

**REGULATORY UPDATE FOR DECEMBER 20, 2022  
(WEEK OF DECEMBER 12, 2022)**

**CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)**

New Proposed Decisions and Draft Resolutions<sup>1</sup>

Draft Resolution E-5252. This Resolution establishes a Transmission Project Review Process for investor-owned electric utilities (IOU) beginning January 1, 2024 to review IOU capital transmission projects.

A.20-02-009/A.20-04-002/A.20-06-001 (2019 ERRRA Compliance, consolidated). This decision resolves the 2019 Energy Resource Recovery Account (ERRA) Compliance Phase Two proceedings of Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively the Joint Utilities), which were consolidated to address issues related to the Public Safety Power Shutoff (PSPS) events they initiated in 2019. Separately, the CPUC opened an Order Instituting Investigation 19-11-013 (PSPS OII) to examine whether the Joint Utilities complied with applicable laws, rules, and regulations when they initiated the PSPS events in 2019. In Decision (D.) 21-06-014 (decision resolving the PSPS OII), the CPUC found that the Joint Utilities were grossly deficient in reasonably identifying, evaluating, and weighing the potential public harms to their customers when initiating the 2019 PSPS events and imposed on them a monetary remedy by prohibiting their collection of all authorized revenue requirement equal to the estimated unrealized volumetric sales and revenues resulting from future PSPS events. This decision prohibits the Joint Utilities from adjusting future rates to collect any revenue shortfalls, recorded as undercollections in their respective balancing accounts, caused by PSPS events in 2019. This decision also adopts a methodology to calculate the estimated unrealized revenues the Joint Utilities incurred in 2019 or will incur during future PSPS events. The consolidated 2019 ERRRA Compliance proceedings of PG&E, SCE, and SDG&E are closed.

Voting Meetings

The CPUC held a voting meeting on December 15, 2022. The agenda included the following energy-related items.

Item 8. R.20-07-013 (Risk-Based Decision-Making Framework). In D.14-12-025, the CPUC established parameters and processes for integrating risk assessments into the general rate cases of large investor-owned utilities, with the goal of promoting transparency and assisting the CPUC and interested parties in evaluating the various processes the energy utilities use to assess their safety risks and to manage, mitigate, and minimize such risks. This decision would modify

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<sup>1</sup> Per CPUC's 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 CPUC's daily calendar, per Rule 14.5.

the Risk-Based Decision-Making Framework adopted in D.18-12-014. It would direct the IOUs to undertake Environmental and Social Justice Pilots in their next Risk Assessment and Mitigation Phase, and to consider specific action items in those pilots. **Signed, D.22-12-027.**

Item 9. R. \_\_\_ - \_\_\_ - \_\_\_ (Biomethane Procurement Cost OIR). The CPUC opens this rulemaking to consider cost allocation for biomethane procurement, pursuant to D.22-02-025, which established biomethane procurement targets to reduce short-lived climate pollutant emissions. The CPUC also plans to consider cost allocation between core and noncore customer classes for biomethane procured under D.22-02-025. **Signed, R.22-12-011.**

Item 14. R.21-10-002 (Resource Adequacy (RA)). This decision denies the petition for modification of D.22-03-034 (Petition), filed by California Community Choice Association. In light of PG&E's shortfalls in procuring local RA capacity in its role as the Central Procurement Entity (CPE) for its service territory, and the resulting impacts on other load serving entities' system and flexible RA compliance obligations, the Petition requested: (1) immediate suspension of a portion of LSEs' system and flexible RA compliance until the California Independent System Operator (CAISO) completes any local RA backstop procurement for the CPE; (2) immediate suspension of a portion of LSEs' system and flexible compliance requirements for January, February, and March, until CAISO completes backstop procurement of local RA for the CPE; (3) system update and flexible RA requirements after CAISO has completed backstop procurement; and (4) require LSEs to meet the adjusted annual and system RA following the backstop adjustment not later than May 1, 2023. The Petition also requested that the CPUC immediately create an interim waiver process for system and flexible RA penalties. **Signed, D.22-12-028.**

Item 16. R.18-07-003 (RPS Implementation). This decision approves the 2022 RPS Procurement Plans for the IOUs, community choice aggregators, and electric service providers, subject to specified modifications. Final plans are due no later than 30 days following issuance of the decision. **Signed, D.22-12-030.**

Item 17. A.22-04-008/-009/-011/-012 (IOU Cost of Capital). This decision establishes the 2023 ratemaking cost of capital for PG&E, SCE, Southern California Gas Company (SoCalGas), and SDG&E. **Signed, D.22-12-031.**

Item 19. Resolution E-5247. SDG&E's joint Advice Letter (AL) 4011-E, consisting of BVES AL 444-E, Liberty Utilities AL 192-E, PG&E AL 6607-E, PacifiCorp AL 685-E, and SCE AL 4803-E (collectively, Joint IOUs' AL), proposes to establish a 160-business day average service energization timeline for projects installing electric vehicle charging infrastructure. The Joint IOUs' AL proposes to limit the adopted service energization timeline to cover tasks that are only within the IOUs' direct control, while also identifying measures to accelerate the timeline to complete tasks within their indirect control. Finally, the Joint IOUs' AL identifies options to improve the completion timeline for steps outside of the IOUs' direct control. This Resolution approves, with modifications, the Joint IOUs' proposed average service energization timeline. The Joint IOUs must achieve an interim average service energization timeline of 125 business days for projects going through the EV Infrastructure Rule, excluding projects with a capacity exceeding 2 MW, projects that need distribution line upgrades via

Electric Rule 15, and projects requiring sub-station upgrades. The Joint IOUs must collect and report data on sites that exceed the 125-business day average service energization timeline to inform potential modifications to the target. Within one year of authorization of this Resolution, the Joint IOUs shall host a public workshop to discuss their efforts to achieve the 125-business day average service energization timeline. Within 60 days of hosting this public workshop, the Joint IOUs must submit a Tier 2 (T2) AL proposing an updated average service energization timeline informed by their efforts over the previous year. Finally, the Joint IOUs must collect service energization data related to processes atypical or outside of the EV Infrastructure Rules (i.e., projects going through Rule 15, projects exceeding 2 MW in capacity, projects requiring sub-station upgrades, etc.) to inform a potential energization timeline for such projects.

**Approved.**

Item 30. A.22-05-025 (SDG&E ERRRA Forecast). This decision approves SDG&E's 2023 Electric Procurement Revenue Requirement Forecasts, 2023 Electric Sales Forecast, and Greenhouse Gas (GHG) Related Forecasts for inclusion in its retail rates effective January 1, 2023. **Signed, D.22-12-042.**

Item 32. A.22-05-029 (PG&E ERRRA Forecast). This decision adopts the 2023 ERRRA and related energy costs, as well as the amortization of energy-related balancing accounts, and the 2023 electric sales forecast to be used by PG&E to recover these costs. The decision also adopts PG&E's 2023 forecast of revenue requirements for GHG- and climate-related costs. **Signed, D.22-12-044.**

Item 36. A.21-02-018 (LS Power Gates 500 kV Dynamic Reactive Support Project). This decision grants LS Power Grid California LLC's request for a permit to construct the Gates 500 kilovolt Dynamic Reactive Support Project. **Signed, D.22-12-048.**

Item 42. A.21-10-010 (PG&E EV Charge 2 Program). This decision approves \$50,728,000 in funding for PG&E to implement phase 1 of its Electric Vehicle Charge 2 program, from January 1, 2023 to December 31, 2025, and support the installation of approximately 2,822 Level 2 and Direct Current Fast Charger ports at multifamily housing, workplace, and public destination sites in PG&E's service territory. This decision sets an equity requirement that PG&E spend at least 65% of program funding in underserved communities. **Signed, D.22-12-053.**

Item 44. A.22-02-007 (SoCalGas Angeles Link). This decision grants SoCalGas the authority to establish the Angeles Link Memorandum Account to record the costs of performing Phase One feasibility studies for the Angeles Link Project, up to a cap of \$26 million with the option for an increase of up to 15%. The objective of the Angeles Link Project is to develop a clean hydrogen energy transport system to serve the Los Angeles Basin. **Signed, D.22-12-055.**

Item 45. R.20-08-020 (Net Energy Metering). This decision would adopt a new net energy metering tariff. The decision makes a number of significant changes, including dropping the grid benefits charge based on installed capacity that the previous proposed decision would have imposed, and adopting a new method of transitioning from the current NEM 2.0 tariff that

provides an adder to the export compensation paid to residential customers in PG&E's and SCE's service territories. **Signed, D.22-12-056.**

Item 46. R.13-02-008 (Biomethane). The CPUC directs California's four large gas IOUs to continue to file with the CPUC previously ordered biomethane-related reports regarding interconnected projects and procurement details, as well as information pertaining to factors identified in D.22-02-025, combined into a single consolidated report due annually starting May 1, 2024. This decision also adopts an interim definition for renewable hydrogen and directs the development of pilot projects to further evaluate standards for the safe injection of renewable hydrogen into California's common carrier pipeline system by specifying permissible injection thresholds, locations, testing requirements, and independent analysis. **Signed, D.22-12-057.**

### **CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)**

#### Stakeholder Initiatives: Upcoming Meetings and Deadlines

**Generator Deliverability Challenges.** The CAISO has posted an update on Generator Deliverability Challenges in response to industry concerns with access to deliverability for resources seeking to compete in load serving entity procurement processes. This topic is being considered for a potential stakeholder initiative in 2023. The update may be found [here](#). Comments are due January 4, 2023.

**WEIM Resource Sufficiency Evaluation Enhancements Phase 2.** The CAISO has scheduled a stakeholder call on January 11, 2023 to discuss the Western Energy Imbalance Market (WEIM) Resource Sufficiency Evaluation Enhancements Phase 2 revised draft tariff language. Comments are due December 23, 2022.

**Day-Ahead Market Enhancements.** The CAISO held a public stakeholder call on December 7, 2022 to discuss the Day-Ahead Market Enhancements draft final proposal. Comments are due December 21, 2022.

**WEIM Governance Review Phase 3.** The CAISO has posted the Extended Day-Ahead Market (EDAM) draft final proposal for the WEIM Governance Review Phase 3 initiative. The draft final proposal may be found [here](#).

**2021-2022 Transmission Planning Process.** The CAISO has posted a list of project sponsors whose applications the CAISO has deemed qualified for the Newark-NRS and Metalf-San Jose B HVDC projects. The CAISO will now initiate the selection process to determine which qualified project sponsor should finance, construct, own, operate, and maintain each transmission solution.

**FERC Order No. 881 – Managing Transmission Line Ratings Phase 2.** The CAISO has rescheduled the public stakeholder call on December 13, 2022 to December 21, 2022 to discuss the FERC Order No. 881 Managing Transmission Line Ratings phase 2 initiative scope, and respond to questions from stakeholders.

**Extended Day-Ahead Market.** The CAISO has published the EDAM final proposal. The EDAM final proposal may be found [here](#). The EDAM design will go before the CAISO Board of Governors and WEIM Governing Body for decision in February 2023.

**Transmission Service and Market Scheduling Priorities Phase 2.** The CAISO held a stakeholder call on December 16, 2022 to discuss the Transmission Service and Market Scheduling Priorities Phase 2 draft final proposal. Comments are due January 4, 2023.

### **CALIFORNIA ENERGY COMMISSION (CEC)**

#### Offshore Wind – AB 525

The CEC held a remote access [workshop](#) on December 19, 2022 to present a draft report containing a preliminary assessment of the economic benefits of offshore wind as they relate to seaport investments and workforce development needs and standards. As set forth in Assembly Bill (AB) 525, the CEC is required to complete and submit the report to the Natural Resources Agency and the relevant fiscal and policy committees of the Legislature by December 31, 2022.

On December 15, 2022, the CEC also released the draft Conceptual Permitting Roadmap for offshore wind.

#### Supply-Side Demand Response

On December 5, 2022, the CEC published the *Commission Report: Qualifying Capacity of Supply-Side Demand Response Working Group Final Report*, CEC 200-2022-001-F ([Report](#)). According to the Report Abstract, “the report provides the CEC’s final findings and recommendations from the CEC’s working group on supply-side demand response to the CPUC. The CPUC requested these findings and recommendations last year in Decision 21-06-029 and earlier this year in Decision 22-06-050.”

#### CEC Business Meetings

The next CEC Business Meeting is scheduled for January 25, 2023.

### **CALIFORNIA AIR RESOURCES BOARD (CARB)**

#### Recent Board Actions

On December 15, 2022, CARB adopted the [2022 Scoping Plan Update](#), which provides the road map to reduce GHG emissions in California 48% from 1990 levels by 2030 and reach economy-wide carbon neutrality by 2045.

#### Meetings and Workshops

CARB will hold its next board meeting on January 25-26, 2023. The agenda for the board meeting will be made available [here](#) 10 days prior to the meeting date.

### Opportunities for Public Comment

On November 9, 2022, CARB held a workshop to discuss potential changes to the [Low Carbon Fuel Standard](#). The [workshop](#) focused on options for increasing the stringency of the carbon intensity targets for 2030 and beyond, the design of initial scenarios for modeling, the modeling approach, and alternatives. The deadline to provide feedback on the workshop has been extended. Comments related to the workshop may be submitted to CARB [here](#) on or before December 22, 2022.

On December 6, 2022, CARB hosted a workshop on revisions to the Community Air Protection Program Blueprint and the fifth annual [community recommendations and selection process](#) for the AB 617 [Community Air Protection Program](#). Comments related to the workshop and the [Community Air Protection Program Blueprint 2.0 Draft Expanded Concepts Outline](#) may be submitted to CARB [here](#) on or before January 19, 2023.

### **MINNESOTA PUBLIC UTILITIES COMMISSION (MPUC)**

#### MPUC Agenda Meeting December 22, 2022

The MPUC will hold its weekly agenda meeting at 8:00 a.m. PT, December 22, 2022. During the meeting the MPUC will address the following matters: (1) Xcel's 2023 renewable energy rider; (2) Minnesota Power's 2023 transmission recovery rider; (3) Local Exchange Carriers' telephone assistance plan review; (4) Minnesota power's renewable resources rider; (5) CenterPoint Energy's renewable natural gas interconnection tariff; and (6) Minnesota Energy Resources Corporation's gas utility infrastructure rider.

### **OREGON PUBLIC UTILITIES COMMISSION (OPUC)**

On December 1, 2022, the OPUC issued order number 22-468 in the matter of UM 2011 (re General Capacity Investigation). The order adopts the staff's recommendation to adopt the Capacity Contribution Best Practices (Best Practices) and close matter UM 2011. This order closes an investigation that began in April 2019. The Best Practices are derived from the Principles of Valuation report produced by Energy and Environmental Economics, summarized by the OPUC [here](#). The order and adopted Best Practices can be found [here](#).

On December 13, 2022 the OPUC held a public meeting to discuss a variety of issues, including in docket UM 2225 (re Request to issue notice of proposed rulemaking for Clean Energy Plan (CEP) procedural rules). At that meeting, the OPUC voted to adopt the staff's proposed changes to the CEP procedural rules found in Division 27 and initiate the formal rulemaking process. House Bill 2021, codified as ORS 469A.415, requires each of Oregon's large IOUs to develop a CEP for meeting clean energy targets concurrent with the development of each integrated resource plan (IRP). Because the IRP rules apply to both gas and electric utilities, while the CEP requirements apply only to electric utilities, the proposed rules avoid altering the IRP rules, but they do attempt to align the CEP and IRP timelines and procedures. The order and proposed rule changes can be found [here](#).

On December 15, 2022 the OPUC hosted a special public meeting in the matter of UM 2225 (re HB 2021 Clean Energy Plans Resiliency Technical Conference). The staff recommendation can be found [here](#), and the PowerPoint presentation can be found [here](#).

### **ILLINOIS COMMERCE COMMISSION (ICC)**

On December 7, 2022, ICC held evidentiary hearings in the consolidated docket (Nos. 22-0432 and 22-0442) considering the application of Commonwealth Edison Company (ComEd) for approval of its Beneficial Electrification Plan (BE Plan). On December 9, 2022, the Office of the Illinois Attorney General (AG) filed an Application for Rehearing of the Commission's Interim Order, entered on November 10, regarding ICC staff's motion to strike certain aspects of ComEd's BE Plan. Specifically, the AG's Office sought rehearing regarding the portions of the Interim order denying staff's motions requesting that the ICC (1) dismiss the non-transportation components of the BE Plan and (2) issue an interim order finding that the entire BE Plan is subject to the statutory cap on the retail rate impact. The ICC voted to deny the Application for Rehearing during its December 15, 2022 voting meeting. Opening Briefs on ComEd's BE Plan are due January 4, 2023.

On December 1, 2022, ICC held evidentiary hearings in the consolidated docket (Nos. 22-0431 and 22-0443) considering whether to approve Ameren Illinois Company's BE Plan. Opening briefs are due December 22, 2022.

### **FEDERAL ENERGY REGULATORY COMMISSION (FERC)**

Chairman Glick said his goodbyes at the FERC's December 15, 2022 open meeting, as it appears that his time at FERC will soon come to an end. In the meeting, FERC rejected a complaint in which Tenaska sought \$9 million in revenues that it asserted were lost as the result of curtailments by the Southwest Power Pool (SPP). FERC found that although Tenaska's facility is subject to limited operations, SPP had not discriminated against the facility in implementing curtailments needed for congestion management.

On November 29, 2022, FERC approved PJM Interconnection, L.L.C.'s (PJM) comprehensive interconnection queue reform proposal, significantly altering how interconnection requests will be processed in the region. Our full client alert is available [here](#).

Two other decisions from FERC last month have the industry focused on investor rights that allow an entity to appoint its own officer or directors to the board of a public utility or a holding company. In [TransAlta Energy Marketing \(U.S.\), Inc.](#), 181 FERC ¶ 61,055 (2022), and [Energys Kansas Central, Inc.](#), 181 FERC ¶ 61,044 (2022), FERC asserted that such appointments will require approval under Federal Power Act Section 203 and may also create affiliations for purposes of assessing market power with respect to a public utility's ability to sell at market-based rates. In both decisions, the investor acquired less than 10% of the relevant voting securities; however, the acquisition was paired with the appointment of the investor's own officers and directors to the target company's board of directors.

On November 30, 2022, the Midcontinent Independent System Operator (MISO), acting on behalf of the MISO Transmission Owners (MISO TOs), filed [\(here\)](#) to revise Schedule 2 of the MISO tariff to eliminate all charges for the provision of reactive power from the TOs' own and affiliated generation resources. Based on FERC's "comparability principle," the MISO TOs submit that their proposal also would terminate the obligation under the MISO tariff to compensate unaffiliated generators interconnected to the MISO Transmission System for Reactive Supply within the standard power factor range of 0.95 leading and 0.95 lagging. Generation resources that provide reactive power support outside the standard power factor range at the direction of MISO would continue to be afforded compensation under certain "make-whole" payment mechanisms in the tariff. The MISO TOs argue that their proposal to eliminate all capability-based compensation for reactive service is consistent with FERC policy, citing to two recent FERC decisions, [Pub. Serv. Co. of N.M.](#), 178 FERC ¶ 61,088 at P 29 (2022), and [Nev. Power Co.](#), 179 FERC ¶ 61,103 at PP 20-21 (2022). In both of those cases, FERC found that the transmission provider had no obligation to compensate independent generators for reactive power within the standard power factor range when its own or affiliated generators were no longer being compensated for that service. The MISO TOs also noted that the CAISO does not provide compensation for reactive power within the standard power factor range. The MISO TOs propose to terminate compensation for reactive power service effective December 1, 2022, and existing generators that currently receive compensation for reactive power service would not be grandfathered.

MISO is one of the few ISOs/Regional Transmission Organizations (RTOs) (together with PJM) that compensates independent generators for reactive power capability. Assuming that FERC accepts the MISO TOs' proposal to revise Schedule 2, many dozens of approved reactive power compensation tariffs currently held by independent generators in MISO will be eliminated. Most (if not all) of these tariffs were the product of negotiated multi-party settlements approved by FERC and, if summarily terminated, will likely be subject to litigation. And with regard to the MISO reactive power cases that have been set for hearing but have not yet been settled by the parties or approved by the FERC, independent generators may be faced with sunk costs for proceedings rendered moot.

On December 2, 2022, FERC issued an [Order Approving Settlement](#) (Settlement) regarding the rates for point-to-point transmission service at the border of PJM for delivery to neighboring regions (Border Rate) over the objections of the New Jersey Board of Public Utilities (NJBPU). The Settlement modifies the formula rate for calculating the Border Rate and provides two sets of discounts to the Border Rate for customers reserving firm service on three specified transmission paths (MTF Paths). From 2021 to 2027, PJM will provide the MTF Discount Rate, a specified discount rate to any new or existing firm transmission customer taking Border Rate service using any of the MTF Paths. From January 1, 2028 through December 31, 2039, PJM will offer the MTF Discount Percentage, a percentage reduction based upon the total amounts owed for transmission enhancement charges assigned to a merchant transmission facility or its transmission customers. The Long Island Power Authority, Neptune Regional Transmission System, LLC, the New York Power Authority, Hudson Transmission Partners, LLC, and Linden VFT, LLC (collectively, MTF Parties) reserved the right to challenge, object



to, or protest such formula method and any rates, terms and conditions for Border Rate service, as applied to reservations after December 31, 2039.

For non-firm Border Rate service using an MTF Path, the Settlement establishes a rate freeze at the current discounted rate of \$.067/MWh through December 31, 2027. Until January 1, 2028, PJM agrees not to oppose an effort by the MTF Parties to change certain loading rules so that they apply to a merchant transmission facility customer taking service over a merchant transmission facility with firm transmission withdrawal rights. The MTF Parties also reserved the right to challenge inclusion in the border yearly charge formula, the revenue requirement of a transmission enhancement project subject to a funding agreement. Finally, revisions to the Settlement are subject to the *Mobile-Sierra* “public interest” standard of review.

FERC approved the contested Settlement as a package, finding that the overall effect is just and reasonable, and that the NJBPU is in “no worse position” under the Settlement than if the case were litigated. FERC found that the benefits of the Settlement outweigh the expense and uncertainties of further litigation, and provides a clear framework for Border Rate service on the MTF Paths until 2039. Regarding the discounts offered for the MTF Paths, FERC found those discounts comply with FERC regulations, Order No. 888-A, and PJM OATT Schedule 7, Section (3).

Also on December 2, 2022, FERC accepted PJM’s tariff revisions, made on behalf of the PJM Transmission Owners, to establish a new Schedule 12 – Appendix C. [PPL Elec. Utils. Corp.](#), 181 FERC ¶ 61,178 (2022). The revisions were made to reflect the State Agreement Approach, which is a supplementary transmission planning and cost allocation mechanism in PJM’s Amended and Restated Operating Agreement through which one or more state governmental entities authorized by their respective states, individually or jointly, may agree to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state public policy requirements identified by the state.

In January 2020, New Jersey formally set forth a policy goal to expand the transmission system to accommodate 7,500 MW of offshore wind generation by 2035. On November 18, 2020, NJBPU issued an order requesting that PJM, pursuant to the State Agreement Approach, open a competitive proposal window to solicit transmission proposals to interconnect and ensure deliverability of 7,500 MW of offshore wind generation by 2035. FERC accepted the proposed tariff revisions meant to accommodate this buildout by assigning cost responsibility for the transmission projects that NJBPU determines are necessary to support New Jersey law, on a load-ratio share basis to Network Customers in New Jersey and to Point-to-Point Customers with a Point of Delivery within New Jersey.

On December 15, 2022, FERC issued an [Order on Complaint](#) filed by the Ohio Consumers Counsel seeking to disallow several Ohio Transmission Owners from receiving a 50 basis point adder to their authorized rate of return on equity for participation in an RTO. Consistent with its rulings in *Dayton Power & Light Co.*, 172 FERC ¶ 61,025 (2021), and *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038 (2019), FERC granted the complaint finding that they do

not qualify for the RTO Adder because their membership in PJM was not voluntary but rather mandatory under Ohio state law.