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PUBLIC UTILITIES - CALIFORNIA

Winding Creek Solar LLC v. Peterman

United States Court of Appeals, Ninth Circuit - July 29, 2019 - F.3d - 2019 WL 3404216 - 19 Cal. Daily Op. Serv. 7422 - 2019 Daily Journal D.A.R. 7071

Limited liability company (LLC) that was owner and developer of planned solar power facility in California brought action for declaratory and injunctive relief against Commissioners of California Public Utilities Commission (CPUC) in their official capacities, alleging that Public Utility Regulatory Policies Act (PURPA) preempted certain CPUC orders governing wholesale price of energy bought from small facilities such as that planned by LLC.

The United States District Court for the Northern District of California granted owner summary judgment on declaratory claim, but denied injunctive relief in form of granting it contract with state utility company. Both sides appealed.

The Court of Appeals held that:

- PURPA preempted CPUC orders, but
- Injunction requiring CPUC to enter into contract with owner was as-applied challenge reserved to state court.

Public Utility Regulatory Policies Act (PURPA) and its implementing Federal Energy Regulatory Commission (FERC) regulations preempt California Public Utilities Commission (CPUC) orders setting the terms on which California's investor-owned public utilities must enter into long-term, fixed price contracts with facilities qualifying as small power production facilities under PURPA.

After prevailing in federal court in action for declaratory relief against Commissioners of California Public Utilities Commission (CPUC), owner of planned solar power facility was not entitled to injunctive relief in form of contract for utility company to buy energy from it at specific price, since that request was as-applied challenge reserved to state court.