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CLIENT ALERT

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California Public Utilities Commission Adopts New Standard Offer Contract for Qualifying Facilities

At its Voting Meeting today the Commission adopted a new standard offer contract available to any Qualifying Facility (QF) of 20 megawatts or less seeking to sell electricity to a Commission-jurisdictional utility pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA). Under PURPA, Commission-jurisdictional utilities must provide QFs the option of executing any existing PURPA contract for which they qualify.

The new standard offer contract follows on the July 2019 decision in *Winding Creek Solar LLC v. Peterman et al.* that struck down California's feed-in tariff for small qualifying facilities, the Renewable Market Adjusting Tariff (ReMAT), and similarly rejected the existing standard offer contract as an alternative for meeting requirements of PURPA, as it utilized market-based prices. Instead, this new standard offer contract uses a fixed avoided cost. While the Commission's decision points out that this task is complicated for a number of reasons, including the lack of public information on pricing, it ultimately uses the CAISO pricing (hourly Locational Marginal Price in the day-ahead market) and publically available bilateral RA pricing as the basis for the avoided costs. Under PURPA, QFs have the option of choosing an avoided cost rate as calculated at the time of contracting or at the time of delivery, and thus the decision includes specific calculations for each option:

> *The **energy price identified at the time of contract execution** (18 C.F.R. § 292.304(d)(2)(ii)) is calculated by use of a five-year average of publicly available California Independent System Operator locational marginal prices for the APNode specific to a qualifying facility, calculated on a monthly basis with periods based on the Commission's most recently approved time-of-use periods specific to a utility, and a collar based on prices at the relevant Energy Trading Hub.*
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> *The **capacity price identified at the time of contract execution** (18 C.F.R. § 292.304(d)(2)(ii)) is calculated by use of a five-year weighted average of publicly available resource adequacy prices for the next five years, shaped to time periods based on generation capacity allocation factors adopted by the Commission and applied to updated time-of-use periods, with a 2.5% escalation factor for each year of the contract term after the last year included in the average.*

*The **energy price determined at the time of delivery (**18 C.F.R. § 292.304(d)(2)(i)) is calculated using locational marginal prices from the California Independent System Operator's day-ahead market for the APNode specific to a qualifying facility.*

*The **capacity price determined at the time of delivery** (18 C.F.R. § 292.304(d)(2)(i)) is set by the same methodology used for capacity price at time of execution, but with the price recalculated each March based on changes in the cost of resource adequacy (if a new Resource Adequacy Report is available) and/or capacity allocation factors, and time-of-use factors.*

*For **as-available energy that is not subject to a legally enforceable obligation** (18 C.F.R. § 292.304(d)(1)), we adopt the same pricing methodology as adopted for the energy price at time of delivery established pursuant to 18 C.F.R. § 292.304(d)(2)(i).*

The Commission adopted the new contract as part of the consent agenda, and no comments were made by the Commission on this item. The timing of any possible reopening and the overall future of ReMAT remains unclear. With this decision the Commission has ensured that Commission-jurisdictional utilities are compliant with PURPA, though the Commission opted to keep the proceeding open to address other potential issues.

If you have questions or would like to discuss potential impacts on your business, please feel free to contact our attorneys listed below.

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