

Decision 23-10-006 October 12, 2023

**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 DENYING PETITION FOR MODIFICATION OF DECISION 20-10-005**

**Summary**

This decision denies the October 8, 2021, petition for modification of Decision (D.) 20-10-005, *Decision Resuming and Modifying the Renewable Market Adjusting Tariff Program*, filed by Burning Daylight, LLC, JTN Energy, LLC, Reido Farms, LLC, and Vote Solar. As indicated in D.20-10-005, this proceeding may consider further changes to the Renewable Market Adjusting Tariff (ReMAT) Program as data on the revised ReMAT Program’s performance and other Renewables Portfolio Standard program procurement becomes available, including Community Choice Aggregators’ and Electric Service Providers’ procurement.

This proceeding remains open.

**1. Procedural Background**

On October 8, 2021, Burning Daylight, LLC, JTN Energy, LLC, Reido Farms, LLC, and Vote Solar (collectively, Joint Parties) filed a petition to modify

Decision (D.) 20-10-005 (Petition). On November 8, 2021, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (collectively, investor-owned utilities (IOUs)), Public Advocates Office of the Public Utilities Commission (Cal Advocates), and Green Power Institute (GPI) filed responses.

### **1.1. Submission Date**

This matter was submitted on November 8, 2021, upon filing of the responses to the Petition.

## **2. Relief Requested and Party Positions**

On October 16, 2020, the Commission issued D.20-10-005 modifying several aspects of the Renewable Market Adjusting Tariff (ReMAT)<sup>1</sup> Program to bring it into compliance with both the federal Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>2</sup> and Section 399.20<sup>3</sup> of the Public Utilities Code and thus resuming the ReMAT Program. The decision adopted an electricity pricing methodology to calculate a fixed rate available to qualifying renewable generators that is based on the weighted average of recently-executed long-term Renewables Portfolio Standard (RPS) contracts and eliminated caps on procurement during bimonthly Program Periods. The decision also authorized Energy Division to annually update the ReMAT prices by Commission resolution.

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<sup>1</sup> The ReMAT Program is implemented pursuant to Public Utilities Code § 399.201 and the Public Utility Regulatory Policies Act of 1978 (PURPA). D.12-05-035, D.13-01-041, and D.13-05-034 established the ReMAT Program.

<sup>2</sup> 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.

<sup>3</sup> Unless otherwise provided, all statutory references are to the California Public Utilities Code.

In their Petition, Joint Parties assert that they have identified several errors and oversights under this new pricing methodology that result in ReMAT pricing being set below the true avoided cost, contrary to PURPA and the State's legislative direction.<sup>4</sup> Therefore, Joint Parties request that the Commission modify D.20-10-005 to bring the pricing methodology into compliance with federal mandates under PURPA and Section 399.20(a). The proposed modifications are as follows:

- 1) The Pricing Methodology should be modified to properly account for the levelized price of contracts that use fixed escalating prices in the Reference Contracts data set;
- 2) Green Tariff/Shared Renewables Program contracts should not be included in the reference dataset;
- 3) The reference data set must be revised to exclude projects greater than 20 MW;
- 4) The Reference Contracts data set must be revised to only include Avoided Cost Prices;
- 5) D.20-10-005 should direct "effective prices" to be equal to the avoided cost;
- 6) The avoided cost rate should include transmission network upgrade costs.

Both Cal Advocates and the IOUs recommend denying the Petition on procedural grounds. The IOUs also oppose the Petition on substantive grounds. Cal Advocates argues that: (1) the Petition attempts to relitigate issues that have been already raised and determined in D.20-10-005 such as the application of time-of-day (TOD) factors;<sup>5</sup> and (2) the Joint Parties fail to identify "new or

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<sup>4</sup> Petition at 2-3.

<sup>5</sup> Cal Advocates Response at 2-3.

changed facts” that justify modifying the prior decision.<sup>6</sup> Cal Advocates supports implementing smaller changes to the pool of contract data that is used to calculate ReMAT prices in the annual price update process, if necessary. Cal Advocates also recommends that the Commission initiate a comprehensive review if the Commission decides to consider the proposals presented by the Petition. Similarly, the IOUs assert that the Petition is procedurally and substantively flawed and that the arguments raised in the petition should have been presented in an application for rehearing.

GPI supports the Petition and makes additional suggestions to improve the ReMAT Program.

### **3. Discussion**

#### **3.1. Timeliness of the Petition**

Rule 16.4 of the California Public Utilities Commission’s Rules of Practice and Procedure (Rules) requires petitions for modification to be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must explain why the petition could not have been presented within one year of the date of the decision. The Petition was timely filed within one year of the effective date of D.20-10-005.

#### **3.2. No New or Changed Facts Presented**

Joint Parties seek to modify the ReMAT pricing methodology that has been determined through a comprehensive Commission review process in this proceeding without presenting any new or changed facts or changes in law supporting their request. Therefore, the Petition is denied.

The Commission adopted the ReMAT pricing methodology after a thorough and recent process to end the suspension of the ReMAT Program. On

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<sup>6</sup> Cal Advocates Response at 3.

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) to modify and restart the ReMAT Program. The Staff proposal set forth proposed modifications, including replacing ReMAT's adjusting pricing mechanism with an administrative determination of prices by ReMAT Product Category with a time-of-delivery adjustment.

The Ruling invited parties in this proceeding to comment on the program modifications in the Staff Proposal. The Ruling was 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. On July 13, 2020, and July 21, 2020, several parties including the ReMAT Coalition, and Vote Solar, jointly with Solar Electric Solutions, filed comments on the staff proposal. On July 22, 2020, and July 28, 2020, several parties including the ReMAT Coalition filed reply comments. Petitioners, Burning Daylight and JTN Energy, were members of the ReMAT Coalition.<sup>7</sup> The ReMAT Coalition filed opening comments and Vote Solar filed reply comments on the proposed decision.

Acknowledging the alternate approaches proposed by the parties, the Commission stated: "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 careful consideration of the comments and reply comments of parties on the Ruling and Staff Proposal,

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<sup>7</sup> See Notice of Ex Parte Communication of the ReMAT Coalition dated September 22, 2020.

and the comments and reply comments on the Proposed Decision, and careful consideration of applicable laws, regulations, caselaw, and orders of the Federal Energy Regulatory Commission (FERC), 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.”<sup>8</sup>

The Petition seeks to relitigate the outcome of an exhaustively litigated proceeding to recommence operation of the ReMAT Program in compliance with state and federal law. In adopting the reopened ReMAT Program’s pricing methodology, the Commission found that PURPA requires focus on only the price that the utility would otherwise pay for the next increment of generation, known as the avoided-cost price.<sup>9</sup> As federal courts have held, the ReMAT Program must be implemented pursuant to PURPA because ReMAT requires the Commission to set the wholesale price for the purchase of electricity.<sup>10</sup> Prior to D.20-10-005, FERC affirmed the long-standing latitude afforded to states to determine avoided costs, to implement multi-tier PURPA programs such as the ReMAT Program, and again declined to prescribe any one method of setting

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<sup>8</sup> D.20-10-005 at 11.

<sup>9</sup> The Commission has broad discretion to implement PURPA and determine avoided costs. FERC has recognized previously that: . . . “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 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.” *Cal. Pub. Utils. Comm’n (CPUC)*, 133 FERC ¶ 61,059, at P 24 (cleaned up).

<sup>10</sup> See *Winding Creek Solar, LLC v. Carla Peterman, et al.* (9th Cir. 2019) 932 F.3d 861, 862 (explaining that ReMAT must set a rate based on the utilities avoided cost as that term is used in federal law).

avoided-cost rates.<sup>11</sup> The Petition does not overcome this deference toward the Commission's final pricing methodology in D.20-10-005.

After considering the Petition and party comments, the Commission finds that the Joint Parties did not present any new or changed facts or changes in law to support their request to modify the ReMAT pricing methodology and concludes that there is no reasonable cause to modify the methodology that has been adopted as a result of the aforementioned comprehensive review process.

Pursuant to D.20-10-005, the Commission staff continues to update the administratively set fixed avoided-cost market price for each ReMAT Product Category using the most recently-executed RPS contract price according to the principles articulated in D.20-10-005 and the Commission approves annual price updates in a Resolution.<sup>12</sup> Public Utilities Code Section 311(g)(1) provides that the Resolution be served on all parties. Parties can bring forth any obvious errors in the annual price update process.

As indicated in D.20-10-005, this proceeding may consider further changes to the ReMAT Program as data on the revised ReMAT Program's performance and other Renewables Portfolio Standard program procurement becomes

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<sup>11</sup> FERC Order 872, *Final Rule: Qualifying Facility Rates and Requirements; Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 172 FERC ¶ 61,041, at P 714 (July 16, 2020); see also Order on R'hrng, FERC Order 872-A, *Final Rule: Order Addressing Arguments Raised on Rehearing and Clarifying Prior Order in Part*, 173 FERC ¶ 61,158, at P 72 (Nov. 19, 2020) ("Although [FERC] precedent does not allow the use of non-operational externalities, such as environmental benefits, in setting avoided cost rates, PURPA neither requires nor prohibits states from establishing tiered procurement (and thus tiered pricing), such as California does. California's tiered supply procurement requirements reflect decisions regarding utility generation procurement (e.g., by specific fuel type or technology) that are within the boundaries of a state's traditional authority.")

<sup>12</sup> D.20-10-005 at 43.

available, including Community Choice Aggregators' and Electric Service Providers' procurement.

**4. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

**5. Assignment of Proceeding**

John Reynolds is the assigned Commissioner and Nilgun Atamturk is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. The Petition was timely filed within one year of the effective date of D.20-10-005.
2. The Joint Parties did not present any new or changed facts or changes in law supporting their request.
3. This proceeding may consider further changes to the ReMAT Program.

**Conclusions of Law**

1. The Petition states no reasonable cause to modify the ReMAT Program's pricing methodology adopted in D.20-10-005.
2. The ReMAT Program remains compliant with state and federal law.
3. The Petition should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. The October 8, 2021, Petition for Modification of Decision 20-10-005 filed by Burning Daylight, LLC, JTN Energy, LLC, Reido Farms, LLC, and Vote Solar is denied.



2. Rulemaking 18-07-003 remains open.

This order is effective today.

Dated October 12, 2023, at Stockton, California.

ALICE REYNOLDS  
President  
GENEVIEVE SHIROMA  
JOHN REYNOLDS  
KAREN DOUGLAS  
Commissioners

Commissioner Darcie L. Houck, being necessarily absent,  
did not participate.