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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6

7 WINDING CREEK SOLAR LLC,

8 Plaintiff,

9 v.

10 PACIFIC GAS AND ELECTRIC  
11 COMPANY,

12 Defendant.

Case No. 20-cv-02602-HSG

**ORDER AFFIRMING BANKRUPTCY  
COURT'S RULING ON MOTION TO  
DISMISS**

Re: Dkt. No. 7

13 Pending before this Court is Appellants'<sup>1</sup> appeal of the Bankruptcy Court's dismissal of  
14 their second cause of action for equitable relief against Appellees PG&E Corporation and Pacific  
15 Gas and Electric Company (collectively, "Debtors"). *See* Dkt. No. 1-1; Dkt. No. 7 ("Appellants  
16 Brief"); Dkt. No. 12 ("Reply Brief"). Specifically, Appellants appeal from the Bankruptcy  
17 Court's *Order Resolving the Utility's Motion to Dismiss* entered on March 30, 2020, Dkt. No. 1-1  
18 ECF 4-6 ("Order"), and the related docket order entered on March 22, 2020, Dkt. No. 1-1 ECF 7  
19 ("Text Order"). Debtors oppose the appeal. Dkt. No. 9 ("PG&E Brief"). For the following  
20 reasons, the Court **AFFIRMS** the Bankruptcy Court's dismissal of Appellants' second cause of  
21 action for equitable relief.

22 **I. BACKGROUND**

23 **A. PG&E's Bankruptcy and Chapter 11 Plan**

24 On January 29, 2019, the Debtors commenced voluntary cases for relief under chapter 11  
25 of title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court  
26 for the Northern District of California ("Bankruptcy Court"). Significantly, the Debtors needed to  
27

28 <sup>1</sup> Appellants are Winding Creek Solar LLC, Foothill Solar LLC, Hollister Solar LLC, Kettleman  
Solar LLC, Vintner Solar LLC, Bear Creek Solar LLC, and Allco Renewable Energy Limited.

1 propose a plan of reorganization that satisfied the requirements of A.B. 1054, including its June  
2 30, 2020 deadline for plan confirmation. In light of the “increased risk of catastrophic wildfires,”  
3 A.B. 1054 created the “Go-Forward Wildfire Fund” as a multi-billion dollar safety net to  
4 compensate future victims of public utility fires and thereby “reduce the costs to ratepayers in  
5 addressing utility-caused catastrophic wildfires,” support “the credit worthiness of electrical  
6 corporations,” like the Debtors, and provide “a mechanism to attract capital for investment in safe,  
7 clean, and reliable power for California at a reasonable cost to ratepayers.” A.B. 1054 § 1(a). For  
8 the Debtors to qualify for the Go-Forward Wildfire Fund, however, A.B. 1054 required, among  
9 other things, the Debtors to obtain an order from the Bankruptcy Court confirming a plan of  
10 reorganization by June 30, 2020. *See* A.B. 1054 § 16, ch. 3, 3292(b). After more than sixteen  
11 months of negotiations among a variety of stakeholders, and following confirmation hearings that  
12 spanned several weeks, the Debtors’ Plan of Reorganization dated June 19, 2020 (“Plan”)<sup>2</sup> was  
13 confirmed by the Bankruptcy Court on June 20, 2020 and became effective on July 1, 2020  
14 (“Effective Date”).

15 **B. Bankruptcy Court Proceedings**

16 On October 20, 2019, Appellants filed an adversarial complaint in the Bankruptcy Court  
17 asserting two causes of action against Debtors: a claim for damages and a claim for injunctive  
18 relief. Appellants Br. at 19. Appellants and Debtors eventually stipulated before the Bankruptcy  
19 Court that the determination of the merits of Appellants’ damages claim as asserted in their first  
20 cause of action would be made exclusively in the context of the Chapter 11 claims administration  
21 process. Dkt. No. 1-1 at ECF 5. Accordingly, Appellants’ appeal is limited to the Bankruptcy  
22 Court’s dismissal of their claim for injunctive relief. Appellants Br. at 4.

23 In their claim for injunctive relief, Appellants sought an order from the Bankruptcy Court  
24 requiring Debtors to enter into contracts for the purchase of energy and capacity from Appellants’  
25 facilities. *Id.* at 19-20. After considering Debtors’ motion to dismiss and Appellants’ opposition,  
26 the Bankruptcy Court issued a tentative ruling granting the motion to dismiss without leave to

27 \_\_\_\_\_  
28 <sup>2</sup> Capitalized terms not otherwise defined in this order have the meanings ascribed to them in the Plan.

1 amend:

2 Even assuming that the second cause of action is procedurally  
3 permissible, and Without dealing with or deciding whether plaintiffs  
4 may maintain a private cause of action or whether the Primary  
5 Jurisdiction Doctrine controls, there is no getting around that this  
6 court is neither a proxy for FERC and/or the CPUC or that it can take  
7 the place of a state court. The argument set forth by Plaintiffs at 8:14  
- 10:13 properly explains why the state courts have a role to play; their  
unsupported statement at 1:15-21 that the automatic stay prevents  
them filing suit in state court and this court is proper is more than  
unpersuasive. It is incorrect.

8 The parties then stipulated to accept the tentative ruling without Appellants waiving  
9 their appeal rights as to the second cause of action for injunctive relief, and the  
10 Bankruptcy Court entered a final order with respect to the second cause of action.  
11 Dkt. No. 1-1 at ECF 5-6. This appeal followed.

## 12 **II. LEGAL STANDARD**

13 District courts have jurisdiction to hear appeals from final judgments, orders, and decrees  
14 of bankruptcy judges. 28 U.S.C. § 158. A district court reviews a bankruptcy court’s decision by  
15 applying the same standard of review used by circuit courts when reviewing district court  
16 decisions. *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009). The district court reviews  
17 the bankruptcy court’s findings of fact for clear error and its conclusions of law de novo. *In re*  
18 *Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001).

19 A bankruptcy court’s decision to decline to exercise jurisdiction over an adversary  
20 proceeding is reviewed for abuse of discretion. *See In re Zegzula*, No. AP 14-04005-BDL, 2015  
21 WL 5786572, at \*2 (B.A.P. 9th Cir. Oct. 2, 2015) (citing *In re Carraher*, 971 F.2d 327, 328 (9th  
22 Cir. 1992). In applying the abuse of discretion test, the Court must first “determine de novo  
23 whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested.”  
24 *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009). If the bankruptcy court identified  
25 the correct legal rule, the Court then determines whether its “application of the correct legal  
26 standard [to the facts] was (1) illogical, (2) implausible, or (3) without support in inferences that  
27 may be drawn from the facts in the record.” *In re Taylor*, 599 F.3d 880, 887–88 (9th Cir. 2010)  
28 (alteration in original). “If the bankruptcy court did not identify the correct legal rule, or its

1 application of the correct legal standard to the facts was illogical, implausible, or without support  
2 in inferences that may be drawn from the facts in the record, then the bankruptcy court has abused  
3 its discretion.” *Id.*

4 **III. DISCUSSION**

5 This appeal presents the question whether the Bankruptcy Court abused its discretion in  
6 declining to exercise jurisdiction over Appellants’ claim for injunctive relief.

7 Appellants have a long history of litigating the underlying substantive issues that they now  
8 argue should be adjudicated by the Bankruptcy Court as an equitable claim. In *Winding Creek*  
9 *Solar LLC v. Peevey*, Appellant Winding Creek Solar LLC successfully challenged a series of  
10 orders by the California Public Utilities Commission (“CPUC”) related to a procurement program  
11 regulated under the federal Public Utility Regulatory Policies Act (“PURPA”). *Winding Creek*  
12 *Solar LLC v. Peevey*, 293 F. Supp. 3d 980, 981 (N.D. Cal. 2017), *aff’d sub nom. Winding Creek*  
13 *Solar LLC v. Peterman*, 932 F.3d 861 (9th Cir. 2019). While Winding Creek prevailed on  
14 summary judgment, the district court rejected Winding Creek’s request that the court order PG&E  
15 to enter into a contract with it. *Id.* at 993-994. The district court found that “the request for a  
16 specific contract at a specific price is an as-applied challenge that does not belong in this forum.”  
17 *Id.*

18 The Ninth Circuit affirmed and held that “the district court did not abuse its broad  
19 discretion to fashion equitable relief by declining to grant Winding Creek a contract with PG&E at  
20 the initial \$89.23/MWh price.” *Winding Creek Solar LLC v. Peterman*, 932 F.3d 861, 866 (9th  
21 Cir. 2019). The Ninth Circuit went on to explain that “it would be inappropriate to order a non-  
22 party to contract with Winding Creek under a modified version of the very program the court had  
23 just determined to be preempted by federal regulation.” *Id.* In concluding that “[i]t is not the  
24 court’s job to fashion a new contract to Winding Creek’s liking,” the Ninth Circuit cited to the  
25 First Circuit’s decision in a similar PURPA case, characterizing the First Circuit’s decision as  
26 “noting that federal courts are neither statutorily authorized nor competent to set avoided-cost  
27 rates.” *Id.* In *Allco Renewable Energy Ltd. v. Massachusetts Elec. Co.*, Appellant Allco  
28 Renewable Energy Ltd. argued that the district court erred in declining to set specific contract

1 rates. 875 F.3d 64, 74 (1st Cir. 2017). The First Circuit affirmed and held that the district court  
2 was correct in “declining to engage in fact-finding to determine the proper avoided cost rate,” and  
3 in observing that “[n]othing in the statutory scheme provides this Court with rate-making  
4 authority, and it lacks the expertise to do so.” *Id.* (quotation marks omitted).

5 Notwithstanding this precedent, Appellants continue to argue that they are entitled to  
6 court-mandated contracts with Debtors at certain specific rates, i.e. the same equitable relief that  
7 was requested and denied in their prior litigation. *Compare* Appellants Br. at 19 (“In the case of  
8 the Winding Creek Facility, for example, this would require the Bankruptcy Court to order PG&E  
9 to enter into a 20-year contract at an avoided cost rate of \$89.23 per MWh....”) with *Winding*  
10 *Creek Solar*, 932 F.3d at 866 (“[T]he district court did not abuse its broad discretion to fashion  
11 equitable relief by declining to grant Winding Creek a contract with PG&E at the initial  
12 \$89.23/MWh price.”). Appellants further argue that the Bankruptcy Court is now the appropriate  
13 venue to seek their desired injunctive relief. Appellants Br. At 20.

14 Appellants present several arguments for why the Bankruptcy Court erred in dismissing its  
15 claim for injunctive relief. First, they argue that the Bankruptcy Court erroneously concluded that  
16 “it lacked jurisdiction” to decide Appellants’ claims. *Id.* at 6. But the Bankruptcy Court did not  
17 find that it lacked jurisdiction. Rather, the Bankruptcy Court found that it was “neither a proxy for  
18 FERC and/or the CPUC [n]or . . . can take the place of a state court.” Text Order. The  
19 Bankruptcy Court agreed with Appellants’ position that California state courts have a role to play  
20 in adjudicating Appellants’ claim but explicitly rejected Appellants’ “unsupported statement” that  
21 the bankruptcy stay “prevents them filing suit in state court.” *Id.* On that basis, the Bankruptcy  
22 Court found that it was not the proper venue for Appellants’ claim. *Id.* (“The argument set forth  
23 by Plaintiffs . . . properly explains why the state courts have a role to play; their unsupported  
24 statement . . . that the automatic stay prevents them filing suit in state court and this court is proper  
25 is more than unpersuasive. It is incorrect.”).

26 Similarly, Appellants argue that the Bankruptcy Court erroneously concluded that “FERC  
27 or the CPUC have primary jurisdiction.” Appellants Br. at 6. But again, Appellants  
28 mischaracterize what the Bankruptcy Court decided. The Bankruptcy Court expressly stated that

1 it did not reach the question of primary jurisdiction. Text Order (“Without dealing with or  
2 deciding whether plaintiffs may maintain a private cause of action or whether the Primary  
3 Jurisdiction Doctrine controls . . . .”).

4       Insofar as Appellants engage with the Bankruptcy Court’s actual ruling, they seem to be  
5 arguing that (1) Appellants’ claims constitute core proceedings, Appellants Br. at 24-25; (2) even  
6 if the claim for injunctive relief is a non-core proceeding, the Bankruptcy Court may exercise  
7 jurisdiction, *id.* at 25-27; and (3) not only is the Bankruptcy Court permitted to exercise  
8 jurisdiction, but it is the appropriate venue and declining jurisdiction constituted an abuse of  
9 discretion, Reply at 19-21.

10       In contending that their injunctive relief claim is a core proceeding under the Bankruptcy  
11 Code, Appellants cite to 28 U.S.C. § 157(b), but they offer no argument or authority explaining  
12 how their claim for injunctive relief falls into § 157(b)’s categories. Appellants Br. at 24-25. The  
13 single case cited by Appellants sets out the Ninth Circuit’s explanation that “[i]n general, a ‘core  
14 proceeding’ in bankruptcy is one that ‘invokes a substantive right provided by title 11 or . . . a  
15 proceeding that, by its nature, could arise only in the context of a bankruptcy case.’” *In re Gruntz*,  
16 202 F.3d 1074, 1081 (9th Cir. 2000) (citation omitted). “‘Non-core proceedings’ are those not  
17 integral to the restructuring of debtor-creditor relations and not involving a cause of action arising  
18 under title 11.” *Id.* Appellants do not attempt to explain how their claim for injunctive relief  
19 invokes a substantive right provided by title 11 or is a claim that could arise only in the context of  
20 a bankruptcy case. Such an argument would fail in any event, as the substance of Appellants’  
21 claim and their prior litigation history make clear. Accordingly, the Court finds that Appellants’  
22 claim for injunctive relief does not constitute a core proceeding under 28 U.S.C. § 157(b).

23       Appellants next argue that the Bankruptcy Court may hear and determine non-core  
24 proceedings that are otherwise related to Debtors’ bankruptcy case. Appellants Br. at 25. They  
25 also cite to 28 U.S.C. § 1334(b), which provides that “the district courts shall have original but not  
26 exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases  
27 under title 11.” 28 U.S.C. § 1334(b); Appellants Br. at 25.

28       The Court agrees with Appellants that the Bankruptcy Court has the statutory authority to

1 “hear a proceeding that is not a core proceeding but that is otherwise related to a case under title  
2 11.” 28 U.S.C. § 157(c)(1). But the Court disagrees with Appellants that the Bankruptcy Court  
3 abused its discretion in declining to exercise jurisdiction. 28 U.S.C. § 1334(c)(1) allows for the  
4 Bankruptcy Court to “abstain[] from hearing a particular proceeding arising under title 11 or  
5 arising in or related to a case under title 11” when it is “in the interest of justice, or in the interest  
6 of comity with State courts or respect for State law.”

7 Appellants acknowledge that “California’s state courts may hear and determine  
8 Appellants’ request for equitable relief.” Appellants Br. at 26. But they assert that because there  
9 is no previously commenced state action, abstention under § 1334(c)(1) is inapplicable. *Id.* at 24.  
10 Again, they cite no authority for this proposition. Rather, they assert without support that the  
11 Bankruptcy Court is better positioned than California state courts to adjudicate their request for  
12 injunctive relief because the Bankruptcy Court is also considering Appellants’ bankruptcy proofs  
13 of claim. *Id.* at 26.

14 Under Ninth Circuit precedent, a previously commenced state court proceeding is only one  
15 of the factors that courts consider in deciding on § 1334(c)(1) abstention. Those factors are:

- 16 (1) the effect or lack thereof on the efficient administration of the  
17 estate if a Court recommends abstention, (2) the extent to which state  
18 law issues predominate over bankruptcy issues, (3) the difficulty or  
19 unsettled nature of the applicable law, (4) the presence of a related  
20 proceeding commenced in state court or other nonbankruptcy court,  
21 (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the  
22 degree of relatedness or remoteness of the proceeding to the main  
23 bankruptcy case, (7) the substance rather than form of an asserted  
24 ‘core’ proceeding, (8) the feasibility of severing state law claims from  
25 core bankruptcy matters to allow judgments to be entered in state  
26 court with enforcement left to the bankruptcy court, (9) the burden of  
27 [the bankruptcy court's] docket, (10) the likelihood that the  
28 commencement of the proceeding in bankruptcy court involves forum  
shopping by one of the parties, (11) the existence of a right to a jury  
trial, and (12) the presence in the proceeding of nondebtor parties.

*In re Eastport Assocs.*, 935 F.2d 1071, 1075-76 (9th Cir. 1991).

25 While the Bankruptcy Court did not go into extensive detail in its Text Order, it did make  
26 clear its conclusion that California state court is a more appropriate venue for Appellants’ claim  
27 for injunctive relief. Text Order (“The argument set forth by Plaintiffs at 8:14 - 10:13 properly  
28 explains why the state courts have a role to play; their unsupported statement at 1:15-21 that the

1 automatic stay prevents them filing suit in state court and this court is proper is more than  
2 unpersuasive. It is incorrect.”).

3 In this same dispute, the district court has already found that Appellants’ request for  
4 injunctive relief “does not belong in this forum.” *Winding Creek Solar*, 293 F.Supp.3d at 994; *see*  
5 *also Solutions for Utilities, Inc. v. Cal. Pub. Util. Comm’n*, No. CV 11–04975 SJO (JCGx), 2016  
6 WL 7613906, at \*15 (C.D. Cal. Dec. 28, 2016) (“[A]n as-applied claim challenges the application  
7 of a state agency’s rules to an individual petitioner and is reserved to the state courts.”). The Ninth  
8 Circuit has affirmed that decision. *Winding Creek Solar*, 932 F.3d at 866 (“It is not the court’s job  
9 to fashion a new contract to Winding Creek’s liking.”).

10 Even if the Bankruptcy Court could have chosen to step into the place of a California state  
11 court, Appellants cite no authority, and the Court has found none, that obliged it to do so.<sup>3</sup> On the  
12 contrary, both the district court and the Ninth Circuit have found that Appellants’ claim for  
13 injunctive relief is properly resolved outside of the federal courts. The Court finds no basis to  
14 conclude that the initiation of bankruptcy proceedings gave the Bankruptcy Court a special  
15 competency to decide Appellants’ injunctive relief claim that the district court previously lacked.  
16 Further, the substance of Appellants’ injunctive relief claim relates to state and federal energy  
17 regulation and has nothing to do with bankruptcy law. Given § 1334(c)(1)’s authorization to  
18 abstain from a proceeding “in the interest of comity with State courts or respect for State law,” the  
19 Court finds that it was not an abuse of discretion for the Bankruptcy Court to decline jurisdiction  
20 over Appellants’ claim for injunctive relief.

21 \_\_\_\_\_  
22 <sup>3</sup> Implicit in Appellants’ position seems to be the premise that the automatic stay under 11 U.S.C.  
23 § 362 makes the Bankruptcy Court a more appropriate venue than California state court. *See*  
24 *Appellants Br.* at 24. But 11 U.S.C. § 362(d) “gives the bankruptcy court wide latitude in crafting  
25 relief from the automatic stay.” *In re Nat’l Env’t Waste Corp.*, 129 F.3d 1052, 1054 (9th Cir.  
26 1997). The Ninth Circuit has recognized that allowing a state action to proceed in a state tribunal  
27 can be proper cause to grant relief from the automatic stay. *See Piombo Corp. v. Castlerock*  
28 *Props. (In re Castlerock Props.)*, 781 F.2d 159, 163 (9th Cir.1986). This case would seem to be  
an ideal candidate for lifting the automatic stay, given the Ninth Circuit’s determination that  
federal courts are not the appropriate place to seek Appellants’ desired relief and the Bankruptcy  
Court’s finding that state courts “have a role to play.” There is no indication in the record before  
this Court why Appellants decided to pursue their injunctive relief claim as an adversary  
proceeding in Bankruptcy Court rather than seek a lift of the automatic stay to pursue their claim  
in state court.

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**IV. CONCLUSION**

The Bankruptcy Court’s order dismissing Appellant’s second cause of action for injunctive relief is **AFFIRMED**. The Clerk is directed to terminate this appeal and close the case.

**IT IS SO ORDERED.**

Dated: July 15, 2021

  
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HAYWOOD S. GILLIAM, JR.  
United States District Judge