REGULATORY UPDATE FOR MARCH 21, 2023
(WEEK OF MARCH 13, 2023)

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions[1]

A.23-01-020 (SCE ERRA). This decision approves the application of Southern California Edison Company (SCE) to recover in bundled service customer generation rates an amount up to $595.615 million to address an undercollection in its Energy Resource Recovery Account (ERRA) Balancing Account. SCE is granted authority to decline to place some or all of the increase into rates if its forecast, at the time it submits its implementing Advice Letter, reasonably demonstrates that it will not need some or all of the increase in order to bring its ERRA Trigger Balance within the prescribed ERRA Trigger Mechanism thresholds. This decision also approves SCE's proposal to amortize the revenue recovery, if needed, over 12 months beginning June 1, 2023. Bundled customer rates would increase by 4.4 percent during that period if the full authorized $595.615 million is recovered.

Rulemaking (R.) 22-07-005 (Demand Flexibility Through Rates). This decision adopts updated Electric Rate Design Principles for the assessment of rate design proposals of Pacific Gas and Electric Company (PG&E), SCE, and San Diego Gas and Electric Company (SDG&E), as well as new Demand Flexibility Design Principles to guide the development of demand flexibility tariffs, systems, processes, and customer experiences of PG&E, SCE and SDG&E.

Voting Meetings

The CPUC held a voting meeting on March 16, 2023. The agenda included the following energy and transportation related items.

Item 2. R.12-12-011 (Transportation Network Companies). This decision finds that the presumption of confidentiality granted by D.13-09-045, footnote 42, to the Transportation Network Companies' (TNCs) Annual Reports for the years 2014-2019 should be terminated and that these Annual Reports should be made publicly available. With the exception of matters that should be protected from public discovery on privacy grounds, TNCs shall submit the balance of their Annual Reports for the years 2014-2019 to the CPUC in accordance with the disclosure and redaction templates attached as Attachments A through U to this decision, following the timetable adopted in this decision. **Held to April 6 meeting.**

Item 3. Resolution E-5252. This resolution would establish a Transmission Project Review Process (TPR Process) to provide a uniform process to review Investor-Owned Utilities'

[1] 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.

(IOU) capital transmission projects. The TPR Process is intended to allow the CPUC and all stakeholders to receive data from Transmission Owners; inquire about and provide feedback on the IOUs' historical, current, and forecast transmission projects; and provide feedback to the IOUs on their transmission projects. The TPR Process will provide semiannually to CPUC and all stakeholders current, specific, comprehensive, and system-wide transmission data for projects with any capital additions to rate base in the last five years, and any forecast or actual capital expenditures in the current year or future five years. Projects will be included if they are expected to total $1 million or more in capital costs. **Held to April 6 meeting.**

Item 4. A.20-02-009/20-04-002/20-06-001 (IOU ERRA Phase 2). This decision resolves the 2019 ERRA Compliance Phase Two proceedings of PG&E, SCE, and 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 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 ERRA Compliance proceedings of PG&E, SCE, and SDG&E are closed. **Held to April 6 meeting.**

Item 8. Resolution ALJ-432 (San Diego Community Power Citation Appeal). This resolution resolves San Diego Community Power's (SDCP) appeal of Citation No. E-4195-0107 by the CPUC's Consumer Protection and Enforcement Division. Citation E-4195-0107 cites and fines SDCP for failing to procure its September 2021 month-ahead system resource adequacy obligation. This resolution denies the appeal, and this proceeding is closed. **Approved.**

Item 11. Resolution E-5246. This resolution approves, with modification, SDCP's Advice Letter (AL) 10-E to create tariffs to implement the Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs. The CPUC requires SDCP to modify its DAC-GT and CSGT tariffs pursuant to the direction and clarifications provided in this resolution. **Approved.**

Item 12. R.14-07-002 (Net Energy Metering). This decision partially grants a petition for modification of D.17-12-022 regarding the Solar on Multifamily Affordable Housing (SOMAH) program. The decision increases current incentive levels and eliminates the annual step-down in incentives established in D.17-12-022. The decision denies the petition's request to enable the SOMAH Program Administrator to propose future changes to incentive levels via AL. The decision defers addressing the request for a differentiated incentive for properties in disadvantaged communities, leaving this element to be considered in a forthcoming ruling. **Signed, D.23-03-007.**

Item 15. Resolution G-3592. This resolution approves in part and modifies in part the California Energy Commission's (CEC) Gas Research and Development Program Proposed Budget Plan for Fiscal Year 2022-2023. The Gas Research and Development Program was established pursuant to D.04-08-010. The CPUC approves the CEC's proposed $24 million budget, which includes a 10 percent, or $2.4 million, administrative budget. These funds will be recovered through gas public purpose program surcharges. **Approved.**

Item 29. R.13-09-011 (Demand Response). This decision grants the petition for modification of D.17-10-017 and adopts three language modifications to the decision, specifically with respect to the four-step process to implement the demand response Competitive Neutrality Cost Causation Principle. First, this decision defines the term "affected customers" as customers who are enrolled in the relevant utility program, either directly or through an aggregator. Second, this decision clarifies that the bill credit for cost recovery of a similar demand response program, referenced in Step Four of the implementation process, shall be provided to all customers of the Community Choice Aggregator or Energy Service Provider. Third, this decision clarifies that the notification, required in Step Three to be provided by the IOUs, shall be provided to directly enrolled customers and the third-party demand response aggregators. This decision closes R.13-09-011. **Signed, D.22-03-020.**

Item 33. R.23-03-___ (Wildfire Fund Non-Bypassable Charge (WF NBC) for 2024 through 2026). Assembly Bill (AB) 1054 (Stats. 2019, ch. 79) addressed, among other things, the increased risk of catastrophic wildfires concerning electrical infrastructure, and the potential costs to electrical corporation customers resulting from liabilities as a result of devastating wildfires related to electrical infrastructure. Among other things, AB 1054 established a wildfire fund to pay eligible claims from covered wildfires, as defined by statute. This Order Instituting Rulemaking responds to the holdings of D.20-12-024 and D.22-12-007 to establish a rulemaking to provide for WF NBC collections in 2024, 2025, and 2026. **Signed, R.23-03-007.**

Item 55. R.19-09-009 (Microgrids). Pursuant to Ordering Paragraphs 6 and 7 of D.21-01-018, this decision adopts implementation rules for the previously authorized Microgrid Incentive Program for PG&E, SDG&E, and SCE. The Microgrid Incentive Program targets placement of community microgrids in disadvantaged vulnerable communities (DVCs) to support populations impacted by grid outages. This Microgrid Incentive Program seeks to advance microgrid resiliency technology, advance system benefits of microgrids equitably across DVCs, and inform future regulatory resiliency action to the benefit of all ratepayer customers. **Held to April 6 meeting.**

Item 56. I.23-03-___ (Natural Gas Prices Winter 2022-23). This Order Instituting Investigation would open a quasi-legislative proceeding to examine high winter 2022-23 natural gas prices and explore future actions. **Signed, I.23-03-008**.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Board of Governors/WEIM Governing Body Meetings

The CAISO has posted the final agendas for the Western Energy Imbalance Market (WEIM) Governing Body, ISO Board of Governors, joint, and Department of Market Monitoring Oversight Committee meetings taking place March 21-23, 2023. The agendas may be found here.

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Day-Ahead Market Enhancements. The CAISO held Day-Ahead Market Enhancements (DAME) initiative public stakeholder workshops on March 7-8, 2023 to continue discussions on several key DAME design elements including the granularity of imbalance reserve procurement and energy storage modeling enhancements. Comments on the stakeholder workshop discussions are due by end of day March 24, 2023.

Interconnection Process Enhancements 2023. On March 6, 2023, the CAISO posted its Interconnection Process Enhancements 2023 issue paper and straw proposal. The issue paper and straw proposal may be found here. It held a public stakeholder call on March 13, 2023. Written comments are due by end of day March 27, 2023.

Cluster 15 Generation Interconnection Request Window. The Cluster 15 Generation Interconnection Request window for new applications will be open from April 3 through April 17, 2023.

Energy Storage Enhancements. The CAISO has posted the revised draft tariff language for the Energy Storage Enhancements initiative to its website. The revised draft tariff language may be found here.

Interconnection Process Enhancements 2023. The CAISO has posted the stakeholder comment template for the Interconnection Process Enhancements (IPE) 2023 Issue Paper and Straw Proposal to its website. Upon further consideration of the issues related to delaying the scheduled Cluster 15 April 2023 open window by some number of months, as discussed in the March 13 stakeholder call, the CAISO is not seeking comments on delaying the Cluster 15 window schedule and will move forward with accepting Cluster 15 interconnection requests during the normal April 3 through April 17 open window.

Market Parameter Changes Enhancements. The CAISO has posted the revised final proposal for the Market Parameter Changes Enhancements initiative to its website. The final proposal may be found here.

CALIFORNIA ENERGY COMMISSION (CEC)

Offshore Wind

During the February 28, 2023 Business Meeting, the CEC adopted Resolution No. 23-0228-07, approving the *Preliminary Assessment of Economic Benefits of Offshore Wind Related to Seaport Investments and Workforce Development* report.

Integrated Energy Policy Report

The CEC adopted the 2022 Integrated Energy Policy Report Update with Errata on February 28, 2023.

Energy System Reliability

On February 9, 2023, the CEC published the Joint Agency Reliability Planning Assessment (Assessment) that addresses requirements for electricity reliability reporting in Senate Bill (SB) 846 (Dodd, Chapter 239, Statutes of 2022) and AB 205 (Committee on Budget, Chapter 61, Statutes of 2022). The Assessment includes the first quarterly review of the demand forecast, the supply forecast, and potential high, medium, and low risks to reliability in the CAISO territory from 2023 to 2032, as required by SB 846. The Assessment also notes that the analysis contained therein for 2023 is preliminary and will be updated in May 2023. Further, as required by AB 205, the report also provides an evaluation of summer 2022 reliability and the magnitude of reliability problems for 2023-2026.

On February 14, 2023, the CEC published a Notice of Availability and Request for Comments on the Diablo Canyon Power Plant Extension-Draft CEC Analysis of Need to Support Reliability. Comments were due by February 21, 2023. A previous workshop regarding the analysis was held on January 20, 2023 and all workshop materials are available in Docket No. 21-ESR-01. On February 28, 2023, the CEC determined that the Diablo Canyon Power Plant is needed to support grid reliability. The final report is available here.

The CEC released the final Clean Energy Reliability Investment Plan, available here.

CEC Meetings

The next CEC Business Meeting is scheduled for April 12, 2023.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

CARB will hold its next Board meeting on March 23-24, 2023. The agenda and a link to the meeting are available here.

Opportunities for Public Comment

Comments on the 2022 CARB Board Update on the AB 617 Community Air Protection Program may be submitted here on or before March 25, 2023.

On February 22, 2023, CARB held a public workshop on potential changes to the Low Carbon Fuel Standard. At the workshop, staff presented additional information on potential credit generation opportunities that may affect carbon intensity targets, preliminary fuel mix and cost outputs from the California Transportation Supply model, and concepts related to streamlining implementation. Staff has released draft regulatory text of the proposed changes. Comments on the proposed changes for Tier 1 Simplified Calculators and Lookup Table Values may be submitted here on or before April 30, 2023.

ILLINOIS COMMERCE COMMISSION (ICC)

Oral arguments were held on March 16 in the matter of Commonwealth Edison Company's (ComEd) application for approval of its Beneficial Electrification Plan (BE Plan). Pursuant to a ruling from the ALJ, the scope of oral argument was limited to the following issues: (a) ComEd's proposed cost recovery, including the new proposed Rider BE, the regulatory asset treatment and the rate of return applied to the regulatory asset; (b) Building Owners and Managers Association of Chicago's proposal to include $10 million annually in dedicated funding to support the installation of electric vehicle (EV) chargers in Chicago buildings and garages; and (c) Chicago Transit Authority's and the City of Chicago's proposed incentives for electrification and associated infrastructure for vehicles used by transit agencies.

The ICC will vote on the Proposed Orders issued in each of the ComEd proceeding (Docket Nos. 22-0432/0442) and the Ameren proceeding (Docket Nos. 22-0431/0443) during the March 23 voting meeting. The ICC's meeting will be available for viewing here.

MINNESOTA

Minnesota Public Utilities Commission (MPUC) March 23, 2023, Agenda Meeting

The MPUC will meet at 8:00 a.m. PT on March 23, 2023 to review the following matter(s): (1) review of Xcel Energy's natural gas rate case settlement.

TEXAS

On March 9, 2023, Texas legislators presented their proposal titled "Powering Texas Forward," which continues the push to incentivize dispatchable energy at the expense of renewable energy in response to the February 2021 Storm Uri. The legislative package would create a reserve market of 10 GW of gas-fired generation; require that 50% of capacity installed in the state be dispatchable; institute a firming requirement for all resources and load serving entities; and mandate that generation be built closer to load to reduce transmission costs. According to proponents of the bill, more dispatchable generation is needed in ERCOT "to balance out" the market and to perform during times of crisis ("when the wind is not blowing and the sun is not shining"). The proposed legislation coincides with ERCOT's recently proposed "performance credit mechanism" (PCM), which would retroactively reward dispatchable generation with incentive payments for meeting performance criteria during the grid operator's most challenging resource adequacy and operational flexibility periods. The PCM payments would add a new revenue stream for generators, separate and apart from energy and ancillary service markets, specifically to incentivize performance needed when the grid is being challenged. It is estimated to increase total energy costs by $460 million annually.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

On February 14, 2023, the D.C. Circuit Court of Appeals issued an opinion upholding FERC's *Broadview Solar* ruling in March 2021, where FERC overturned a prior ruling and determined that a small power production Qualifying Facility (QF) may install greater than 80 megawatts (MW) of nameplate capacity so long as its send-out capacity at any single point in time is capped at no more than 80 MW. In reaching its decision, the D.C. Circuit focused on all of the components of the QF working together to produce power, including in Broadview's case the inverters that limited instantaneous output to 80 MW, rather than disqualifying the facility due to the nameplate capacity of any single component. A lengthier client alert is found here.

On January 27, 2023, FERC accepted the Midcontinent Independent System Operator (MISO) Transmission Owner's proposal to eliminate all charges under Schedule 2 of the MISO open access transmission tariff for the provision of reactive power within the standard power factor range (0.95 leading to 0.95 lagging). *Order on Tariff Revisions*, *Midcontinent Independent System Operator*, *Inc*., 182 FERC ¶ 61,033 (2023) (*Order*). FERC reasoned that under Order 2003-A, if a Transmission Provider (TP) pays itself or an affiliated generator for reactive power within the standard power factor range, then the "comparability principle" requires that unaffiliated generators also be compensated for reactive power within the standard range. However, with the elimination of TP compensation for reactive power capability, independent generators are no longer entitled to such compensation. *Id.* at P 52 & n.185. The *Order* dismissed the argument that elimination of reactive power capability compensation would adversely impact system reliability, finding that generators in MISO will still be required to provide reactive power within the standard power factor range as a condition to interconnection. The *Order* was silent regarding the independent generators' alternative proposal of eliminating compensation on a prospective basis while giving effect to the many dozens of settlements reached under FERC's prior practice of setting reactive power compensation cases for hearing. Nor did FERC address how its elimination of reactive power capability compensation in MISO will impact its generic rulemaking regarding the methodology for compensation pending in Docket No. RM22-2.

On February 21, 2023, FERC instituted a Section 206 proceeding to investigate the continued justness and reasonableness of several existing Reactive Service rate schedules that were previously approved by FERC under Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff. *Flemington Solar, LLC*, 182 FERC ¶ 61,110 (2023). The filing parties each had submitted informational filings to notify FERC of a proposed transfer of upstream ownership of the facilities, including the Reactive Service rate schedules, and to request waiver of PJM's 90-day prior notice requirement under Schedule 2. While FERC granted the requested waiver, it also found, based on concerns raised by the filing parties' responses to a FERC staff Deficiency Letter, that the rate schedules may no longer be just and reasonable. *Id*. at P 23. FERC specifically noted, among other issues, that the test data supplied by the filing parties showed a substantial degradation of reactive power as compared to the facilities' nameplate capacity used to establish Reactive Service rates. *Id.* at P 23 n.35. Accordingly, FERC set the matter for hearing and settlement procedures and established a refund effective date.

On February 27, 2023, numerous requests for rehearing were filed regarding the FERC's January 27, 2023, *Order on Tariff Revisions*—which effectively eliminated reactive power capability compensation in MISO. The rehearing requests (here) argued, among other things, that FERC failed to consider elimination of reactive power compensation on a *prospective* basis, such that it would not apply to generation owners that have approved reactive power rates on file with FERC. These generators contend that the order ignored the reasonable reliance and expectations of public utilities with revenue requirements on file with FERC, and that they made business and economic decisions in good-faith reliance on the FERC-approved tariffs and rates and should not now be required to absorb the costs. They maintain that no other market mechanism exists to replace the lost revenues, that the Purchase Power Agreements (PPAs) reasonably assumed a separate revenue stream for compensation of reactive power capability through MISO's Schedule 2, and that the PPAs cannot now be reopened to recoup those revenues. (AQN Wind Projects Request for Rehearing.) Another major theme on rehearing is that the MISO Transmission Owners failed to comply with the procedural requirements of the Transmission Owners Agreement, most importantly, that they failed to engage in the required notice and stakeholder engagement process. (Clean Energy Advocates Request for Rehearing.)

On March 16, 2023, FERC issued an Order on Formula Rate Protocols and Establishing a Show Cause Proceeding, 182 FERC ¶ 61,156 (2023) (*Order*), finding that the transmission formula rate protocols of Com Ed appear to "have become" unjust and unreasonable because they do not conform with FERC's current policy as established in a series of orders regarding MISO and the protocols of the MISO TOs. (Order on compliance filings re MISO Under ER13-2379; Order on Rehearing and Clarification re MISO.) The *Order* identified three broad categories of concern with Com Ed's protocols: (1) the limited scope of participation by interested parties, (2) the transparency of information provided under the protocols and (3) the adequacy of the formula rate challenge procedures. Regarding the scope of participation, the Order noted that its policy is to allow participation by all interested parties, and that the protocols should define "interested parties" to include customers, state public utility commissions, consumer advocate agencies and state attorneys general. *Order* at PP 12-13. Regarding transparency, the *Order* expressed concern that Com Ed's protocols do not provide interested parties with sufficient time to review, request information and challenge annual updates *before* the formula rate filings are made with FERC. *Order* at P 20. Regarding the adequacy of formula rate challenge procedures, the Order was concerned that Com Ed's protocols did not specify procedures through which interested parties can *informally* challenge the proposed inputs to the formula rate, and that such procedures not impede the statutory rights of other parties to file complaints regarding the formula rates. *Order* at PP 30-34. As a result, the *Order* initiated an investigation under Section 206(b) of the Federal Power Act and directed Com Ed within 60 days to "show cause why" its protocols remain just and reasonable, explain what changes to its protocols would remedy the identified concerns if FERC were to find these deviations to be unjust and unreasonable, and established a refund effective date as of the *Order*'s publication in the Federal Register.

U.S. DEPARTMENT OF TRANSPORTATION (DOT)

On March 14, the DOT opened a new funding opportunity—the Charging and Fueling Infrastructure (CFI) Discretionary Grant Program—for EV charging and alternative-fueling infrastructure along designated highways, interstates, and major roadways. The funding opportunity includes $2.5 billion over five years, with $700 million in funding available from fiscal years 2022 and 2023. This program funding is *in addition to* the $5 billion in funding that was authorized under the National Electric Vehicle Infrastructure formula Program, as this funding opportunity is designed to "fill gaps" in the alternative fuel corridors network and to prioritize disadvantaged communities. There are two funding categories under the CFI program: (1) Community Charging and Fueling Grants (Community Program); and (2) Alternative Fuel Corridor Grants (Corridor Program). Applications for the CFI funding opportunity are due by May 30, 2023.

DOT will host a series of webinars to share information regarding the CFI grant funding opportunity. One webinar took place on March 21 at 1 p.m. ET, and another will be held on March 22, at 2 p.m. ET. Registration and other grant information is available here.