

**REGULATORY UPDATE FOR AUGUST 9, 2021 (WEEK OF AUGUST 2)****CALIFORNIA**

California continues to be challenged to find sufficient electric capacity to prevent blackouts. On Thursday, August 5, the Department of Water Resources announced that the Hyatt Hydroelectric Power Plant at Lake Oroville was being shut down, due to low water levels. Although the shutdown was anticipated, it represents a loss of 645 megawatts (MW) of hydroelectric generation.

During a media availability on July 30, California ISO President and CEO Elliot Mainzer commented on the increasing challenges that California must surmount to maintain electric reliability, stating that while “[]earlier this year,” he had expressed “guarded optimism that our grid was more prepared for this summer,” “over the course of the past three months, as we have experienced worsening drought conditions and declining hydro production, unprecedented heat throughout the West, and increasingly dangerous wildfires impacting key transmission lines, it has become clear that we have entered a new normal and that extraordinary action is required.” He went on to express appreciation for Governor Newsom’s efforts to address these challenges through the emergency proclamation issued on July 30, and referenced in last week’s Regulatory Update.

**CALIFORNIA PUBLIC UTILITIES COMMISSION****New Proposed Decisions and Draft Resolutions<sup>1</sup>**

Draft Resolution E-5164. In Decision (D.) 21-01-018, the Commission required that any utility reserving temporary generation to mitigate transmission-level Public Safety Power Shutoff (PSPS) events “document its plans to establish clean substation microgrid projects located at, or able to serve, at least one substation,” or alternatively “document the specific conditions [for clean substation pilots] that have not been met in its Advice Letter.” This Resolution finds that Pacific Gas and Electric Company (PG&E) has not documented its plans to establish a clean substation microgrid project, or adequately documented specific conditions that make such a project infeasible. Although PG&E provided evidence for the infeasibility of temporary projects, it did not provide adequate evidence for the infeasibility of permanent projects, which may still meet the requirements of D.21-01-018. PG&E must meet its obligation under D.21-01-018 by pursuing a new clean substation project as ordered in this Resolution. PG&E shall issue a Request for Proposals that allows for permanent projects, and shall submit a Tier 3 Advice Letter requesting approval for at least one project through the framework approved in D.21-01-018.

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<sup>1</sup> Per California Public Regulatory Commission (CPUC or Commission) 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.

This Resolution also approves PG&E's request to use two existing DR programs to reduce the use of temporary generation during PSPS events.

Draft Resolution E-5168. This Resolution finds that Bear Valley Electric Service Inc., Liberty Utilities (Calpeco Electric) LLC, and PacifiCorp d/b/a Pacific Power proposed EV Infrastructure Rules and associated Memorandum Accounts are reasonable, with modifications, and are in compliance with Assembly Bill 841.

Draft Resolution E-5167. This Resolution finds that the proposals from PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) to establish new EV Infrastructure Rules and associated Memorandum Accounts are reasonable with modifications and are in compliance with Assembly Bill 841.

A.18-07-013/A.18-12-008 (PG&E Diablo Canyon Decommissioning Planning Cost Memorandum Account). A.18-07-013 requested authority to establish the Diablo Canyon Decommissioning Planning Memorandum Account (DCDPMA). PG&E proposed the DCDPMA to track the cost of decommissioning planning activities incremental to those reimbursable from the Diablo Canyon Nuclear Decommissioning Trust Funds so it could preserve the ability to request and obtain cost recovery for these costs in the 2018 Nuclear Decommissioning Cost Triennial Proceeding. A.18-12-008 sought review of PG&E's updated nuclear decommissioning cost estimates and determination of necessary customer contributions to fully fund the nuclear decommissioning trusts to the level needed to decommission PG&E's nuclear plants. This decision adopts and approves the Settlement Agreement, dated January 10, 2020, between The Utility Reform Network, the Public Advocate's Office of the California Public Utilities Commission, Alliance for Nuclear Responsibility, County of San Luis Obispo, Women's Energy Matters, yak ti'vu yak ti'hini Northern Chumash Cultural Preservation Kinship, and PG&E. Adoption of the Settlement Agreement resolves all issues presented in A.18-07-013 and A.18-12-008, and closes those proceedings.

R.14-08-013 (Utility Distribution Resources Plans). This decision closes R.14-08-003 in light of the opening of the successor distribution resource plan proceeding, R.21-06-017, and approves, as modified, the Investor-owned Utilities' Applications 15-07-002, 15-07-003, and 15-07-006, as well as the Small and Multi-Jurisdictional Utilities' Applications 15-07-005, 15-07-007, and 15-07-008, to approve their respective distribution resources plans.

### Voting Meetings

The Commission's next voting meeting is scheduled for August 19, 2021. The Commission held a voting meeting on August 5, and the agenda included the following energy-related items.

Item 3. Draft Resolution G-3583. This Resolution adopts a Backbone Transmission Service Credit mechanism for the SDG&E customers who pay for, but do not receive, firm Backbone Transmission Services because of maintenance-related outages. The Backbone Transmission Service Credit shall be included in an affected customer's monthly gas bill. **Rev. 1 denies SDG&E's request. Approved.**

Item 4. Draft Resolution G-3581. This Resolution adopts a Backbone Transmission Service Credit mechanism for the Southern California Gas Company (SoCalGas) customers who pay for, but not do receive, firm Backbone Transmission Services because of maintenance-related outages. The Backbone Transmission Service Credit shall be included in an affected customer's monthly gas bill. **Rev. 1 denies SoCalGas's request. Approved.**

Item 7. I.00-11-001 (Transmission and Distribution Constraints). This decision denies SDG&E's petition to modify D.06-09-003 to exempt it from the requirement to submit quarterly reports concerning its transmission projects. **Signed, D.21-08-003.**

Item 11. R.14-10-003 (DER Framework). This decision closes R.14-10-003. The proposed decision concludes that the Commission has largely resolved the issues it set out to accomplish through development of the Competitive Solicitation Framework for distributed energy resources, pilots of two additional frameworks for the procurement of distributed energy resources, and updates on the cost-effectiveness analysis framework for distributed energy resources. While these actions have continuing related activities, the decision finds that the continuing activities can be more appropriately resolved in other rulemakings. **Withdrawn.**

Item 13. A.18-06-015 (SCE Charge Ready 2 Infrastructure). This decision clarifies that SCE shall not subtract the bridge funding approved in D.18-12-006 from the authorized Charge Ready 2 budget. SCE is authorized \$436 million for the utility's Charge Ready 2 electric vehicle charging infrastructure and market education program, authorized in Commission D.20-08-045. **Signed, D.21-08-005.**

Item 14. Draft Resolution M-4856. This Resolution ratifies and modifies in part the June 28, 2021 letter by the Executive Director of the Commission to PG&E, directing PG&E to comply with specific additional requirements with regard to PG&E's reliance on tree overstrike criteria in its PSPS de-energization decision-making during the 2021 wildfire season. These requirements include additional noticing, public safety partner coordination, reporting, assessment of additional resource deployment, and protocol for adjustments or cancellations of PG&E's reliance on tree overstrike criteria. **Approved.**

Item 16. A.19-07-021 (SCE 2017 Drought and Firestorm Recovery). This decision grants SCE the authority it requests to recover the incremental expenses recorded in the Catastrophic Event Memorandum Account, incurred in 2017-2018 responding to catastrophic drought conditions, but denies without prejudice recovery of capital costs incurred in 2017 for responding to catastrophic firestorms. **Held to August 19 meeting.**

Item 21. Draft Resolution G-3585. This Resolution eliminates lower and upper action level specifications (as defined in D.14-01-034) for biological contaminants—formally referred to as “biologicals”—from the Standard Renewable Gas Interconnection Tariff, deletes biologicals from the table of “Maximum Constituent Concentrations,” includes biologicals in the pre-injection testing procedure, and implements this modification in each gas utility's respective tariff, as PG&E, SoCalGas, Southwest Gas Company, and SDG&E requested in their Advice Letters (ALs) filed pursuant to Ordering Paragraph 11 of D.20-12-031. **Approved.**

Item 33. Draft Resolution M-4855. In D.20-05-053, approving the Bankruptcy Plan of Reorganization for PG&E, the Commission directed PG&E to file a Tier 3 AL to establish terms for PG&E to engage an Independent Safety Monitor (ISM). The ISM will fulfill a role that supports the Commission's ongoing oversight of PG&E's activities related to electric and gas safety. This Resolution directs that the ISM's engagement will begin before the term of the Federal Monitor appointed in PG&E's federal criminal probation proceeding before Judge William Alsup, case number CR 14-00175 WHA (N.D. Cal.), expires in early 2022, and will continue for five years thereafter. On March 15, 2021, PG&E submitted AL 4401-G/6116-E pursuant to D.20-05-053. This Resolution approves portions of the AL with modifications and denies PG&E's request to establish a memorandum account. Specifically, the Resolution addresses the following: (1) solicitation and selection of the ISM; (2) ISM scope of work; (3) annual budget; (4) schedule and duration; and (5) memorandum account and cost recovery. As directed in D.20-05-053, the Commission seeks to ensure the ISM has a role "functionally equivalent" to the Federal Monitor, subject to certain adaptations adopted in the Resolution. **Approved.**

## **CALIFORNIA ISO**

### **Additional Significant Event Capacity Procurement Mechanism Designations**

The California ISO issued additional Capacity Procurement Mechanism (CPM) designations to nine resources (totaling 268.49 MW) to address a CPM Significant Event. Eight of the resource designations are effective August 2, 2021, and one is effective August 10, 2021.

### **Stakeholder Initiatives: Upcoming Meetings and Deadlines**

**2021-2022 Transmission Planning Process.** The California ISO has posted a white paper and held a public stakeholder call on July 27, 2021 to discuss transmission capability information provided to the CPUC through its Integrated Resource Planning Process, and updates for the 2021-2022 transmission planning process and the 20-year transmission outlook. Written comments are due August 10, 2021.

**Day-Ahead Market Enhancements Second Revised Straw Proposal.** Written comments on the Day-Ahead Market Enhancements initiative straw proposal are due by end of day August 18, 2021.

**Maximum Import Capability Enhancements: Revised Straw Proposal.** The California ISO will hold a public stakeholder call on August 11, 2021, to discuss the revised straw proposal for the Maximum Import Capability Enhancements initiative. Comments are due August 25.

**Department of Market Monitoring 2020 Annual Market Issues and Performance Report.** The California ISO Department of Market Monitoring posted its 2020 Annual Market Issues and Performance Report and scheduled a stakeholder web conference on August 12, 2021, to discuss reported analysis and findings.

## **CALIFORNIA ENERGY COMMISSION**

**EPIC 2021-2025 Investment Plan.** On June 2, 2021, California Energy Commission (CEC) Staff published a Notice of Staff Workshops regarding a series of remote access workshops to discuss the Electric Program Investment Charge (EPIC) 2021-2025 Investment Plan (EPIC 4 Investment Plan) and solicit public input on specific research topics to inform the plan. The workshops will review the research initiatives proposed in the draft EPIC 4 Investment Plan and solicit public input.

As background, the CPUC established EPIC in 2012 to fill a critical gap in funding for public investments in clean energy research and technology innovation that can provide benefits to electric ratepayers through greater reliability, lower costs, and increased safety. On September 2, 2020, the CPUC renewed EPIC for an additional 10 years (January 1, 2021 through December 31, 2030) in D.20-08-042. The CPUC approved the CEC as an EPIC administrator with an annual budget of \$148 million for the first five years and ordered the investor-owned utilities to collect funds for the renewed EPIC starting January 1, 2021. The decision requires the CEC to file an investment plan to the CPUC by October 1, 2021 to cover the period of January 1, 2021 to December 31, 2025 (referred to as EPIC 4). According to the Public Notice, CEC Staff anticipates that the CPUC will issue a decision on the EPIC 4 Investment Plan in spring 2022. More information on the CEC's administration of the EPIC program is available [here](#).

The series of CEC Staff workshops started on June 14, 2021 and culminated in an August 4, 2021 workshop entitled "Draft Initiatives for EPIC 4" that reviewed the research initiatives proposed in the draft EPIC 4 Investment Plan and solicited public input. A copy of the draft initiatives is available [here](#).

**SB 100.** On August 12, 2021 at 10:00 a.m., the CEC will jointly conduct a workshop with the CPUC and the California ISO to discuss the development of a resource map to examine potential environmental and land use implications of developing renewable energy resources required to achieve the goals of 100 Percent Clean Energy Act of 2018 (SB 100). The scenarios and resource map will also help inform work on the California ISO's 20-year Transmission Outlook. Details regarding remote attendance as well as a meeting agenda are available [here](#).

**CEC Business Meetings.** The next CEC Business Meeting will be held remotely on August 11, 2021. The meeting agenda is available [here](#). A second CEC Business Meeting will be held on August 17, 2021 at 2:30 p.m. The August 17, 2021 meeting agenda, including remote attendance instructions, is available [here](#). Items on the August 17, 2021 meeting [agenda](#) directly relate to the Governor's July 30 Emergency Proclamation.

## **CALIFORNIA AIR RESOURCES BOARD**

On August 12, 2021, the AB 617 Consultation Group will hold a virtual meeting. Meeting information and a link to the meeting are available [here](#).

On August 17, 2021, ARB will hold a [Technical Workshop](#) on development of modeled scenarios that lead to carbon neutrality by 2045, as part of the [AB 32 Scoping Plan Update](#). In June, ARB held a [series of public workshops](#) on development of the 2022 Scoping Plan Update. Recordings of the workshops are [available online](#). Recordings of past technical workshops, including on engineered carbon removal and natural and working lands, are also [available](#). Comments on the engineered carbon removal technical workshop, held August 2, 2021, can be submitted [here](#) on or before August 16, 2021.

ARB is accepting informal public comments on the proposed [Advanced Clean Fleets](#) regulation, which aims to achieve a zero-emissions truck and bus California fleet by 2045. Comments may be [submitted](#) on or before September 15, 2021.

The next ARB meeting will be held September 9, 2021. The meeting agenda will be made available [here](#) 10 days prior to the meeting.

## MINNESOTA

### Minnesota Public Utilities Commission Investigation into the Impact of Severe Weather in February 2021, PUC Docket Nos. 21-135, 21-138

As a follow up to previous updates, the Minnesota Public Utilities Commission (Commission) met on August 4 and 5 to continue its investigation into the impacts of the extreme cold weather event that occurred in February 2021. While the extreme weather had impacts nationwide, the Commission's investigation targeted the impact on natural gas utilities in Minnesota, where one utility estimated the impact of the storm to be nearly \$500 million and the Midwest wholesale market price of gas spiked by at least 4,500%. As part of the investigation, the Commission generally addressed the following questions: (1) should it provisionally approve recovery of the extreme weather costs proposed by the utilities; (2) were the extraordinary costs incurred by each gas utility prudent; (3) how should the Commission proceed with other issues related to the extreme weather; and (4) should the Commission refer this matter to the Office of Administrative Hearings for a contested case proceeding. Ultimately, the Commission provisionally approved cost recovery, granted specific variances, and required specific low-income customer exemptions; however, the Commission referred the case to the Minnesota Office of Administrative Hearings to conduct a prudence review of extreme weather costs incurred by the utilities. The Commission also approved a recovery mechanism that is subject to the ultimate prudence determination. The recovery mechanism will spread the costs of extreme weather over a 27-month period rather than the traditional 12 months. Additionally, the mechanism provides the opportunity for ratepayers to recoup some of these costs should the pending prudence review result in the determination that certain costs incurred by the natural gas utilities are not recoverable. In the meantime, utilities will begin collecting on the roughly \$660 million associated with the extreme weather.

In addition to the Commission's analysis of the extreme weather costs, commissioners made specific comments regarding the general use of natural gas in Minnesota. When addressing the utilities, Commissioner Tuma stated, "I don't think you realize how significant

this was and how it will move us away from gas .... It has changed my worldview as to how natural gas fits into our energy [system] in Minnesota.” Commissioner Tuma’s concerns were echoed by other commissioners. While these concerns were expressed in the context of a specific docket, the Commission’s changing attitude toward natural gas resources has the potential to influence resource planning and related dockets in Minnesota moving forward.

## **OREGON**

### **OPUC Meeting This Week**

On Tuesday, August 10 at 9:30 a.m. PST the OPUC will hold a public meeting to discuss a wide range dockets including ADV 1264 (related to PGE’s Schedule 55 Green Energy Affinity Rider (GEAR) program tariff). The OPUC is expected to approve PGE’s revision to its voluntary renewable energy tariff, which, among other things, clarifies the distinction between customer supplied power purchase agreements and utility procured power purchase agreements under the GEAR program. OPUC Staff’s latest report on the proposed revisions are located [here](#).

## **WASHINGTON**

### **WUTC Meetings This Week**

On Thursday, August 12 at 9:30 a.m. PST the Washington Utilities and Transportation Commission (WUTC) will hold a public meeting to discuss a wide range of topics including the 2021 Renewable Portfolio Standard Reports for Avista (UE 210396), Puget Sound Energy (UE 210411), and the Microsoft Corporation (UE 161123).

Later in the day at 1:00 p.m. PST, the WUTC will be hosting a workshop to implement the Clean Energy Transformation Act. Specifically, the meeting will include a discussion on the interpretation of RCW 19.405.040 related to Washington’s carbon neutrality goal for retail electricity customers.

## **COURT OF APPEALS, DC CIRCUIT**

### **DC Circuit Partially Remands FERC Order Regarding 2015 MISO Capacity Auction**

On August 6, 2021, the United States Court of Appeals for the District of Columbia Circuit (Court) granted in part, and denied in part, the Petition for Review filed by Public Citizen, Inc. (Public Citizen) against the Federal Energy Regulatory Commission (FERC or Commission).

The proceeding stems from the Midcontinent Independent System Operator (MISO) 2015 Capacity Auction. MISO’s operational area is divided into nine separate regional zones, and for each zone, MISO determines how much capacity will be required. In 2015, MISO had certain market power mitigation mechanisms in place to cap the price for capacity in the auction and ensure the market ran efficiently; however, these mechanisms did not function correctly in Zone

4. During the 2015 Capacity Auction, the auction clearing price in Zone 4, largely in Illinois, was more than 40 times the price set in the other zones.

Complaints were filed by Public Citizen, the State of Illinois; Southwestern Electric Cooperative; and Illinois Industrial Energy Consumers. The complainants argued Dynegy, a power company in Illinois, had become a pivotal supplier for Zone 4 by purchasing four power plants in Zone 4 and then had used economic withholding tactics to manipulate the market.

In its initial order in 2015, FERC determined that the MISO tariff mechanisms related to mitigating market power effects in the capacity market were insufficient and that the assumptions undergirding the tariff mechanisms were no longer valid. FERC determined that the staleness of these assumptions had led to the capacity pricing issues. FERC directed MISO to revise its tariff and opened an enforcement investigation into Dynegy's practices.

In 2019, FERC issued an order closing the enforcement investigation after finding that there was no evidence of market manipulation by Dynegy. After FERC denied Public Citizen's request for rehearing, Public Citizen filed the Petition for Review. In its Petition for Review, Public Citizen argued that the Commission (1) failed to meet its obligation to ensure just and reasonable rates because it did not review the prices resulting from the 2015 Capacity Auction before those prices went into effect; (2) was arbitrary and capricious in failing to adequately explain its decision to close its investigation into whether Dynegy engaged in market manipulation; and (3) failed to adequately explain its conclusion that the results of the 2015 Capacity Auction were just and reasonable.

In its decision, the Court denied Public Citizen's first two arguments while granting its third argument. The Court denied Public Citizen's first argument, concluding that FERC can rationally allow markets to set "just and reasonable" prices as long as the Commission takes the necessary steps to ensure that market participants cannot wield anticompetitive market power. In such instances, there is no need to review each individual market-based price resulting from an auction. The Court denied Public Citizen's second argument by reaffirming the general principle that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."

The Court agreed with Public Citizen that the Commission's order was arbitrary and capricious because it did not provide the reasoned explanation necessary in determining that the prices from the 2015 Capacity Auction were just and reasonable. The Court emphasized that the Commission did not even attempt to reconcile its determination in 2015 that the MISO tariff mechanisms were insufficient with the results from the 2015 Capacity Auction. The Court also found that the Commission failed to explain how potential market manipulation did not lead to unjust and unreasonable rates. The Court did not state that the Commission must find that market manipulation existed; rather, the Court determined that the Commission did not do the leg work required to explain how the unusually high prices were still just and reasonable. Accordingly, that portion of the order was deemed to be arbitrary and capricious. The Court remanded the case to the Commission for further proceedings related to this issue.