Utilities Code views the RPS program as part of utilities’ general procurement activities, as it requires the Commission to adopt RPS plans , “[t]o the extent feasible, ... as part of, and pursuant to, a general procurement plan process.”⁶³ Third, we consider this factor in light of the statutory *requirement* that this program is available only to “eligible renewable energy resource[s].”⁶⁴ Reading § 399.20 as a whole, the Commission finds that the utilities’ RPS procurement activities are those procurement activities relevant to determining the utilities’ avoided costs and hence the market price of electricity for ReMAT procurement.

Staff’s proposed pricing methodology also considers the “long-term ownership, operating, and fixed-price fuel costs associated with fixed-price

⁶² PG&E/SCE Comments at 3; *see also* PG&E/SCE Reply Comments at 3, 6.

⁶³ § 399.13(a)(1). *See, e.g.*, D.19-12-042 (issued Dec. 30, 2019) (approving IOUs’ 2019 RPS Procurement Plans).

⁶⁴ § 399.20(b)(4).

electricity from new generating facilities,” as required by § 399.20(d)(2)(B). Using actual recent long-term RPS contracts prices is valuable because they are a facial indication of what price is sufficient to cover long-term ownership, operating, and other costs of new generating facilities. Under PURPA, we do not look to a QF’s ownership and operation costs, but in looking to the more than 70 RPS contracts in the Staff Proposal, we are persuaded that Staff’s methodology gives due consideration to § 399.20(d)(2)(B).

Lastly, the Staff Proposal expressly incorporates a value for the different electricity products of baseload, as-available peaking, and as-available non-peaking electricity, as these products are reflected in Table 3. The Staff Proposal thus achieves the required consideration of “the value of different electricity products including baseload, peaking, and as-available electricity” pursuant to § 399.20(d)(2)(C).⁶⁵

We conclude that using the weighted average of recent RPS contracts are reasonable to determine the market price of electricity within the meaning of § 399.20.

3.5.2. Current and Anticipated Environmental Compliance Costs

§ 399.20(d)(1) further requires that the ReMAT payment include:

all current and anticipated environmental compliance costs, including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operating of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located.

⁶⁵ See OCID Comments at 3-4.

GPI comments that the Staff Proposal fails to include environmental compliance costs, citing to D.12-05-035 indicating that such costs were not included in the ReMAT price.⁶⁶ The Commission, however, subsequently determined that a market-based price for ReMAT contracts already includes all of the generator's costs, including current and anticipated environmental compliance costs.⁶⁷ The same reasoning applies where recent market-based RPS contract prices are used to establish the market price for ReMAT contracts. Accordingly, we reject GPI's assertion that the ReMAT pricing methodology should be modified to include an additional amount for environmental compliance costs pursuant to Section 399.20(d)(1).

3.5.3. Response to Comments

We address several parties' comments that the Staff Proposal does not comply with § 399.20. First, the ReMAT Coalition comments that avoided-cost pricing for ReMAT "must be based on similarly sized projects,"⁶⁸ and the Joint Solar Parties agree.⁶⁹ However, we find no language in § 399.20 requiring the commission to base pricing on project size. Moreover, PURPA does not *require* that avoided-cost rates be based on similarly sized QFs. In *CPUC*, FERC determined that "where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are *relevant* to the determination of the

⁶⁶ GPI Reply Comments at 5, 7, 13.

⁶⁷ See D.12-05-035 as conformed by D.13-01-041 at 46-47, 59-60, and 124 (Finding of Fact 22 ("A market-based price accounts for all of a generator's costs, including environmental compliance costs.)) and D.13-05-034 at 30-32.

⁶⁸ ReMAT Coalition Comments at 8. See also CalWEA Comments at 2-3; Clean Coalition Comments at 3; GPI Comments at 1-2, 6-7; GPI Reply Comments at 10, 13; and Winding Creek Comments at 9-10.

⁶⁹ Joint Solar Parties Comments at 7.

utility's avoided cost for that procurement requirement."⁷⁰ Certainly, generators with the same characteristics as those that are eligible to participate in the state-mandated program are an optimal data source *if they are available*, but they are not *necessary*; they are *relevant*.

Commenters additionally assert that the Commission must account for varied pricing between utility service territories.⁷¹ Again, § 399.20 does not require the Commission to vary pricing between utility service territories. The Commission finds that using the actual market-based cost data of the utilities' RPS programs as authorized by the Commission provides a transparent, verifiable methodology to determine the market-price of electricity for the ReMAT program and is thus the most reasonable at this time.

Further, the ReMAT Coalition and GPI comment that the Commission must account for the impact of tax credits on historical RPS prices.⁷² Section 399.20 contains no such requirement. We find, consistent with PURPA, that the impact of tax credits bears on the generating facility's costs. PURPA does not concern itself with the QF's costs, but on utilities' avoided costs, that is, the market costs for the next increment of procurement.⁷³

Commenters also state that the Commission must provide illustrations of the impact of TOD factors on Staff Proposal's RPS dataset so that parties can observe "effective prices."⁷⁴ We note that the Commission is specifically

⁷⁰ *CPUC*, 133 FERC ¶ 61,059 at P 27.

⁷¹ ReMAT Coalition Comments at 9. *See also* Clean Coalition Comments at 3; and Winding Creek Comments at 10.

⁷² *Id.* at 10. *See also* GPI Comments at 8-9.

⁷³ *See* Order 872, P 41.

⁷⁴ *Id.* (*See also* GPI Comments at 7-8.)

authorized by § 399.20(d)(3) to adjust the payment rate to reflect the value of electricity generated on a time-of-delivery basis, and we do so in this decision. But the commenters' request to review the "effective prices" is a fair one, and we require the utilities to provide "effective prices" when they file Advice Letters revising their ReMAT tariffs and each year when they must update the prices.

PG&E and SCE comment that the price available to participants in the ReMAT program should be the price available from the New QF SOC approved in D.20-05-006 based upon the locational marginal price.⁷⁵ We disagree that the New PURPA SOC's pricing is consistent with § 399.20. The Legislature sought to promote small renewable resources by creating a discrete program that mandates a tariff offered just to them until a certain amount of megawatts are procured, specifically stating "[i]t is the policy of this state and the intent of the Legislature to encourage electrical generation from eligible renewable energy resources."⁷⁶ Had the Legislature believed that general RPS procurement or PURPA generally were adequate to promote small renewable resources, the Legislature would not have enacted a requirement for a tariff particular to encouraging a specified procurement amount of small renewable resources. We must give effect to legislative intent with this discrete market segment and the uniquely enumerated requirements and considerations when setting avoided cost pricing under § 399.20.

As always, the relevant inquiry in setting rates under PURPA is the utility's avoided costs. Whether one QF receives a tax credit when another does not, or whether TOD factors change over time (as they regularly do), may be

⁷⁵ PG&E/SCE Comments at 6.

⁷⁶ 399.20(a)(policy and intent statement); (c) and (f)(1) for procurement and tariff requirement.

relevant to the QF's *production costs*, but they cannot alter the proper methodology for determining rates under PURPA, which is to focus on the *costs that a purchasing utility avoids* by procuring under PURPA.

3.6. An Avoided-Cost Rate Based on RPS Resources Is Appropriate for the ReMAT Program

The Staff Proposal's use of the utilities' market-based RPS contracts to set the avoided-cost rate for ReMAT is appropriate because the intent of § 399.20 is to support procurement of *renewable* electricity from small generators.⁷⁷

As discussed above, PG&E/SCE maintain that ReMAT prices should be based on all resources, not just RPS resources, and thus argue that their proposal to use the New QF SOC to implement ReMAT – is the only proposal that is consistent with both PURPA and § 399.20.⁷⁸ PG&E/SCE go even further and mistakenly assert that FERC's Order 872 signals FERC's return to determining avoided costs based all resources in the “entire market,” as such a requirement was broadly construed in *Southern California Edison Company*.⁷⁹ We do not agree that FERC reversed *CPUC* in Order 872, as discussed above. Accordingly, there is no barrier to implementing ReMAT with an avoided cost based on renewable contract prices, and doing so fulfills the intent of § 399.20 to support procurement of *renewable* electricity from small generators.

⁷⁷ The Ninth Circuit last year held that “where a utility uses energy from a QF to meet a state RPS, the avoided cost must be based on the sources that the utility could rely upon to meet the RPS.” *CARE*, 922 F.3d at 937. We note that there is no requirement or guarantee, however, that utilities will have a need to or in fact use their ReMAT procurement for compliance with the state's RPS requirements, as they have already satisfied their RPS procurement requirements for the foreseeable future.

⁷⁸ PG&E/SCE Reply Comments at 3-5. See also Cal Advocates Comments at 4 (supporting the use of the New QF SOC to implement ReMAT).

⁷⁹ PG&E/SCE Comments at 5; PG&E/SCE Reply Comments at 6-10.

Nor do we agree that the Ninth Circuit struck down FERC's endorsement of multi-tier pricing as "unreasonable."⁸⁰ Instead, the Ninth Circuit applied the term, "unreasonable," to FERC's determination that the QF Settlement Standard Contract "provides QFs the opportunity to enter into long-term legally enforceable obligations at avoided-cost rates" in satisfaction of all of the multiple requirements of 18 C.F.R. § 292.304(d).⁸¹

CPUC remains valid and applicable here to empower the Commission to set an avoided-cost rate for the ReMAT program separate from the New QF SOC. Accordingly, multi-tier pricing is endorsed by FERC, and there is nothing that prohibits the Commission from adopting different pricing for ReMAT and the New QF SOC. Rather, states have broad discretion to establish methodologies to set avoided cost rates.

Furthermore, nothing in PURPA or § 399.20 requires that the Commission look to all generation resources. As the IOUs admit, ReMAT was premised on *CPUC*, which allows states to set avoided cost rates under state-mandated programs based on the resources available to participate in that program. The cost of the next increment to procure energy under ReMAT is renewable generation because only certain renewable generators may participate in ReMAT.⁸² Hence, our determination in the previous section – that looking to RPS procurement contracts is the best means of determining the market price of electricity for the ReMAT Program – addresses parties comments urging otherwise.

⁸⁰ See *Winding Creek Reply Comments* at 5-6.

⁸¹ *Winding Creek Solar LLC v. Peterman*, 932 F.3d at 865.

⁸² See § 399.20(b).

3.7. It Is Appropriate to Use Only Investor-Owned Utility RPS Contracts

Although 18 C.F.R. § 292.304(e)(1) permits states to use non-IOU data, we determine that using only the IOUs' long-term RPS contract data is most appropriate. PG&E/SCE comment that the Staff Proposal's reliance on IOU-only RPS procurement data is flawed because it does not capture the contracts of all load serving entities such as Community Choice Aggregators (CCAs) and Electric Service Providers (ESPs).⁸³ Nevertheless, we believe use of IOU RPS contracts is the most reasonable and relevant data on which to base ReMAT prices. First, the § 399.20 tariff is mandated only on the Commission-regulated IOUs.⁸⁴ Second, most of the IOU contracts in the Staff Proposal's dataset were procured through competitive solicitations in conformance with the *Allegheny* principles required for competitive solicitations under Order 872.⁸⁵ Third, the Commission does not possess a complete data set of RPS prices paid by CCAs and other Load Serving Entities such as ESPs. The Commission does, however, possess a robust, transparent (complete), and verifiable data set that provides reliable data on the entirety of RPS contract prices paid by Commission-regulated IOUs pursuant to § 913.3(a)(1).

3.8. Annual Updates to the ReMAT Price Will Capture Utilities' Changing Avoided Costs

PG&E/SCE argue that the Staff Proposal's price exceeds the utilities' avoided costs.⁸⁶ Cal Advocates expresses reservations that the Staff Proposal will

⁸³ PG&E/SCE Comments at 5.

⁸⁴ See §§ 399.20(c) and (f)(1).

⁸⁵ See Order 872 at PP 411-441.

⁸⁶ PG&E/SCE Comments at 4; PG&E/SCE Reply Comments at 2, 8.

accurately determine the utilities' avoided costs.⁸⁷ The ReMAT Coalition and others comment that the Staff Proposal's initial prices "are already too low to support development of new projects."⁸⁸ The strongly expressed arguments on both sides capture, in a nutshell, the challenges and protracted litigation regarding PURPA pricing.

Although PG&E/SCE "generally agree that 'recent' purchases may be a reasonable method for determining utility avoided costs," they allege that the 2013-2019 dataset that the Staff Proposes uses as a starting point is "stale."⁸⁹ They point to the Commission's 2020 "Padilla Report" to argue that RPS contract prices of all load serving entities (not just IOUs) were three times higher in 2013 compared to present day prices.⁹⁰ Similarly, while Cal Advocates supports the Staff Proposal's annual adjustments, it believes the data set used (IOU RPS contracts between 2013 and 2019) weighs too heavily in favor of older, higher-priced contracts and lacks transparency.⁹¹ It and other parties note the decline of RPS and other procurement prices in more recent years.⁹² The ReMAT Coalition, on the other hand, submits that operation of the Staff Proposal's annual adjustments will "ratchet prices down" and "will be ineffective at stimulating projects and achieving the State's mandate as set forth in ReMAT's implementing legislation."⁹³ Clean Coalition comments that adjustments on a statewide basis

⁸⁷ Cal Advocates Comments at 6.

⁸⁸ ReMat Coalition Comments at 11.

⁸⁹ PG&E/SCE Comments at 4.

⁹⁰ *Id.*

⁹¹ Cal Advocates Comments at 4.

⁹² See Clean Coalition Comments at 3-4; and GPI Comments at 13-14.

⁹³ ReMat Coalition Comments at 11. See also OCID Comments at 3-4.

does not reflect differences in marginal prices in various locations across California.⁹⁴

The State's mandate in § 399.20 requires utilities to offer the feed-in tariff approved by the Commission until they reach their proportionate share of the 750 megawatts statewide cap, and the limited mandates on pricing.⁹⁵ PURPA expressly focuses on a utility's avoided costs, not on the cost of production of QFs. It is well-established that PURPA is not designed to ensure prices that support a QF's cost of production;⁹⁶ instead, it guarantees that utilities purchase electricity offered by a QF at a price that the utilities would otherwise pay for the next increment of generation. The ReMAT Coalition's concern for prices to support a QF's cost of production is understandable, but this point of reference is not the applicable standard under PURPA. Instead, PURPA mandates a focus on the costs the *utilities* would otherwise be required to pay for the next increment of procurement.

There is some sense in updating the ReMAT price as additional RPS contracts are signed, and the Staff Proposal incorporates the ability to update the ReMAT price as long as certain considerations, discussed below, are addressed. At present, however, we conclude that the 2013-2019-time frame is the most reasonable under the present circumstances to resume the ReMAT program.

Our first consideration concerns a fair and balanced data set representing the utilities' RPS procurement costs. We agree with Staff that the use of RPS

⁹⁴ Clean Coalition Comments at 3.

⁹⁵ GPI suggests lifting the 750 MW program cap. GPI Comments at 10. This is beyond the Commission's authority to consider, as the 750 MW program cap is set in statute at § 399.20(f)(1).

⁹⁶ See Order 872 at P 41.

contracts executed by the utilities between 2013 and 2019 “ensure[s] an adequate representation of a range of eligible renewable technologies, project sizes, and dispatchability, reliability, and other factors in 18 C.F.R. 292.304(e) that should be considered when setting avoided cost rates.”⁹⁷ We note that Staff was motivated to look back to 2013 in order to develop a robust data set to implement the methodology. Because the data set for baseload generation from RPS resources is limited,⁹⁸ use of the 2013-2019 timeframe is reasonable to develop a balanced data set. We also agree with OCID that using a weighted average price based on recent prior years’ RPS contracts will both reflect the current market and “smooth any market volatility.”⁹⁹

Our next consideration is confidentiality. No party disputes the Staff Proposal’s motivation to use RPS prices between 2013 and 2019 for the initial ReMAT price: preservation of the confidentiality of market-sensitive contract prices. Cal Advocates best appreciates this constraint and recommends a workshop to consider the various pricing adjustment proposals to mitigate the imbalance in favor of older, higher-priced contracts, even suggesting weighting the averaging in favor of more recent contracts or applying a de-escalation factor to reflect the average drop in prices.¹⁰⁰ GPI also suggests a workshop to consider various proposals for further changes, such as shifting megawatts targets between product categories if little interest is expressed in some of the

⁹⁷ Ruling at A-3.

⁹⁸ The baseload RPS generation units in the Staff Proposal are the Sonoma County Landfill LFGTE Project (2015), the Geysers Power Company, LLC (2014), and the Geysers Power Company, LLC (2013).

⁹⁹ OCID Comments at 4.

¹⁰⁰ Cal Advocates Comments at 5-9. See also Cal Advocates Reply Comments at 3-5.

categories.¹⁰¹ Other parties forward proposals for more radical changes to the ReMAT program.¹⁰² All of these comments are relevant to the consideration of further changes to ReMAT's pricing mechanism at a later date in this proceeding, particularly as newer RPS contracts are signed and as participation in the revised ReMAT program can be analyzed.

3.9. Staff's Methodology Complies with FERC Regulations Guiding the Determination of Avoided Costs

GPI suggests including the transmission access charges and a locational adder to the ReMAT price.¹⁰³ Clean Coalition supports a ReMAT price that captures the "value of resilience and the avoided transmission cost of ReMAT projects."¹⁰⁴ These appear to be the types of costs or charges that FERC recently determined were not relevant to setting avoided cost rates under PURPA.¹⁰⁵ As PG&E/SCE correctly point out, PURPA is "not intended to require the rate payers of a utility to subsidize cogenerators or small power producers" with compensation that does not reflect the utility's avoided costs.¹⁰⁶ We decline to adopt them here.¹⁰⁷

¹⁰¹ GPI Comments at 14.

¹⁰² *See, e.g.*, Clean Coalition Comments at 11-13.

¹⁰³ GPI Comments at 11-12; GPI Reply Comments at 5-12.

¹⁰⁴ Clean Coalition Comments at 3, 4-10.

¹⁰⁵ Order 872 at P 123.

¹⁰⁶ PG&E/SCE Reply Comments at 9, quoting H.R. Rep. No. 95-1750, at 98 (1978) (H. Conf. Rep.).

¹⁰⁷ Order 872 at P 123.

3.10. The Commission May Not Resume ReMAT's Adjusting Pricing Mechanism As Adopted in D.12-05-035, D.13-01-041, and D.13-05-034

Clean Coalition, ReMAT Coalition, and utilities advance the continued use of ReMAT's Price Adjustment Mechanism as adopted in D.12-05-035, D.13-01-041, and D.13-05-034.¹⁰⁸ Such a proposal, however, is inconsistent with the *Winding Creek* district court order. Further, as explained above, the ReMAT program must comply with PURPA's requirement for prices that reflect avoided costs. We therefore decline to adopt this proposal.

The ReMAT Coalition's reasoning is that if the Commission has a fully PURPA-compliant PURPA program, then it may implement alternative PURPA programs that are not available to all QFs.¹⁰⁹ The district court and the Ninth Circuit never at any point found that such a framework for state implementation of PURPA is invalid; they simply declined to second-guess FERC's determination "that an alternative program may exist if a state otherwise satisfies its obligations to QFs under PURPA."¹¹⁰

Be that as it may, the Commission must address the very plain language of the district court order. The district court order concluded that the Price Adjustment Mechanism as it was approved in our orders D.12-05-035, D.13-01-041, and D.13-05-034 does not set an avoided-cost rate, and the Commission is enjoined from further implementation of the Price Adjustment Mechanism.

¹⁰⁸ See Clean Coalition Comments at 1-2; PG&E/SCE Comments at 3 fn.6; and ReMAT Coalition Comments at 3-7.

¹⁰⁹ ReMAT Coalition Comments at 5. See also CalWEA Comments at 2.

¹¹⁰ *Winding Creek Solar LLC v. Peterman*, 932 F.3d at 868.

The ReMAT Coalition comments that the Price Adjustment Mechanism is the type of competitive solicitation that FERC recently endorsed as setting avoided-cost rates in Order 872.¹¹¹ Order 872 does explicitly endorse competitive solicitations as one potential method to set avoided-cost rates. FERC, however, enumerates specific requirements to satisfy this option, including oversight by an Independent Evaluator.¹¹² The Price Adjustment Mechanism (with pre-determined adjustment amounts in each program period) does not appear to satisfy the competitive solicitation requirements under Order 872.

The ReMAT Coalition goes on to suggest that minor revisions to the Price Adjustment Mechanism would avoid any concerns raised by the federal court order's criticisms of the Price Adjustment Mechanism.¹¹³ It suggests, for example, changing the two-month program periods to quarterly period, changing the \$4, \$8, and \$12 adjustment increments to a five percent price increment, and removing program period caps.¹¹⁴ These changes, however, might suffer the same assessment that the Price Adjustment Mechanism received in the federal court order: that the five percent price increment is arbitrary and that the ReMAT Coalition's pricing mechanism "strays too far" from calculating a utility's avoided cost.

We agree that the ReMAT program has been suspended for a long period of time and it is appropriate to resume ReMAT promptly. Some parties believe the pricing methodology adopted here is too high to reflect the utility's avoided cost, others believe it is too low. For the reasons discussed above, we conclude

¹¹¹ ReMAT Coalition Comments at 12, citing Order 827 at P 411.

¹¹² Order 827 at PP 411-438.

¹¹³ ReMAT Coalition Comments at 11-12. See also CalWEA Comments at 2.

¹¹⁴ ReMAT Coalition Comments at 12-13.

that actual market-based long-term contract prices for RPS resources provide the most transparent and reliable dataset with which to calculate ReMAT's avoided-cost rates, under all applicable laws.

3.11. The Adopted Revisions to the ReMAT Program Will Not Result in Unconstitutional Takings

Winding Creek comments that the imposition of unlawful terms in the ReMAT program and a delay in implementing remedial action could amount to a taking of private property because it would "render certain [of its] assets worthless."¹¹⁵ Winding Creek states that it had "reasonable investment-backed expectations that were violated and crushed by the unlawful Re-MAT provisions."¹¹⁶ PG&E/SCE respond that the takings allegation is "far-fetched" and dispute that a taking could "occur if there was no property right to begin with. Winding Creek admits it 'submitted an application for the Re-MAT program' on *October 4, 2013*, more than four months *after* it challenged the ReMAT price. Winding Creek cannot reasonably claim that a 'property right' formed at the initial price in October 2013 when it had already rejected the offered price by challenging it at FERC."¹¹⁷ Winding Creek had opportunities to obtain a ReMAT contract, prior to the December 2017 suspension of ReMAT, but chose not to do so.

The law on takings is well-established. The United States Constitution prohibits the government from taking private property for a public use without

¹¹⁵ Winding Creek Comments at 3-5.

¹¹⁶ *Id.* at 5.

¹¹⁷ PG&E/SCE Reply Comments at 6 (emphasis and italics in original).

just compensation.¹¹⁸ Under the takings clauses of the federal and state constitutions, there are two types of takings: (1) categorical or per se takings that arise from the government physically occupies property or deprives its owner of all viable uses of the property, and (2) regulatory takings that result when government regulation of a property's use sufficiently impairs its value.¹¹⁹

Regarding the categorical or per se takings category, ReMAT involves no physical taking or invasion of private property and Winding Creek has not been deprived of all viable uses of its property by the suspension of the ReMAT program, therefore no per se taking has occurred.

Winding Creek correctly identifies *Penn Central Transportation v. New York City* (1978) 438 U.S. 104, 124 and its factors as being of particular significance for determining if a regulatory taking has occurred.¹²⁰ A court may dismiss a takings claim on the basis of any one of the *Penn Central* factors.¹²¹ The federal court injunction interrupting the offering of the ReMAT program does not meet any of these factors.

First, the injunction did not unreasonably impair the value or use of the property in view of the owners' general use of the property. *See Bottini v. San Diego* (2018) 27 Cal. App. 5th 281, 284-85 (applying the *Penn Central* test and explaining that the first factor – the economic impact of the regulation on the

¹¹⁸ U.S. Const. amend V, see also CA. Const. Art. I sec. 19(a) and *Bottini v. City of San Diego* 27 Cal. App. 5th 281, 311 (2018) (explaining that the takings clause in the California Constitution generally is construed “congruently” with the federal takings clause).

¹¹⁹ *See e.g. McClain v. Sav-on Drugs*, 9 Cal. App. 5th 684, 703 (2017)(reciting the federal and California Constitutions takings clause tests and noting that the taking of money is different from the taking of real or personal property and does not implicate the takings clause).

¹²⁰ Winding Creek Comments at 3-4.

¹²¹ *See Ruckelshaus v. Monsanto Co.* (1984) 476 U.S. 986, 1005; *see also Allegretti & Co. v. County of Imperial* (2006) 138 Cal. App. 4th 1261, 1277.

claimant – is a question of whether the regulation “unreasonably impair[s] the value or use of [the] property’ in view of the owners’ general use of their property” (citing *Allegretti* 131 Cal. App. 4th at 1278, and quoting *PruneYard Shopping Center v. Robins* (1980) 447 U.S. 74, 83)).

As to the second *Penn Central* factor, the injunction has not prevented Winding Creek from using its property in a manner that interferes with a reasonable investment-backed expectation as the expectation must be more than a “unilateral expectation or an abstract need.” *Ruckelshaus v. Monsanto Co.*, 476 U.S. at 1005. Winding Creek has been free to enter into an energy generation contract outside of the ReMAT program, including over the time period since the federal district court enjoined the Commission from continuing to operate the ReMAT program as set forth in D.12-05-035, D.13-01-041, and D.13-05-034.¹²² Further, Winding Creek has no “reasonable investment-backed expectations” in a program it admits was, and successfully challenged as, unlawful. *See Colony Cove Prop., LLC v. City of Carson* (9th Cir. 2018) 888 F.3d 445, 452 (applying the *Penn Central* factors and finding that an investment-backed expectation must be objectively reasonable).

The third *Penn Central* factor requires an examination of the character of the government action. The Commission denies Winding Creek’s unsupported assertion that “the character of the regulatory action was the imposition of unlawful provisions that sought to strip small renewable generators of federal rights.”¹²³ Rather, the character of the Commission’s implementation of ReMAT

¹²² Winding Creek could have sold its power pursuant to the CHP settlement standard offer contract or by executing a bilateral power purchase agreement.

¹²³ Winding Creek Comments at 5.

has been to carry out Pub. Util. Code 399.20 and federal law, providing a program “to encourage electrical generation.”¹²⁴

3.12. The ReMAT Program Shall Eliminate Program Periods and Period Caps, Up to the 750 megawatts Statutory Cap

We adopt the Staff Proposal to eliminate program periods and period caps.

PG&E/SCE’s proposal to implement § 399.20 by using the New QF SOC would naturally eliminate the 2013 ReMAT’s program periods and period caps.¹²⁵ They recommend, however, capping the number of applications to be reviewed at 5 per 20-business day period, followed by a 10-business day period for applicants to cure deficiencies, to enable the utilities to manage the program queue.

We decline to adopt PG&E/SCE’s proposed modification. § 399.20(f)(1) requires the tariff to be offered to qualifying generation facilities on a first-come, first-served basis until the utility meets its proportional share of ReMAT procurement. Once a standard tariff is approved, there should be no cause for delay in a qualifying renewable generator securing a contract.

3.13. Other Comments That Are Out of Scope of the Ruling

The Ruling solicited comments on the Staff Proposal to make modifications to the ReMAT’s pricing mechanism, the bi-monthly program periods, and program period procurement caps. Parties submitted additional comments that are out-of-scope of the Ruling, and we will not address them here. They may be relevant as additional changes to ReMAT are contemplated in this proceeding. These comments include PG&E/SCE’s request to modify the term of years of the

¹²⁴ § 399.20(a); *see also* D.12-05-035, Conclusions of Law 1-5, 20.

¹²⁵ PG&E/SCE Comments at 8-9.

modified ReMAT contracts;¹²⁶ the incorporation of storage capabilities in modifying the ReMAT program,¹²⁷ changes to the capacity allocation between Product Categories,¹²⁸ and changes to the cost-allocation methodology to recover ReMAT costs.¹²⁹

We also decline Winding Creek's request for a grandfathering rule, to award Winding Creek a ReMAT contract with the initial offer price when the ReMAT program commenced in October 2013.¹³⁰ Winding Creek's request is substantively identical to the relief it sought without success in federal court and, as such relief is not required by law, we will proceed with implementing a revised ReMAT program that complies with federal and state law under the most reasonable means to do so.

SDG&E emphasizes that its ReMAT program became fully subscribed and closed in 2016, and that it intends to keep its ReMAT program closed to new subscriptions.¹³¹ CalWEA, on the other hand, urges the Commission to modify the ReMAT rules that permitted SDG&E to end its ReMAT program, despite SDG&E procuring only 65% of its program capacity, so that SDG&E would be compelled to reopen its ReMAT program.¹³² CalWEA's comments have merit

¹²⁶ PG&E/SCE Comments at 7.

¹²⁷ See CESA Comments at 1-4; GPI Comments at 9-10; Joint Solar Parties at 6; PG&E/SCE Comments at 8; and PG&E/SCE Reply Comments at 13-14.

¹²⁸ Joint Solar Parties at 6.

¹²⁹ Cal Advocates Reply Comments at 5-6; PG&E/SCE Comments at 10-12; PG&E/SCE Reply Comments at 17.

¹³⁰ Winding Creek Comments at 2-9.

¹³¹ SDG&E Comments at 1-4.

¹³² CalWEA Comments at 3-4.

and this option is worth exploring as additional changes to the ReMAT program are considered. However, we will not pursue this option here.

Finally, this decision does not resolve outstanding petitions for modification to the ReMAT program.¹³³ This proceeding will continue to consider further changes to the ReMAT program based on petitions for modification, as additional data on how the newly revised ReMAT Program is performing, and/or as other RPS procurement data becomes available.

4. Conclusion

The ReMAT program has been suspended for a long period of time and we hereby adopt modifications to the ReMAT program so that the program can promptly resume and each electric utility can achieve its proportionate share of procurement under § 399.20. No party forwarded comments that would allow for a prompt resumption of ReMAT in accordance with state and federal statutory law, binding caselaw, FERC's regulations and orders, and related Commission orders. The revisions to ReMAT adopted here does achieve our goal of its prompt resumption in accordance with all applicable law. We expect the investor-owned utilities subject to this order to promptly and fully comply, without delay.

5. Comments on Proposed Decision

The proposed decision of ALJ Lakhanpal in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Rules. Comments were filed on _____ and reply comments were filed on _____.

¹³³ See CalWEA Comments at 3-4; GPI Comments at 5-6.

6. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Nilgun Atamturk and Manisha Lakhanpal are the assigned ALJs in this proceeding.

Findings of Fact

1. Commission decisions D.12-05-035, D.13-01-041, and D.13-05-034 established the Renewable Market Adjusting Tariff (ReMAT) Program, which launched in October 2013.
2. On December 6, 2017, a federal district court enjoined the further implementation of D.12-05-035, D.13-01-041, and D.13-05-034.
3. In response to the federal district court order, the Commission suspended the ReMAT program in December 2017.
4. Use of long-term forecasts to determine avoided costs is problematic whereas actual market-based energy prices are better indicators of utilities' avoided costs.
5. Using the utilities' actual recently executed Renewables Portfolio Standard (RPS) contracts provides the benefits of transparency and verifiability.
6. The investor-owned utilities' actual recently executed RPS contracts are listed in Energy Division's database containing information on their RPS contracts and are publicly available.
7. The actual RPS contracts in Energy Division's publicly available RPS database for the period 2013 to 2019, inclusive, presents a robust data set representing a range of eligible renewable technologies, project sizes, and dispatchability, reliability, and other factors in 18 C.F.R. § 292.304(e) that should be considered when setting avoided cost rates.
8. Time-of-Day (TOD) periods identify the periods of daily and season peak and off-peak periods.

9. TOD factors are applied to the market price adjusting the energy payment according to the season and TOD time periods and thereby place a higher value on energy delivered during times of peak demand and a lower value on energy delivered during times of off-peak demand.

10. Periods of peak or off-peak demand are defined in part by the times when the utility can or cannot avoid incremental costs.

11. The Commission does not at this time have useful data to determine costs or savings from variations in line losses by purchasing from ReMAT QFs, as compared with purchases from other generation facilities.

12. § 399.20(b)(3)(A) prompts an indirect consideration of costs and savings from variations in line losses because facilities eligible to participate in ReMAT must be “strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity at the facility to load centers.”

13. The 69 RPS contracts listed in Table 3 of the Staff Proposal attached to the June 26, 2020 Ruling were procured at market-based prices for renewable electricity under long-term contracts at fixed prices and were procurement activities overseen by and authorized by the Commission.

14. 65 of the 69 contracts in Table 3 of the Staff Proposal attached to the June 26, 2020 Ruling are with new facilities as referenced in § 399.20(d)(2)(B); the four contracts with existing facilities are Geysers (2013), Geysers (2014), Sonoma Landfill (2015), and Kekawaka Creek Hydro (2013).

15. Using actual recent long-term RPS contracts prices is a facial indication of what price is sufficient to cover long-term ownership, operating, and other costs of new generating facilities, for the purposes of the § 399.20(d)(2)(B) consideration.

16. The pricing methodology adopted here incorporates a value for the different electricity products of baseload, as-available peaking, and as-available non-peaking electricity and thus incorporates consideration of § 399.20(d)(2)(C).

17. Recent market-based RPS contract prices used to establish the market price for ReMAT contracts already includes all of the generator's costs, including current and anticipated environmental compliance costs.

18. Most of the RPS contracts listed in Table A of the Staff Proposal were procured through competitive solicitations.

19. The Commission does not possess a complete data set of RPS prices paid by Community Choice Aggregators and other Load Serving Entities.

20. The Commission does possess a robust, transparent (complete), and verifiable data set of the investor-owned utilities' RPS contracts.

21. The use of the investor-owned utilities' RPS contracts between 2013 to 2019, inclusive, to calculate the ReMAT's market price of electricity for the first year under this revised methodology allows the use of a robust and balanced data set of actual market-based RPS prices that includes baseload and as-available, and peaking and non-peaking resources.

22. The use of the investor-owned utilities' RPS contracts between 2013 to 2019, inclusive, smooths any volatility of actual market data.

23. The use of the investor-owned utilities' RPS contracts between 2013 to 2019, inclusive, preserves the confidentiality of market-sensitive contract prices.

24. Winding Creek Solar LLC had opportunities to obtain a ReMAT contract, prior to the December 2017 suspension of ReMAT, but chose not to do so.

25. Winding Creek Solar LLC has not been deprived of all viable uses of its property by the suspension of the ReMAT program.

26. Winding Creek has been free to enter into an energy generation contract outside of the ReMAT program.

27. Winding Creek has no “reasonable investment-backed expectations” in a program it admits was, and successfully challenged as, unlawful.

28. Modifications other than to ReMAT’s pricing mechanism, the bi-monthly program periods, and program period procurement caps exceed the scope of comments solicited in the June 26, 2020 Ruling.

Conclusions of Law

1. On June 26, 2020, the Assigned Commissioner and Assigned Administrative Law Judge ruling issued a Ruling *Staff Proposal for Modification to the ReMAT Program* to modify and promptly resume the ReMAT program.

2. The June 26, 2020 Ruling was served on parties in R.18-07-003, R.18-07-017, and R.11-05-005 and invited parties to comment on the modifications to the Renewable Market Adjusting Tariff (ReMAT) Program contained in the Staff Proposal.

3. The ReMAT Program must be implemented pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA) because the Commission is setting the wholesale price for the purchase of electricity.

4. § 399.20 requires the Commission to set the wholesale rate.

5. The New Qualifying Facility Standard Offer Contract adopted in D.20-05-006 brings the Commission into full compliance with the federal requirements to implement PURPA.

6. ReMAT does not need to by itself satisfy all the Commission’s PURPA implementation requirements because the New QF SOC already fulfills these requirements and without a limit on procurement.

7. The Federal Energy Regulatory Commission (FERC) sanctions a state's implementation of multiple PURPA programs where some of those programs might not be available to all QFs.

8. In a 2010 order *Cal. Pub. Utils. Comm'n*, FERC clarified that a state's determination of a utility's avoided cost based on "all sources" able to sell, in the context of a mandatory state program, meant that those sources able to participate in such mandatory state program are relevant to determining avoided costs with respect to that mandatory program.

9. FERC's Order 872 does not reject or disturb the 2010 order *Cal. Pub. Utils. Comm'n*.

10. The United States Court of Appeals for the Ninth Circuit affirmed the 2010 order *Cal. Pub. Utils. Comm'n* and held that "where a utility uses energy from a QF to meet a state RPS, the avoided cost must be based on the sources that the utility could rely upon to meet the RPS." The Court also held that the Commission may "permissibly" implement this requirement by "aggregate[ing] all sources that could satisfy its RPS obligations."

11. Staff's Proposal to use the IOUs' recent wholesale RPS contracts is the most reasonable methodology to set the wholesale price of electricity for the ReMAT program under both federal and state law and under the present circumstances.

12. 18 C.F.R. § 292.304(e) (2020) sets forth factors that states must, "to the extent practicable," be accounted for when determining the utility's avoided cost.

13. Use of recently executed contracts by investor-owned utilities under their Renewables Portfolio Standard programs present the best option at this time as the means of determining their avoided cost rates for procurement under § 399.20 because such data are comprised of recent actual executed contracts rather than uncertain forecasts.

14. FERC does not prescribe any one method of setting avoided-cost rates. The Commission has a wide degree of latitude to implement section 210 of PURPA, and the Commission's avoided-cost determinations are by their nature fact-specific and include consideration of many factors.

15. Using a weighted average of recent RPS contract prices – with the automatic updating of the ReMAT price as more recent market-price data becomes available – best satisfies all legal requirements at this time.

16. 18 C.F.R. § 292.304(e)(2)-(3) (2020) are inherently reflected in the calculation of utilities' avoided costs by using actual, market-based competitive contracts, with Time-of-Day (TOD) periods and factors applied.

17. It is not practicable at this time to factor 18 C.F.R. § 292.304(e)(4) into our determination of avoided cost under ReMAT.

18. To the extent practicable, the Commission has accounted for 18 C.F.R. § 292.304(e)'s factors when reviewing the avoided-cost pricing methodology for ReMAT adopted here.

19. The avoided-cost price under § 399.20 must be the “market price” that “correspond[s] to the length of contracts with an electric generating facility.”

20. The avoided-cost pricing methodology adopted here considers § 399.20(d)(2)(A) and reflects the “long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.”

21. The RPS program is part of utilities' general procurement activities, as the Commission adopts RPS plans, “[t]o the extent feasible, ... as part of, and pursuant to, a general procurement plan process,” pursuant to § 399.13(a)(1).

22. The ReMAT program is available only to “eligible renewable energy resource[s],” as defined by § 399.20(b)(4).

23. Reading § 399.20 as a whole, the utilities' recent RPS procurement activities are those procurement activities relevant to determining the utilities' avoided costs and hence the market price of electricity for ReMAT procurement.

24. The avoided-cost pricing methodology adopted here considers § 399.20(d)(2)(B) and the "long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities."

25. Under PURPA, the Commission does not look to a Qualifying Facility's ownership and operation costs, but to the utilities' avoided costs. The relevant inquiry in setting rates under PURPA is the utility's avoided costs.

26. § 399.20(d)(2)(C) requires consideration of "the value of different electricity products including baseload, peaking, and as-available electricity."

27. § 399.20(d)(1) generally requires that the ReMAT payment include "all current and anticipated environmental compliance costs."

28. The Commission in D.12-05-035, as modified by D.13-01-041, determined that a market-based price for ReMAT contracts already includes all of the generator's costs, including current and anticipated environmental compliance costs.

29. § 399.20 does not require that the market price of electricity adopted here be based on similarly sized projects.

30. PURPA does not require that avoided costs for QFs be based on similarly sized projects, though the size of ReMAT projects are relevant in determining the avoided cost under ReMAT.

31. § 399.20 does not require the Commission to vary pricing between utility service territories.

32. § 399.20 does not require the Commission to account for the impact of tax credits on historical RPS prices when setting the ReMAT price.

33. § 399.20(d)(3) permits the Commission to adjust the ReMAT price to reflect the value of electricity generated on a time-of-delivery basis.

34. The avoided-cost rate under the New Qualifying Facility Standard Offer Contract adopted in D.20-05-006 is not consistent with § 399.20's purpose of establishing a market solely for eligible "electric generation facility[ies]" as defined by § 399.20.

35. The use of the investor-owned utilities' RPS contracts is the most reasonable and relevant data on which to calculate ReMAT prices.

36. The § 399.20 tariff is mandated only on the Commission-regulated investor-owned utilities.

37. The use of the investor-owned utilities' RPS contracts between 2013 to 2019, inclusive, to calculate the ReMAT's market price of electricity for the first year under this revised methodology is the most reasonable under the present circumstances.

38. It is not reasonable to include transmission access charges, locational adders, resilience values, and avoided transmission costs to the avoided-cost rate under ReMAT.

39. It is reasonable for the investor-owned utilities to apply to the fixed ReMAT price the most recent Commission-approved time-of-day (TOD) periods and factors, rather than continuing to use outdated periods and factors.

40. Resumption of ReMAT's Price Adjustment Mechanism adopted in D.12-05-035, D.13-01-041, and D.13-05-034 is inconsistent with a federal court order.

41. ReMAT involves no physical taking or invasion of private property.

42. The federal district court order enjoining certain aspects of ReMAT as adopted in D.12-05-035, D.13-01-041, and D.13-05-034 does not meet any of the

factors of a regulatory taking under *Penn Central Transportation v. New York City* (1978) 438 U.S. 104.

43. The federal district court order enjoining certain aspects of ReMAT as adopted in D.12-05-035, D.13-01-041, and D.13-05-034 did not unreasonably impair the value or use of the property in view of the owners' general use of the property.

44. The federal district court order enjoining certain aspects of ReMAT as adopted in D.12-05-035, D.13-01-041, and D.13-05-034 did not prevent Winding Creek from using its property in a manner that interferes with a reasonable investment-backed expectation.

45. The character of the Commission's implementation of ReMAT has been to carry out Pub. Util. Code § 399.20 and federal law, providing a program "to encourage electrical generation."

46. It is reasonable to eliminate ReMAT's bi-monthly program periods and caps.

47. It is not reasonable to cap the number of ReMAT applications at 5 per 20-business day period, followed by 10-business day periods for applicants to cure deficiencies because § 399.20(f)(1) requires the tariff to be offered to qualifying generation facilities on a first-come, first-served basis until the utility meets its proportional share of ReMAT procurement.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company and Pacific Gas and Electric Company shall each file a Tier 2 Advice Letter within 21 days of issuance of this decision to resume and implement the revised Renewable Market Adjusting Tariff Program, in accordance with these Ordering Paragraphs and this decision.

The revised tariffs and associated standard contracts shall become effective immediately upon the Energy Division's approval of them as being in compliance with this decision.

2. Southern California Edison Company and Pacific Gas and Electric Company shall update their Renewable Market Adjusting Tariff Program tariffs and associated standard contracts so that the market price of electricity is an administratively set fixed avoided-cost rate based on the long-term Renewables Portfolio Standard contracts listed in Table 3 of the Staff Proposal attached to the June 26, 2020 Ruling. The market price of electricity shall be determined by calculating the average price of the Renewables Portfolio Standard contracts, calculated by the representative units by Product Category (baseload deliverability, as-available deliverability with a peaking profile, and as-available deliverability with a non-peaking profile), weighted according to the generator capacity of the facilities in the applicable Product Category data set (as calculated in Table 4 of the Staff Proposal).

3. Beginning in May 2021, the Energy Division shall issue a draft Resolution to annually update the administratively set fixed avoided-cost rate determined by calculating a continuously rolling average price of the Renewables Portfolio Standard contracts, calculated by the representative units by Product Category (baseload deliverability, as-available deliverability with a peaking profile, and as-available deliverability with a non-peaking profile), weighted according to the generator capacity of the facilities in the applicable Product Category data set.

4. Beginning in May 2021, Southern California Edison Company and Pacific Gas and Electric Company shall annually update the market price of electricity for their Renewable Energy Market Adjusting Tariffs and standard contracts to reflect the updated fixed avoided-cost rate by submitting a Tier 1 Advice Letter

each within 30 days of the effective date of the Resolution ordered in Ordering Paragraph 3.

5. Southern California Edison Company and Pacific Gas and Electric Company shall not update the market price of electricity for their Renewable Energy Market Adjusting Tariffs and standard contracts using a continuously rolling weighted average where updated RPS contract data could improperly reveal otherwise confidential market prices of contracts.

6. Southern California Edison Company and Pacific Gas and Electric Company shall update their Renewable Energy Market Adjusting Tariffs and standard contracts to reflect the most recent Commission-approved Time-of-Day periods and factors and shall continue to update via Tier 1 Advice Letters within 30 days of the effective date of Commission decisions approving new Time-of-Day periods and factors.

7. Southern California Edison Company and Pacific Gas and Electric Company shall provide “effective prices” calculating the Renewable Energy Market Adjusting Tariff price with the Time-of-Day periods and factors applied, when they file Advice Letters revising their Renewable Energy Market Adjusting Tariff and annually with updated prices after each Resolution approving the updated market prices of electricity and each Commission decision approving new Time-of-Day periods and factors.

8. Southern California Edison Company and Pacific Gas and Electric Company shall update their Renewable Energy Market Adjusting Tariffs and standard contracts to eliminate the bi-monthly program periods and program period procurement caps adopted in D.12-05-035, D.13-01-041, and D.13-05-034, and shall instead offer the Renewable Energy Market Adjusting Tariffs and standard contracts on a first-come, first-served basis.

9. Southern California Edison Company and Pacific Gas and Electric Company shall retain the existing queues of facilities eligible to participate in the Renewable Energy Market Adjusting Tariffs Program.

10. Rulemaking 18-07-003 remains open.

This order is effective today.

Dated _____, at San Francisco, California