

151 FERC ¶ 61,103  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Winding Creek Solar LLC

Docket Nos. EL15-52-000  
QF13-403-002

NOTICE OF INTENT NOT TO ACT AND DECLARATORY ORDER

(May 8, 2015)

1. On March 9, 2015, Winding Creek Solar LLC (Winding Creek) filed a petition for enforcement against the California Public Utilities Commission (California Commission) pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>1</sup> Winding Creek petitions the Commission to initiate an enforcement action against the California Commission to remedy part of the California Commission's feed-in tariff program, called the Renewable Market Adjusting Tariff (Re-MAT), which Winding Creek alleges is inconsistent with PURPA.
2. Notice is hereby given that the Commission declines to initiate an enforcement action pursuant to section 210(h)(2)(A) of PURPA.<sup>2</sup> Our decision not to initiate an enforcement action means that Winding Creek may itself bring an enforcement action against the California Commission in the appropriate court.<sup>3</sup> We issue a declaratory ruling below, however.
3. Winding Creek<sup>4</sup> alleges that the Re-MAT program, a feed-in tariff program for eligible renewable energy generation sources with a generation capacity of 3 MW or

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<sup>1</sup> 16 U.S.C. § 824a-3(h)(2)(B) (2012).

<sup>2</sup> 16 U.S.C. § 824a-3(h)(2)(A) (2012).

<sup>3</sup> 16 U.S.C. § 824a-3(h)(2)(B) (2012).

<sup>4</sup> Winding Creek's planned facility is an as-yet unbuilt 1 MW solar facility in Lodi, California, in the service territory of Pacific Gas and Electric Company.

less,<sup>5</sup> violates PURPA by imposing a 750 MW statewide cap on the obligation of utilities under section 292.304(d)(2)(ii) of the Commission's regulations<sup>6</sup> to provide qualifying facilities (QFs) a long-term avoided cost rate.

4. Winding Creek states that it previously filed a petition for enforcement pursuant to section 210(h) of PURPA in Docket No. EL13-71-000 arguing that the Re-MAT program violated PURPA and the Federal Power Act because it fixed the wholesale price for the purchase of power from a QF at a price that has not been determined to be the utility's full long-term avoided costs, and created a rule that eliminates a QF's ability to seek a long-term avoided cost pursuant to section 292.304(d)(2)(ii), except through the Re-MAT program. In *Winding Creek*, the Commission issued a Notice of Intent Not to Act and did not initiate an enforcement action with respect to the Re-MAT program.<sup>7</sup>

5. Winding Creek now argues that more recently the Commission declared that caps, such as caps imposed by the Re-MAT program, are unlawful and violate a QF's right under PURPA to sell energy and/or capacity at forecasted long-term avoided cost rates.<sup>8</sup> In the event that the Commission decides not to initiate an enforcement action, Winding Creek requests that the Commission issue a declaratory order stating that the caps imposed by Re-MAT are inconsistent with PURPA and the Commission's regulations.

6. In California, QFs 20 MW and smaller, including Winding Creek, may sell their net capacity to their host utility under a long-term PURPA contract at an avoided cost rate, containing both an energy and capacity component, pursuant to California's

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<sup>5</sup> The Re-MAT feed-in tariff program is part of California's Renewables Portfolio Standard Program that requires 33 percent of utility procurement be from eligible renewable energy resources by December 31, 2020.

<sup>6</sup> 18 C.F.R. § 292.304(d)(2)(ii) (2014).

<sup>7</sup> *Winding Creek Solar LLC*, 144 FERC ¶ 61,122 (2013) (*Winding Creek*).

<sup>8</sup> *Hydrodynamics, Inc.*, 146 FERC ¶ 61,193 (2014) (*Hydrodynamics*).

Standard Contract for QFs 20 MW or Under.<sup>9</sup> The Re-MAT program is a feed-in tariff program that is an alternative to California's standard PURPA avoided cost rate program. The Commission has held that, as long as a state provides QFs the opportunity to enter into long-term legally enforceable obligations at avoided cost rates, a state may also have alternative programs that QFs and electric utilities may agree to participate in; such alternative programs may limit how many QFs, or the total capacity of QFs, that may participate in the program.<sup>10</sup>

7. The Re-MAT program is such an alternative program. The Re-MAT program in California differs from *Hydrodynamics*, where the Commission ruled that an absolute cap of 50 MW on a utility's obligation to make PURPA purchases was inconsistent with PURPA, because once a utility had contracted for 50 MW of purchases from QFs, there were no other means to obtain a PURPA long-term avoided cost legally-enforceable obligation. Here, in contrast, Winding Creek and other QFs 20 MW and under may obtain a PURPA long-term, avoided cost legally-enforceable obligation to sell their net capacity to their host utility pursuant to California's Standard Contract for QFs 20 MW or Under. Given the availability of California's Standard Contract for QFs 20 MW or Under, Winding Creek has not demonstrated that the California Commission's implementation of PURPA, specifically the 750 MW statewide cap on the obligation of utilities under the Re-MAT program, is inconsistent with PURPA and our regulations.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>9</sup> See California Commission Decision D.10-12-035, pp. 14-15, 44-45, and the standard offer contract for QFs of 20 MW or less (Exhibit 6 to Attachment A to D.10-12-035). The energy component of the avoided-cost rate is based on a short-run formula while the capacity component is a forecast avoided cost which may escalate over time, but will not drop.

<sup>10</sup> *Otter Creek Solar, LLC*, 143 FERC ¶ 61,282, at P 4 (2013), *reconsid. denied*, 146 FERC ¶ 61,192 (2014).