REGULATORY UPDATE FOR AUGUST 2, 2022 (WEEK OF JULY 25, 2022)

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions[1]

None.

Voting Meetings

The CPUC's next voting meeting will be held August 4, 2022, and the agenda includes the following energy-related items:

Item 3. Resolution E-5217. This resolution revises existing requirements for Pacific Gas and Electric Company (PG&E), and adopts new requirements for Southern California Edison (SCE) and San Diego Gas and Electric (SDG&E) to standardize their respective annual end-of-year consolidated electric revenue and January 1 rate change Advice Letter (AL) filings. These requirements are needed to establish uniform filing procedures for these utilities to provide a more efficient process to implement revenue requirement changes previously approved by the CPUC and the Federal Energy Regulatory Commission (FERC), and for the amortization of regulatory accounts. This resolution requires these utilities to file a Tier 2 AL by November 5 of the year prior to the January 1 rate change with initial estimated revenue requirement amounts, and then subsequently update these forecasts with the actual amounts that were authorized in a separate Tier 1 AL to be filed by December 31.

Item 5. A.20-10-012 (SCE GRC, Phase 2). This decision adopts five separate and uncontested partial settlements resolving distinct and specific components of SCE's proposals for establishing marginal costs, allocation of revenues, and rate designs to be used to prospectively recover SCE's revenue requirements as adopted by the CPUC. They are: (1) the Marginal Cost and Revenue Allocation Settlement Agreement, filed on December 13, 2021; (2) the Residential and Small Commercial Rate Design Settlement Agreement, filed on December 17, 2021; (3) the Streetlight and Traffic Control Rate Group Settlement Agreement, filed on January 7, 2022; (4) the Agricultural and Pumping Rate Group Rate Design Settlement Agreement, filed on January 11, 2022; and (5) the Medium and Large Power Rate Group Rate Design Settlement Agreement, filed on February 18, 2022. All issues contemplated in the scoping memo for this proceeding are resolved by the five separately filed settlements except for the following: (1) Real Time Pricing rate design proposals; and (2) the proposal to increase the rate differentials for Schedules TOU-D-4-9PM1 and TOU-D-5-8PM. The proceeding remains open to address those proposals.

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[1] Per CPUC Rules of Practice and Procedure Rule 14.3, comments on proposed decisions are due 20 days after issuance of the proposed decision, and reply comments are due five days thereafter. Comments on draft resolutions are due 20 days after the draft resolution appears in the CPUC's daily calendar, per Rule 14.5.

Item 6. A.19-11-019 (PG&E Marginal Costs, Revenue Allocation, Rate Design)/A.20-10-011 (PG&E Day-Ahead Real Time Rate & Pilot). This decision considers a study on the marginal generation capacity costs that should be used by PG&E when calculating its rates, including its recently approved real-time pricing rate. This decision approves the study's methodology for calculating marginal generation capacity costs and orders PG&E to utilize the methodology as soon as is practicable. An uncontested settlement on real-time pricing pilots for certain customers of PG&E is also considered by this decision and is approved without modification.

Item 9. A.22-03-010 (PG&E Fire Risk Mitigation Recovery Bonds). This Financing Order grants the request by PG&E for authority under Assembly Bill (AB) 1054 and Public Utilities (Pub. Util.) Code §§ 850(a)(2) and 850.1 to issue Wildfire Hardening Recovery Bonds (Recovery Bonds) totaling up to approximately $1.4 billion. These Recovery Bonds will finance additional authorized fire risk mitigation plan capital expenditures pursuant to Pub. Util. Code § 8386.3(e), enacted under AB 1054. The Recovery Bonds' principal, interest, and related costs will be recovered via a surcharge called the Fixed Recovery Charge. All consumers of electricity in PG&E's service territory will be required to pay the Fixed Recovery Charge, except for those consumers that are exempt pursuant to Pub. Util. Code § 850.1(i).

Item 10. Resolution G-3587. This resolution approves SDG&E's AL 3028-G, which proposes a meter calibration adjustment factor to customer bills in statistically tested meter groups in which 10% or more of the gas meters are registering fast by 2% to 3%. By approving the adjustment factor, the eventual replacement of these meters will be aligned with SDG&E's next-generation Smart Meter 2.0 program, to be submitted as part of its 2024 general rate case (GRC). The proposed meter calibration adjustment factor will be applied to the whole group whose gas meters have been statistically tested as registering outside allowable limits because SDG&E does not know precisely which meters are outside the limits, based on its statistical sampling. In lieu of replacement of the meter in advance of the smart meter deployment, SDG&E requests that those customers whose gas meters are within a participating meter group that has been statistically tested as running at 2% to 3% fast receive a bill credit of 2% until their meter has been replaced. This resolution also approves commensurate tariff changes to SDG&E's Rule No. 02.

Item 11. Resolution E-5103. This resolution adopts with modifications PG&E's AL 5799-E, Mid-Cycle Review Compliance Submittal for its 2018-02022 demand response (DR) funding application pursuant to Decision (D.) 17-12-003. The Mid-Cycle Review (MCR) is required by D.16-09-056, which increased the DR budget cycle from three to five years. The MCR provides a full status report of each DR program and may recommend minor, non-controversial program changes.

Item 12. Resolution E-5113. This resolution addresses various proposals in SDG&E's AL 3522-E, MCR Compliance Submittal for its 2018-2022 DR funding application pursuant to D.17-12-003. The MCR is required by D.16-09-056, which increased the DR budget cycle from three to five years. The MCR provides a full status report of each DR program and may recommend minor, non-controversial program changes.

Item 19. A.21-01-016 (SoCalGas Storage Integrity Management Program). This decision adopts and approves the September 8, 2021 Joint Motion for Approval of the Settlement Agreement of Southern California Gas Company (SoCalGas) and the Public Advocates Office of the CPUC pertaining to SoCalGas's application to recover costs recorded in the Storage Integrity Management Program (SIMP) Balancing Account from January 1, 2016 to December 3, 2018. SoCalGas is authorized to recover $32.622 million composed of $41.904 million in operations and maintenance (O&M) and $16.996 million in capital expenditures, reduced by $26.278 million already paid by ratepayers for 2018 SIMP O&M and capital expenditures.

Item 31. R.18-07-006 (Affordability of Utility Service). D.20-07-032 adopted three metrics—the Affordability Ratio, Hours-at-Minimum-Wage, and Socio-Economic Vulnerability Index—by which the CPUC would assess the relative affordability of essential utility service across industries and proceedings, including examination of how different geographic areas of California are impacted. This decision directs when and how the affordability framework will be applied in CPUC proceedings and further develops the tools and methodologies used to calculate three affordability metrics.

Item 32. R.18-12-006 (Vehicle Electrification). This decision adopts a plug-in electric vehicle submetering protocol for PG&E, SCE, SDG&E, Liberty Utilities (CalPeco Electric) LLC, Bear Valley Electric Service Inc., and PacifiCorp d/b/a Pacific Power and requires the utilities to implement the submetering protocol for all customers with plug-in electric vehicles and customer-owned submeters. This decision also adopts electric vehicle supply equipment communication protocols for PG&E, SCE, SDG&E, Liberty Utilities (CalPeco Electric) LLC, Bear Valley Electric Service Inc., and PacifiCorp d/b/a Pacific Power and requires the utilities to qualify electric vehicle supply equipment that meet the minimum performance standards for all future transportation electrification efforts.

CALIFORNIA ISO

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Price Formation Enhancements. The California ISO held a public stakeholder call on July 12, 2022 to discuss the issue paper for the new Price Formation Enhancements initiative. The deadline for written comments has been extended to August 9, 2022.

2021-2022 Transmission Planning Process. The California ISO held a stakeholder call on June 27, 2022 as an extension to the 2021-2022 transmission planning process to explore an expression of interest for out-of-state resources in the Idaho area. As noted during the call, the California ISO planned to release expressions of interest on July 18, 2022; however, it has been delayed until August.

Energy Storage Enhancements. The California ISO has scheduled a public stakeholder call on July 28, 2022 to discuss the addendum to the second revised straw proposal for the energy storage enhancements initiative. The California ISO has extended the comment deadline to August 4, 2022.

Interconnection Process Enhancements 2021 - Phase 2. The California ISO has posted the draft final proposal for the Interconnection Process Enhancement (IPE) 2021 - Phase 2 initiative and will hold a stakeholder call on August 2, 2022 to discuss the paper. Written comments on the draft final proposal are due August 16, 2022.

Extended Day-Ahead Market. The California ISO will hold a stakeholder call on August 3, 2022 to further discuss the Greenhouse Gas Model examples included in the Extended Day-Ahead Market technical workshop on July 27, 2022.

Capacity Procurement Mechanism Enhancements. The California ISO will hold a public stakeholder call on August 4, 2022 to discuss the track 1 straw proposal for the new Capacity Procurement Mechanism Enhancements initiative. Written comments on the track 1 straw proposal are due August 18, 2022.

Transmission Service and Market Scheduling Priorities Phase 2. The California ISO has scheduled a stakeholder call on August 11, 2022 to discuss the Transmission Service and Market Scheduling Priorities Phase 2 straw proposal. Comments are due August 25, 2022.

Transmission Development Forum

The California ISO, in conjunction with the CPUC and the participating transmission owners, held its quarterly public stakeholder call on July 29, 2022 to provide status updates on the transmission projects previously approved through the transmission planning process and network upgrades identified in the generation interconnection process. Written comments are due August 12, 2022.

CALIFORNIA ENERGY COMMISSION

Offshore Wind

According to the August 10, 2022 California Energy Commission (CEC) Business Meeting agenda, the CEC will consider adoption of the final report on Offshore Wind Energy Development in Federal Waters Offshore the California Coast: Maximum Feasibly Capacity and Megawatt Planning Goals for 2030 and 2045 (see agenda item 2). A copy of the final report is available here.

AB 205: Expansion of CEC Siting Jurisdiction

On June 30, 2022, California Governor Gavin Newsom signed AB 205, which, among *various* other things, expands the siting jurisdiction of the CEC to include non-thermal generating facilities, such as solar and wind projects, with a capacity of 50 megawatts (MW) or more. The CEC's siting jurisdiction was previously limited to thermal generating facilities like gas-fired and geothermal power plants with a capacity of 50 MW or more. In addition, AB 205 allows the CEC to have siting jurisdiction over energy storage facilities with a capacity of 200 MW hours or more. Unlike thermal generating facilities, the CEC's expanded siting jurisdiction over solar and non-thermal generating facilities, as well as energy storage facilities, is at the request of the applicant—meaning it is "opt-in." A summary of the changes to the CEC siting jurisdiction contained in AB 205 can be found on the Stoel Rives California Environmental Law blog and Renewable + Law blog.

CEC Business Meetings

The next CEC Business Meeting is scheduled for August 10, 2022 and the agenda is available here.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

CARB will hold several community listening sessions on the draft AB 32 Scoping Plan Update across the state. The Plan assesses progress towards achieving a decrease in California's greenhouse gas emissions by 40% below 1990 levels by 2030 and lays out a path to achieve carbon neutrality by 2045. Sessions will be held in person in Fresno on August 3, 2022 and in Los Angeles on August 4, 2022. A session was also held in Oakland on July 28, 2022. A virtual listening session will be held August 9, 2022. Information on the sessions is available here.

CARB has invited Native American tribes to consult on the draft AB 32 Scoping Plan Update. Requests for consultation on the draft Plan should be submitted to CARB by August 4, 2022. CARB will hold a listening session and webinar for tribes on the draft Plan on August 24, 2022. Information is available here.

CARB will hold its next Board meeting on August 25-26, 2022. The full agenda will be available here 10 days prior to the meeting.

Opportunities for Public Comment

CARB previously issued the draft AB 32 Scoping Plan Update for public comment and held a public hearing on the Plan on June 23, 2022. On July 22, 2022, Governor Gavin Newsom issued a letter to CARB calling for more aggressive targets in the Plan, including (1) a planning goal for an offshore wind of 20 gigawatts (GW) by 2045, (2) a 20% clean fuels target for the aviation sector, (3) renewable energy implementation to avoid new natural gas-fired power plants, and (4) carbon removal targets of 20 million metric tons (MMT) by 2030 and 100 MMT by 2045.

CARB held a virtual public workshop on July 7, 2022 to discuss potential changes to the Low Carbon Fuel Standard. Comments may be submitted here on or before August 8, 2022.

CARB has held a series of public workshops on draft regulatory language for the proposed Advanced Clean Fleets Regulation to achieve zero-emission medium and heavy-duty truck and bus fleets by 2045. Informal comments on the proposed regulation may be submitted here on or before August 19, 2022.

A draft People's Blueprint has been prepared by community and environmental justice advisors to CARB as a starting point for discussion of CARB's update to the AB 617 Community Air Protection Blueprint, issued in 2018. Comments on the draft People's Blueprint may be submitted to CARB here on or before September 30, 2022.

MINNESOTA PUBLIC UTILITIES COMMISSION (MPUC)

MPUC August 4, 2022 Agenda Meeting

The MPUC will hear oral arguments regarding Minnesota gas utilities' requests for approval to recover costs associated with the February 2021 Winter Storm Uri extreme weather event. The rescheduled hearing is now on August 4, 2022, starting at 9:00 a.m. CT. The notice can be found here.

New Minnesota Transmission Projects

On July 25, 2022, MISO approved 18 new high-voltage transmission lines, setting the stage for adding 53 GW of renewable energy to the grid. News of the announcement can be found here. The estimated cost is $10.3 billion. About 20% of this investment will be in Minnesota, where three high-voltage transmission lines are planned, the largest of which will be a $970 million, 150-mile transmission line linking the Iron Range to central Minnesota. Local news coverage, and a map of the transmission lines in Minnesota, can be found here.

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

OPUC Meetings This Week

On August 4, 2022, OPUC will hold a rulemaking hearing on proposed updates to the Certificate of Public Convenience and Necessity Rules. Specifically, OPUC has proposed modifying the filing requirements where new overhead transmission lines will require condemnation of property. Final comments are due August 11, 2022, and the hearing information can be found here.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION (WUTC)

WUTC Orders

On July 28, 2022, WUTC adjusted the cost of greenhouse gas emissions to reflect inflation. The order and updated values can be found here.

FEDERAL ENERGY REGULATORY COMMISSION

FERC's July 28, 2022 Open Meeting resulted in three proposed rulemakings:

FERC issued a Notice of Proposed Rulemaking (NOPR) to modernize its accounting systems to better reflect the rapid changes in electric power market resources and technologies. The NOPR would modify FERC's Uniform System of Accounts by creating new accounts for wind, solar, and other non-hydro renewable assets; establishing a new functional class for energy storage accounts; codifying the accounting treatment for renewable energy credits; and creating new accounts for computer hardware, software, and communication equipment. Creation of these discrete accounts would provide more accurate information to FERC and the public during the ratemaking process by enabling more reasonable estimates for lifetimes of plant service and their recorded depreciation. Additionally, the NOPR seeks comment on whether the Chief Accountant should issue guidance on accounting for hydrogen. Comments on the NOPR will be due 45 days after publication in the Federal Register.

FERC issued a second NOPR on improving credit risk management in the organized wholesale electric power markets. The NOPR would allow electric power market operators to share credit-related information among themselves so they can more accurately assess market participants' credit risks. Separately, FERC also issued an Order to Show Cause finding that the existing open access transmission tariffs of the California Independent System Operator Corporation, ISO New England Inc., New York Independent System Operator, Inc., and Southwest Power Pool Inc. appear to be unjust and unreasonable because they lack certain credit risk management practices. Specifically, these tariffs do not contain practices intended to ensure that market participants in financial transmission rights markets administered by these market operators maintain sufficient collateral to reduce the risk of defaults and the potential mutualization of costs from any defaults that are not supported by adequate collateral. Comments on the NOPR will be due 60 days after publication in the Federal Register. Market operators' responses to the Show Cause Order are due October 26, 2022.

FERC issued a third NOPR that would impose a new duty of candor for entities that communicate with FERC or organizations upon which FERC relies to carry out its statutory obligations in the FERC-jurisdictional electric, natural gas, and oil industries and markets. The proposed rule is based on the existing rule governing communications by entities with market-based rate authority and would apply to communications with FERC (including FERC staff), FERC-approved market monitors, FERC-approved regional transmission organizations, FERC-approved independent system operators, jurisdictional transmission or transportation providers, and the North American Electric Reliability Corporation (NERC) and its associated Regional Entities. Comments on the NOPR will be due 60 days after publication in the Federal Register.

FERC Chairman Rich Glick and Jim Robb, President and CEO of NERC, published a letter encouraging the North American Energy Standards Board to convene a forum to identify solutions to the reliability challenges facing the nation's natural gas system and bulk electric system. Such a forum was one of the key recommendations from the FERC-NERC report on the February 2021 freeze in Texas and the southcentral U.S. caused by Winter Storm Uri.

FERC/NYPSC DEVELOPMENT

On July 27, 2022, the New York Transmission Owners (NYTOs) filed an Answer to the Protests of LSP Transmission Holdings, et al. (LS Power) and the New York Association of Public Power (NYAPP) to the NYTOs' June 21, 2022 joint application to FERC for approval of the Cost Sharing and Recovery Agreement, and proposed Schedule 19 to the New York Independent System Operator's (NYISO) Open Access Transmission Tariff. The NYTOs' June 21 filing is the product of a New York State initiative known as the Accelerated Renewable Energy Growth and Community Benefit Act that, among other things, requires the NYTOs, under the supervision of the New York Public Service Commission (NYPSC), to facilitate the integration of renewable energy resources through local transmission and distribution plans to achieve New York's ambitious clean energy goals under the Climate Leadership and Community Protection Act (CLCPA).

LS Power protested the NYTOs' filing, contending that it violated NYISO's existing tariff planning requirements under FERC Order No. 1000 to determine whether there are more efficient or cost-effective alternatives to the proposed local projects. According to LS Power, the NYTOs' filing is an attempt to circumvent the Order No. 1000 process and avoid competition from non-incumbent transmission developers like LS Power. NYAPP also protested the NYTOs' filing, but solely with respect to the proposed load-ratio share cost allocation among all load-serving entities. NYAPP argues that its members are already meeting the CLCPA targets, so they would receive no benefit from NYTOs' projects and thus should not pay for them.

In its Answer, the NYTOs point out that Order No. 1000 expressly authorizes a voluntary agreement to fund transmission projects to achieve state public policy goals that are not otherwise being developed under the Order No. 1000 regional transmission planning process, and that the proposal also is consistent with FERC's recent Policy Statement re State Voluntary Agreements to Plan and Pay for Transmission Facilities. In response to NYAPP's protest, the NYTOs note that the proposed cost allocation was fully vetted and approved by the NYPSC, reflecting the fact that the CLCPA targets are statewide goals.

IMPACT OF *WEST VIRGINIA, ET AL. V. EPA ET AL.*

On June 30, 2022, the U.S. Supreme Court ruled in a 6-3 decision that the Environmental Protection Agency (EPA) lacks the authority under the Clean Air Act (CAA) to limit greenhouse gas (GHG) emissions from power plants through "generation shifting," i.e., by increasing the use of cleaner energy resources like wind and solar and decreasing the use of dirtier resources like coal. *West Virginia v. EPA*. The Court's decision reverses and remands the D.C. Circuit ruling that vacated both the Trump administration's repeal of the Obama administration's Clean Power Plan and its replacement with the Trump administration's Affordable Clean Energy Rule. The Court held that the general grant of authority in Section 111(d) of the CAA does authorize the EPA to establish emission standards for existing power plants based on the generation-shifting approach taken in the Clean Power Plan. In reaching its decision, the Court said that EPA's effort to regulate GHG emissions by making industry-wide changes violated the "major questions doctrine" under which the Court applies a more skeptical review of "a particular and recurring problem: agencies asserting highly consequential power beyond what Congress could reasonably be understood to have granted." No. 20-1530 et al., slip op. at 20 (U.S. June 30, 2022).

Whether the Court's ruling in *West Virginia v. EPA* will impact or alter FERC's regulatory policymaking initiatives remains to be seen. The Court's application of the "major questions doctrine" signals a significant shift in the Court's approach to statutory interpretation and to the role of administrative agencies in implementation of their statutory authority. The Court's reasoning could be applied to the FERC's current initiative to evaluate the GHG emissions and impacts on climate change of proposed new natural gas pipeline projects in determining whether to grant a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act (NGA). *Order on Draft Policy Statements*, 178 FERC ¶ 61,197 (2022). Arguments are already being made that FERC's heightened review and assessment of the environmental impacts associated with a pipeline project's GHG emissions go well beyond FERC's statutory authority under the NGA and are of such "economic and political significance" that only Congress can authorize such regulation.

On July 28, 2022, FERC issued Order Denying Protest and Issuing Certificate (Order) to Gas Transmission Northwest LLC (GTN) to construct and operate a new compressor station in Oregon (the Coyote Springs Compressor Station Project), but not without controversy—foreshadowing an ongoing debate between Chairman Glick (D) and Commissioner Danly (R) regarding whether, in the context of an application for certificate under Section 7(c) of the NGA, FERC should assess the significance of the project's GHG emissions and its potential impact on climate change. While the FERC's Order ultimately granted a certificate to GTN over the vigorous objections of Columbia Riverkeeper, Chairman Glick clarified in a separate concurring statement that, in accordance with existing precedent, the Order does not assess the significance of the climate impacts from the project's GHG emissions "because the Commission intends to assess how we will conduct significance determinations in the pending generic proceedings on our now-draft policy statement." (Order at 42.) In his concurring statement, Commissioner Danly wrote a scathing critique of the notion that FERC, consistent with its statutory obligations under the NGA, would ascribe significance to any particular rate or volume of GHG emissions. (Order at 46.) He also indicated that the FERC's proposed establishment in the now-draft Policy Statement of the 100,000 metric tons per year significance threshold was a "mistake" and likely exceeds FERC's statutory authority. Citing to the Supreme Court's recent reinvigoration of the "major questions doctrine" in *West Virginia, et al. v. EPA, et al.*, Commissioner Daly urged FERC to terminate draft Policy Statement proceeding and discontinue consideration of GHG emissions in natural gas infrastructure project reviews.