

**REGULATORY UPDATE FOR MARCH 7, 2023
(WEEK OF FEBRUARY 28, 2023)**

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions¹

Draft Resolution E-5259. This Resolution approves Southern California Edison Company's (SCE) request to count the utility-owned Etiwanda Separator storage project towards its midterm reliability procurement requirements and modify the project's cost recovery mechanism. The project was originally procured to meet summer reliability procurement targets.

R.22-07-005 (Demand Flexibility Through Electric Rates). This decision authorizes up to \$425,000 for third-party consultant services to the CPUC's Energy Division relating to income-graduated fixed charge proposals in Track A of Phase 1 of this proceeding. This proceeding remains open to address Phase 1 issues.

Draft Resolution E-5254. Pursuant to Article XII Section 6 of the California Constitution and the Public Utilities Code, the CPUC may adopt reasonable regulations for the oversight of costs passed on to the ratepayers of California. This resolution adopts a procedural venue for the electric and gas investor-owned utilities (IOU) to request cost recovery for match funding and tax liabilities pursuant to any funds received from the federal Infrastructure Investment and Jobs Act Clean Energy Infrastructure Grant Programs administered by the United States Department of Energy, the federal Inflation Reduction Act, and the federal Creating Helpful Incentives to Produce Semiconductors and Science Act. This resolution also adopts an advice letter process for IOUs to track and report costs and grant project progress.

A.22-02-005 (EE Portfolio Plan Applications). This decision addresses a staff proposal for reducing ratepayer-funded incentives for natural gas energy efficiency measures. This decision: (1) establishes a framework that defines and allows continued funding of "exempt measures"—measures that result in gas savings but do not burn gas; (2) establishes a means to determine whether a given measure is (or is not) cost-effective; and (3) provides for working groups to examine and recommend technical guidance for identifying a viable electric alternative (for a given gas measure) and further criteria for custom projects. Beginning in program year 2024, ratepayer-funded incentives will no longer be authorized for non-exempt, non-cost-effective gas measures for new construction projects with no existing gas line, and for new construction projects with an existing gas line if gas usage will materially increase. This policy will apply to residential and commercial projects in the resource acquisition and market support segments of energy efficiency program administrators' portfolios.

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.

R.21-10-002 (Resource Adequacy). This decision adopts implementation details for the 24-hour slice-of-day framework adopted Decision (D.) 22-06-050, including adopting compliance tools, resource counting rules for various resource types, and a methodology to translate the Planning Reserve Margin to the slice-of-day framework.

Voting Meetings

The CPUC will hold a voting meeting on March 16, 2023. The agenda includes 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.

Item 3. Resolution E-5252. This resolution would establish a Transmission Project Review Process (TPR Process) to provide a uniform process to review IOUs' 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 the CPUC and all stakeholders semiannually with 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 one million dollars or more in capital costs.

Item 5. A.20-02-009/20-04-002/20-06-001 (IOU ERRAs Phase 2). This decision resolves the 2019 ERRAs Compliance Phase Two proceedings of Pacific Gas and Electric Company (PG&E), 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 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.

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.

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.

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.

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.

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 Rulemaking (R.) 13-09-011.

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.

Item 55. R.19-09-009 (Microgrids). Pursuant to Ordering Paragraphs 6 and 7 of Decision 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 is a program that 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.

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

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Day-Ahead Market Enhancements. The CAISO will hold 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.

2023-2024 Transmission Planning Process. The CAISO will hold a public stakeholder call on February 28, 2023 to discuss the 2023-2024 Transmission Planning Process draft study plan. Written comments are due March 14, 2023. The draft study plan may be found [here](#).

Price Formation Enhancements. The CAISO will hold a Price Formation initiative public stakeholder workshop on March 20, 2023. The workshop will be offered virtually and in person at the CAISO in Folsom, California.

2024 and 2028 Local Capacity Technical Study Draft Results. The CAISO will hold a stakeholder call on March 9, 2023 to present and discuss the draft Local Capacity Technical Study results.

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 will hold a public stakeholder call on March 13, 2023. Written comments are due by end of day March 27, 2023.

Assembly Concurrent Resolution 188. In response to the requests set forth in

Assembly Concurrent Resolution (ACR) 188, the CAISO, in consultation with the other California Balancing Authorities, engaged the National Renewable Energy Laboratory (NREL) to produce a final report summarizing recent relevant studies on the impacts of expanded regional cooperation on California and, among other things, discuss engagement between neighboring states on the potential formation of regional transmission organizations in the West. The CAISO has posted the final report (which can be found [here](#)), and along with NREL, will hold a public stakeholder call on March 8, 2023 to discuss it. The report has also been delivered to the California Legislature, per the ACR 188 request.

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 the Economic Benefits of Offshore Wind Related to Seaport Investments and Workforce Development Needs and Standards](#).

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). According to the Assessment, the contents include 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 March 14, 2023. At the March 2, 2023 joint meeting of the CEC and CPUC, the CEC [adopted a Resolution](#) Committing to Support California Tribal Energy Sovereignty (Resolution No. 23-0302-09).

STATE WATER RESOURCES CONTROL BOARD (SWRCB)

On January 4, 2023, the SWRCB published a [Notice of Document Availability, Opportunity for Public Comment, and Public Hearing](#) regarding the [Draft Staff Report](#) and [Draft Amendment](#) to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling to Extend the Compliance Schedule for Alamitos, Huntington Beach, Ormond Beach, and Scattergood Generating Stations, and the Diablo Canyon Nuclear Power Plant (OTC Policy Amendment). According to the notice, written comments are due by 12:00 p.m. PT on March 17, 2023. A public hearing is scheduled to occur at the SWRCB [meeting scheduled](#) for March 7, 2023. The proposed OTC Policy Amendment would extend the compliance date for the following power plants:

- Alamitos Generating Station (Alamitos) Units 3, 4, and 5; Huntington Beach Generating Station (Huntington Beach) Unit 2; and Ormond Beach Generating Station (Ormond Beach) Units 1 and 2 for three years, from December 31, 2023 to December 31, 2026, to support system-wide grid reliability.
- Scattergood Generating Station (Scattergood) Units 1 and 2 for five years, from December 31, 2024 to December 31, 2029, to support local system reliability.

The amendment also incorporates revisions to the compliance date for Diablo Canyon Nuclear Power Plant Units 1 and 2 to October 31, 2030, which reflects the extension provided by SB 846.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

On March 8, 2023, CARB will host a virtual meeting of the [AB 617 Community Air Protection Program Consultation Group](#). The agenda and a link to the meeting are available [here](#).

On March 15, 2023, CARB will host a public meeting of the [AB 32 Environmental Justice Advisory Committee](#). Information on attendance and the agenda for the meeting are available [here](#).

CARB will hold its next Board meeting on March 23-24, 2023. The agenda for the meeting will be available [here](#) 10 days prior to the meeting.

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. Written feedback on the proposed changes may be submitted [here](#) through March 15, 2023. Comments on the proposed changes for Tier 1 Simplified Calculators and Lookup Table Values may be submitted [here](#) on or before April 30, 2023.

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

On March 9, 2023, the OPUC will hold a Special Public Meeting in Docket No. AR 631, which is a rulemaking addressing the procedures, terms, and conditions associated with Qualifying Facility (QF) standard contracts.

ILLINOIS COMMERCE COMMISSION (ICC)

On March 3, 2023, 11 parties filed briefs on exceptions to the ALJ's Proposed Order that would approve, with modifications, the Beneficial Electrification Plan (BE Plan) filed by Commonwealth Edison Company (Docket Nos. 22-0432/0442). Reply briefs on exceptions are due by March 9, 2023. The ICC will vote on the Proposed Order by March 28, 2023, consistent with the statutory directive under the Climate and Equitable Justice Act.

Briefs on exceptions to the ALJ's Proposed Order issued in Ameren Illinois Company's (Ameren) BE Plan Filing (Docket Nos. 22-0431/0442) were submitted on February 24, 2023, and reply briefs on exceptions were filed on March 6, 2023. A Proposed Order regarding Ameren's BE Plan is also expected by March 28, 2023.

MINNESOTA

Minnesota Public Utilities Commission (MPUC) March 9, 2023, Agenda Meeting

The MPUC will meet at 8:00 a.m. PT on March 2, 2023 to review the following matters: (1) Xcel's petition to sell land at its Sherco facility; and (2) Byron Solar's application for a certificate of need and site and route permits for the 200 MW Byron solar project.

MPUC Order in Minnesota Power's Rate Case

On February 28, 2023, the MPUC issued its Findings of Fact, Conclusions of Law and Order in Minnesota Power's rate case (docket no. 21-335). By way of background, Minnesota Power initially requested a revenue requirement increase of \$108.3 million, based upon an ROE of 10.25 percent. Minnesota Power further proposed that all customer classes share equally in

any approved rate increase. Ultimately, the MPUC made various reductions to Minnesota Power's revenue requirement request, including the disallowance of Minnesota Power's Prepaid Pension Asset and Other Post-Employments Benefits requests, and reduction of the ROE to 9.65%. The MPUC also concluded that the final increase would be shared equally among all customer classes. Following the issuance of the order, parties have the opportunity for post-hearing filings and Minnesota Power will file compliance filings with updated rate schedules. The MPUC's order is available [here](#).

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 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 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 OATT. [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 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. ([Here.](#)) 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. ([Here.](#)) 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, failed to engage in the required notice and stakeholder engagement process. ([Here.](#))

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION (FHWA)

On February 15, the FHWA announced the issuance of its minimum program standards applicable to federally funded electric vehicle (EV) charging infrastructure under the National Electric Vehicle Infrastructure (NEVI) Formula Program. Under this program, \$2.5 billion in funding will be administered on a statewide basis to support the development of EV charging infrastructure along designated fuel corridors. The FHWA established minimum standards and program requirements applicable to charging stations that receive NEVI Program funding, which standards include minimum power levels applicable to charging infrastructure (150 kilowatts for DCFC stations), contactless payment standards, and a minimum uptime standard of greater than 97 percent port reliability. The NEVI Standards and Requirements Final Rule appeared in the Federal Register on February 28, 2023 and is available [here](#). 23 C.F.R. pt. 680.