

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**RESPONSE OF WINTEC ENERGY, LTD
TO PACIFIC GAS AND ELECTRIC COMPANY'S, SOUTHERN CALIFORNIA
EDISON COMPANY'S, AND SAN DIEGO GAS AND ELECTRIC COMPANY'S
JOINT MOTION FOR CLARIFICATION REGARDING
RENEWABLE MARKET ADJUSTING TARIFFS**

Frederick W. Noble
President/CEO
Wintec Energy, Ltd.
2045 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Tel: (760) 232-9490
Email: fw noble@wintecenergy.com

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Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Wintec Energy, Ltd (“Wintec”) hereby submits this Response to the October 17, 2013 Joint Motion for Clarification (“Joint Motion”) of Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”) and San Diego Gas and Electric Company (“SDG&E” and, collectively, the “IOUs”) regarding the Renewable Market Adjusting Tariff (“Re-MAT”) program. The IOUs seek clarification that so-called “daisy chained projects” (*i.e.*, multiple projects being developed by the seller on any single or contiguous piece of property) may participate in the Re-MAT program, provided that their combined capacity does not exceed 3 MW.

Wintec agrees with the IOUs that the Commission’s daisy chain requirement was intended to prevent developers from breaking larger projects into smaller pieces to evade the 3 MW cap on eligibility for participation in the Re-MAT program. Wintec therefore supports the IOUs’ proposal insofar as it clarifies that an applicant will not be disqualified from the program

if it is developing more than one Re-MAT project on any single or contiguous pieces of property whose combined capacity is not greater than 3 MW.

However, Wintec is concerned that the specific “daisy chaining” tariff language proposed by the IOUs could be read to disqualify one or more new projects that are constructed on the same piece of property, or contiguous to a piece of property, where existing generating facilities are located, and the combined capacity of the new project(s) and the existing facilities exceeds 3 MW. Wintec therefore respectfully requests that the Commission clarify that the capacity of an existing generating facility (“Existing Facility”) shall not be considered when determining whether the daisy chain restriction disqualifies an applicant project from the ReMAT program. Wintec proposes that, for purposes of applying the daisy chain restriction, an “Existing Facility” be defined as any generating facility that has been placed in service and executed a power purchase agreement with a third party outside of the Re-MAT program as of the date that the applicable Re-MAT application Period commenced. To effectuate this clarification, Wintec further requests that the Commission direct the IOUs to file advice letters modifying their respective tariffs to conform to the language proposed below.

I. BACKGROUND

The Re-MAT program, which was established pursuant to Commission Decisions D.12-05-035, D.13-01-041 and D.13-05-034, enables developers of eligible renewable facilities of up to 3 MW to sell the output of those facilities to the IOUs under an approved, standard contract.¹

¹ D.12-05-035, *Decision Revising Feed-In Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, and Senate Bill 2 1X and Denying Petitions for Modification of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc.* (adopted on May 24, 2012); D.13-01-041, *Order Modifying Decision (D.) 12-05-035, and Denying Rehearing of Decision, as Modified* (adopted on Jan. 24, 2013); D.13-05-034, *Decision Adopting Joint Standard Contract for Section 399.20 Feed-In Tariff Program and Granting, in Part, Petitions for Modification of Decision 12-05-035* (adopted on May 23, 2013). These Decisions implement the amendments to Pub. Util. Code § 399.201 enacted by Senate Bill (SB)

As the 3 MW eligibility restriction suggests, the Re-MAT program is intended to benefit small-scale renewable projects, not larger facilities. In D.12-05-035, the Commission addressed “the concern that project developers may break up larger projects into smaller pieces or ‘daisy-chain’ in order to evade the [3 MW] size restriction.”² The Commission therefore required the IOUs to include a provision in their Re-MAT tariffs that

shall, at a minimum, require the seller to attest that the project represents the only project being developed by the seller on any single or contiguous piece of property. This provision shall also give utilities the authority to deny a tariff request pursuant to § 399.20(n) if the project appears to be part of a larger overall installation by the same company or consortium in the same general location.[³]

On June 24, 2013, each of the IOUs submitted an advice letter seeking approval of its respective Re-MAT tariff and related power purchase agreement (“PPA”).⁴ In compliance with D.12-05-035, the tariffs included language in the eligibility criteria regarding daisy chaining. For example, PG&E’s tariff provided the following:

8. Daisy Chaining: The Applicant must provide to PG&E an attestation that the Project is the only exporting project being developed, owned or controlled by the Applicant on any single or contiguous pieces of property. PG&E may, at its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of a larger installation in the same general location that has been or is being developed by the Applicant or the Applicant’s Affiliates.

Aside from the identification of the IOU, the daisy chain prohibition language in the SCE and SDG&E tariffs is nearly identical. Under D.13-05-034, the IOUs’ Re-MAT tariffs and PPAs became effective on July 24, 2013.⁵ The IOUs began accepting Program Participation Requests

380 (Kehoe, Stats. 2008, ch. 544, § 1), SB 32 (Negrete McLeod, Stats. 2009, ch. 328, § 3.5), and SB 2 of the 2011-2012 First Extraordinary Session (Simitian, Stats. 2011, ch. 1).

² D.12-05-035 at 66.

³ *Id.* at 67.

⁴ PG&E Advice Letter 4246-E; SCE Advice Letter 2916-E; SDG&E Advice Letter 2492-E.

⁵ D.13-05-034 at 68.

for the Re-MAT program on October 1, 2013, and the first program Period will begin November 1, 2013.

In the Joint Motion, the IOUs raise the concern that the current daisy chaining language prevents smaller projects with a total capacity of 3 MW or less from being eligible for the Re-MAT program if they are located on a single or contiguous pieces of property. The IOUs therefore proposed to revise the daisy chaining language in their tariffs as follows:

8. Daisy Chaining: The Applicant must provide to [PG&E or SCE or SDG&E] an attestation that the ~~Project is the only~~ exporting Projects being developed, owned or controlled by the Applicant or the Applicant's affiliates on any single or contiguous pieces of property do not have a combined capacity in excess of 3 MW. [PG&E or SCE or SDG&E] may, at its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of a larger installation in the same general location that has been or is being developed by the Applicant or the Applicant's Affiliates that results in a combined capacity in excess of 3 MW.

II. RESPONSE

Wintec agrees with the IOUs that “the intent of the Commission’s prohibition on daisy chaining was to *prevent developers from breaking up larger projects* to evade the Re-MAT program’s capacity restriction.”⁶ The daisy chain restriction was not intended to, nor should it, disqualify projects located on a single or contiguous pieces of property, provided their combined capacity is not above 3 MW.

However, the specific tariff language proposed in the Joint Motion to address this concern may inadvertently prevent otherwise eligible projects from participating in the Re-MAT program if they are constructed on the same piece of property, or contiguous to a piece of property, as an Existing Facility and the combined capacity of the new project or projects (which have a combined capacity of 3 MW or less) and the adjacent Existing Facility exceeds 3 MW. For

⁶ Joint Motion at 3 (emphasis added).

example, if an applicant were to develop two new 1 MW facilities on land adjacent to an Existing 3 MW Facility, the IOUs' proposed Re-MAT tariff language could be read to disqualify the developer, even if the Existing Facility had been in operation for years and was not participating in Re-MAT.

This is not an unusual scenario; to make efficient use of existing transmission and distribution infrastructure, new projects are often sited in close proximity to existing generating facilities, many of which have been in operation for decades. The concerns giving rise to the restriction on daisy chaining (*i.e.*, gaming the system by developers of large new projects so as to become eligible for the Re-MAT program) are not implicated by this efficiency-promoting practice.

For example, Wintec has submitted a Program Participation Request to SCE in connection with its development of a 3 MW solar facility on the same parcel of land as a 25-year old, 1.25 MW wind facility owned by Wintec. The output of the existing 1.25 MW wind facility is sold to a third party pursuant to a long-term power purchase agreement outside of the Re-MAT program. Wintec is proposing to construct the 3 MW solar facility on the same parcel as the existing wind facility in order to make efficient use of spare capacity in an existing substation with a vacant breaker. The existence of the adjacent, decades-old wind facility should have no impact on whether Wintec's new solar facility meets the 3 MW size requirement for participation in the Re-MAT program. However, the IOUs' proposed daisy chain tariff language could be read to disqualify the solar project simply because there is an existing generating facility located on the same parcel of land.

The daisy chain restriction was intended to prevent developers *of new facilities* from breaking up larger projects in order to qualify for the Re-MAT program.⁷ That concern is not present when an applicant develops one or more new projects that are located in close proximity to Existing Facilities and, therefore, Existing Facilities should have no bearing on the IOUs' determination whether the developer has engaged in inappropriate daisy chaining in order to meet the 3 MW Re-MAT project limit. Moreover, even if an IOU were to become concerned that a developer's attempt to locate a new project near an Existing Facility under particular circumstances suggests that the developer is attempting to evade the 3 MW size limitation, the IOU retains authority under its Re-MAT tariff to exclude the project from participation if the IOU determines that the project "appears to be part of larger installation in the same general location that has been or is being developed by the Applicant or the Applicant's affiliates that results in a combined capacity in excess of 3 MW." There is therefore no reason to leave in place tariff language that could categorically disqualify projects that meet the 3 MW size restriction but that are constructed on the same or contiguous piece of property as an Existing Facility.

Wintec therefore respectfully requests that the Commission clarify that the capacity of Existing Facilities shall not be considered when determining whether the developer of a new renewable project is eligible for Re-MAT program participation under the daisy chain restriction. Wintec proposes that, for purposes of applying the daisy chain restriction, an "Existing Facility" be defined as any generating facility that has been placed in service and executed a power purchase agreement with a third party outside of the Re-MAT program as of the date that the

⁷ See, e.g., D.12-05-035 at 66 (requiring the seller "to attest that the project represents the only project *being developed* by the seller on any single or contiguous piece of property") (emphasis added).

applicable Re-MAT application Period commenced.⁸ Specifically, Wintec requests that the Commission adopt the IOU's proposed tariff language with the added clarification identified below:

8. Daisy Chaining. The Applicant must provide to [PG&E or SCE or SDG&E] an attestation that the exporting Projects being developed, owned or controlled by the Applicant or the Applicant's affiliates on any single or contiguous pieces of property do not have a combined capacity in excess of 3 MW; provided that no generating facility that has been placed in service and has executed a power purchase agreement with a third party outside of the Re-MAT program as of the date that the applicable application Period commenced, shall be considered for purposes of calculating such combined capacity. [PG&E or SCE or SDG&E] may, at its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of a larger installation in the same general location that has been or is being developed by the Applicant or the Applicant's affiliates that results in a combined capacity in excess of 3 MW.

⁸ The ReMAT program is divided into bi-monthly "Periods," with the first such Period beginning on November 1, 2013. *See, e.g.*, PG&E Electric Schedule E-ReMAT, Section F.2.

III. CONCLUSION

For the reasons described above, Wintec respectfully requests that the Commission (i) clarify that the capacity of an Existing Facility shall not be considered when determining whether the daisy chain restriction disqualifies an applicant project from the Re-MAT program, and (ii) direct the IOUs to file advice letters modifying their respective tariffs as described above. Wintec further requests that the Commission expeditiously rule on this filing to provide clarity to applicants and the IOUs regarding the eligibility of these projects for the Re-MAT program.

Respectfully submitted,

/s/ Frederick W. Noble

Frederick W. Noble

President/CEO

Wintec Energy, Ltd.

2045 E. Tahquitz Canyon Way

Palm Springs, CA 92262

Tel: (760) 232-9490

Email: fw noble@wintecenergy.com

VERIFICATION

I, Frederick Noble, am the President/CEO of Wintec Energy, Ltd., and I make this verification on its behalf. The statements in the foregoing *RESPONSE OF WINTEC ENERGY, LTD TO PACIFIC GAS AND ELECTRIC COMPANY'S, SOUTHERN CALIFORNIA EDISON COMPANY'S, AND SAN DIEGO GAS AND ELECTRIC COMPANY'S JOINT MOTION FOR CLARIFICATION REGARDING RENEWABLE MARKET ADJUSTING TARIFFS* have been prepared and read by me and are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 2013, at Palm Springs, California.

Respectfully submitted,

/s/ Frederick W. Noble

Frederick W. Noble
President/CEO
Wintec Energy, Ltd.
2045 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Tel: (760) 232-9490
Email: fw noble@wintecenergy.com