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PUBLIC UTILITIES - CALIFORNIA

Californians for Renewable Energy v. California Public Utilities Commission

United States Court of Appeals, Ninth Circuit - April 24, 2019 - F.3d - 2019 WL 1781432

Solar producers brought action alleging that California Public Utilities Commission's (CPUC) programs did not comply with Public Utility Regulatory Policies Act (PURPA).

The United States District Court denied plaintiffs' motion for leave to file amended complaint and entered summary judgment in CPUC's favor. Plaintiffs appealed.

The Court of Appeals, sitting by designation, held that:

- In calculating full avoided cost under PURPA based on mix of energy sources, relevant comparable energy sources were other renewable energy providers, not all energy sources that utility might technically have been capable of buying energy from;
- CPUC was required to pay full avoided costs to customers who participated in its Net Energy Metering (NEM) program only if utility was making separate payment to customers;
- Energy that customers provided to utilities through NEM program did not have sufficient legally enforceable guarantees of deliverability to trigger utilities' obligation to compensate them for avoided capacity costs;
- Renewable energy credits (REC) that qualified facilities (QF) received from state were outside PURPA's purview;
- NEM program did not violate PURPA's mandatory interconnection requirement;
- Eleventh Amendment barred plaintiffs' claim for equitable damages; and
- Plaintiffs could not recover their attorney fees under private attorney general theory.