REGULATORY UPDATE FOR NOVEMBER 1, 2022
(WEEK OF OCTOBER 24, 2022)

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions[1]

R.20-01-007 (Long-Term Gas System Planning). This decision adopts a gas infrastructure General Order (GO), attached to the decision as Appendix A. The GO requires regulated gas corporations to file an application for a certificate of public convenience and necessity (CPCN) prior to commencing construction on any gas infrastructure that meets either of these criteria: (1) the project cost exceeds $75 million or (2) the project is located within 1,000 feet of a "sensitive receptor" (including housing, educational institutions, or health care facilities) and, when completed, operation of the relevant plant, pipeline, or extension will result in an increase in permitted levels of a criteria air pollutant or a toxic air contaminant for which the area is listed as a serious, severe, or extreme air pollution non-attainment area. The GO outlines CPCN application information and notification requirements and specific types of exempt projects for which CPCN applications are not required. The GO and this decision require gas corporations to annually file a Report of Planned Gas Investments (gas reports), starting March 1, 2023. This decision directs Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), and San Diego Gas & Electric Company (SDG&E) to jointly convene a Planned Gas Investments Workshop during the years 2023, 2024, and 2025. It authorizes parties to file comments on the gas reports, and on the reporting requirements contained in the adopted GO, in the years 2023, 2024, and 2025. This decision authorizes PG&E, SoCalGas, and SDG&E to submit a Tier 3 Advice Letter requesting changes to the reporting requirements contained in the GO in Appendix A suggested by parties and agreed to by the gas corporations.

A.18-10-008/-009/-010 (Resolution E-4906 Applications). In D.16-09-056, CPUC adopted a policy of prohibiting the use of certain fossil-fueled resources in demand response programs (Demand Response Prohibited Resources Policy). That decision also established a program to enforce the Demand Response Prohibited Resources Policy. IOU Demand Response Prohibited Resources Policy Verification Plans (Verification Plans) were approved in Resolution E-4906. This decision determines that an incremental modification to the Verification Plans is needed to improve the confidence level and margin of error of the annual verification audits to ensure compliance with this policy. CPUC adopts the annual monitoring of the prohibited resources of a random set of Scenario 2 customers through the installation of a data logger and a current transformer. Scenario 2 customers are demand response customers who attest they have a prohibited resource on their premises but will not use it to defer load during a demand response

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

event. The annual demand response prohibited resource monitoring shall commence in 2024 to coincide with the annual verification audit for that year and is additional to the attestations and audits currently performed in the Verification Plan. PG&E, SoCalGas and Southern California Edison Company (SCE) (jointly, Applicants) are directed to purchase 60 data loggers and current transformers for use in the annual monitoring. The costs for these improvements shall be borne by all ratepayers as these demand response programs benefit all ratepayers. Applicants are directed to track these costs in the same demand response account as costs for the annual Verification Plan. These costs shall be reviewed for reasonableness in the annual Energy Resource Recovery Account process for each of the Applicants.

Draft Resolution E5243. This resolution approves PG&E amendments to four contracts for capacity procured to meet mid-term reliability requirements of Decision (D.) 21-06-035. The contract price of the four contracts is increased. Additionally, the Canyon Country, Beaumont, and Inland Empire contracts have been amended to delay the initial delivery dates to June 1, 2024 (from October 1, 2023, August 1, 2023, and April 1, 2024, respectively). The Inland Empire project capacity has also been reduced from 100 MW to 50 MW.

Petition 22-06-012 (Bloom Energy Petition to Adopt, Amend or Repeal a Regulation). This decision denies the petition for rulemaking by Bloom Energy Corporation to consider adopting a distributed energy resource reliability and resilience tariff, pursuant to Public Utilities (Pub. Util.) Code Section 1708.5 and Rule 6.3 of CPUC's Rules of Practice and Procedure. The issues presented in this petition were considered in CPUC proceedings within the previous 12 months. Furthermore, the proposal, as narrowly presented by the petition, is not appropriate for a rulemaking, and is more appropriately considered in other proceedings. Petition 22-06-012 is closed.

A.16-08-006 (PG&E Diablo Canyon). In compliance with Senate Bill 846, this decision implements Pub. Util. Code Sections 712.8(c)(1)(A) and 712.8(e) requiring CPUC to direct and authorize PG&E to take "all actions that would be necessary" so as to preserve the option of extended operations at the Diablo Canyon nuclear power plant beyond the current expiration dates, and to track all costs associated with continued and extended operations. Application 16-08-006 is closed.

R.21-03-001 (Wildfire Fund NBC). Assembly Bill (AB) 1054 (Ch. 79, Stats. 2019) was enacted as an urgency measure to address increased risk of catastrophic wildfires in California, the electric utilities' exposure to financial liability, and ratepayer costs. The Governor signed AB 1054 on July 12, 2019. Pub. Util. Code Sections 1701.8 and 3280 et seq. define the Wildfire Fund, and Pub. Util. Code Section 3289 directed CPUC to consider whether it should exercise its authority to require certain electrical corporations to collect from ratepayers a non-bypassable charge to support California's new Wildfire Fund. On July 26, 2019, in response to Pub. Util. Code Section 3289, CPUC issued Order Instituting Rulemaking (R.) 19-07-017. On October 24, 2019, as a result of the R.19-07-017 proceeding, CPUC adopted D.19-10-056. That decision found that the imposition of a Wildfire Fund Non-Bypassable Charge (WF NBC) as contemplated by AB 1054 was just and reasonable. The decision adopts a $0.00530/kWh rate amount for the 2023 WF NBC to collect a $866.7 million revenue requirement for January 1, 2023 through December 31, 2023.

Draft Resolution E-5230. PG&E, SCE, and SDG&E, collectively the large investor-owned utilities (Large IOUs), submitted Tier 3 Advice Letters (ALs) to comply with Ordering Paragraphs (OPs) 15 and 51 of D.20-09-035. OP 15 and OP 51 required the Large IOUs to provide recommendations regarding the standard review, certification requirements, and interconnection processes necessary for implementation of the Limited Generation Profile proposal (Issue 9) and allow an inverter approved for non-export and limited-export to be set using different maximum export value settings at different times of the year (Proposal A-B 3) (collectively, the Proposals). In the ALs the Large IOUs outlined the interconnection process in five phases, including review, certification requirements, approval, and performance evaluation process to implement the Proposals. This current resolution approves in part and modifies the Large IOUs' proposals. This current resolution finds the ALs largely comply with OPs 15 and 51. There are issues, however, in both the protested items and the Large IOUs' proposals, that call for further discussion and clarification. The Large IOUs are therefore directed to participate in at least two half-day workshops. Additional workshops may be held at the Energy Division's discretion. The workshops shall be recorded and publicly posted on the Energy Division's web site. The workshops shall commence no later than 30 days after issuance of the resolution. The Large IOUs are ordered to submit Tier 3 ALs no later than 90 days after issuance of the resolution to address the topics identified in the resolution as well as those raised in the workshops.

Voting Meetings

The CPUC will hold a voting meeting on November 3, 2022. The agenda includes the following energy-related items.

Item 2. Resolution E-5221. The Database for Energy Efficient Resources (DEER) contains information on energy-efficient technologies and measures. DEER provides estimates of the typical energy-savings potential for these technologies in residential and nonresidential applications. DEER is used by California Energy Efficiency (EE) Program Administrators, private sector implementers, and the EE industry across the country to develop and design energy efficiency programs. This resolution approves updates to the DEER for program year (PY) 2024 and a revised version of DEER for PY2023 and PY2022, in compliance with D.15-10-028 and D.21-05-031 and Resolutions E-4818, E-4952, E-5009, E-5082, and E-5152.

Item 14. Resolution E-5236. In December 2020, the CPUC issued D.20-12-027, Concerning Low Carbon Fuel Standard Holdback Revenue Utilization, in which it found that Low Carbon Fuel Standard (LCFS) credits are a utility asset that would require a CPUC order for the utility to sell under Pub. Util. Code Section 851 unless an exemption to this requirement is granted pursuant to Section 853(b). The decision found that it is reasonable to require the large electric corporations to file LCFS Holdback revenue return Implementation Plans in order to qualify for an exemption from the requirements of Pub. Util. Code Section 851 pursuant to Pub. Util. Code Section 853(b). This resolution approves in part, with modifications, the request from SCE to seek an exemption to Pub. Util. Code Section 851 and adopt the Implementation Plan of programs and projects funded with LCFS Holdback residential base charging credit and electric forklift credit proceeds.

Item 15. A.21-06-022 (PG&E Microgrid Framework). This decision adopts a framework for substation microgrid resiliency solutions to mitigate public safety power shutoffs for PG&E. The adopted framework contains eight primary elements: (1) a 10-year historical lookback analysis; (2) greenhouse gas emissions performance standards; (3) clean technology market development standards; (4) an alternatives analysis; (5) a procurement strategy; (6) a rate architecture and cost allocation methodology; (7) demand response measures; and (8) environmental and social justice action.

Item 16. R.18-07-003 (RPS Implementation). This decision reviews and approves Voluntary Allocations and modifies the Market Offer process proposals of the load-serving entities (LSEs) to sell excess renewable resources pursuant to D.21-05-030. The decision approves all Voluntary Allocation offers made by the investor-owned utilities (IOUs) and accepted by the LSEs (except 3 Phases Renewables, Incorporated (3 Phases Renewables)) in this Voluntary Allocation and Market Offer cycle, as reported in the LSEs' draft 2022 RPS Plans filed on July 1, 2022, or updates filed on August 15, 2022. 3 Phases Renewables must file an updated draft 2022 RPS Plan, incorporating information on the status of its Voluntary Allocations, within seven days of the issuance date of this decision. PG&E, SCE, and SDG&E must each file a Tier 1 Advice Letter within 15 days of the issuance date of this decision to include the changes to the Market Offer process described in this decision, along with updated Market Offer proformas.

Item 18. A.21-09-001 (SDG&E Optional Residential Rate). This decision considers SDG&E's proposal for an optional residential rate, TOU-ELEC, with a tiered fixed charge to incentivize beneficial electrification and adopts it as modified, with the following rate design features: (1) an un-tiered time-of-use (TOU) rate with a flat monthly fixed charge of $16 for customers who own one or more of the following qualifying technologies: electric vehicles, energy storage, electric heat pump for water heating, or climate control; (2) greater Peak-to-Super-Off-Peak differential in summer and winter, as proposed by SDG&E, to send a stronger signal to use electricity outside the peak period; and (3) lower Off-Peak-to-Super-Off-Peak differential, as proposed by SDG&E, to soften the price signal between the two off-peak periods and allow for greater flexibility between peak- and non-peak period usage. This decision places an enrollment cap of 10,000 accounts on TOU-ELEC to control any potential revenue shortfall, with the option to increase the cap by increments of 10,000 via Tier 2 advice letter filings. This decision also requires SDG&E to supplement its marketing, education, and outreach plan to target customers who do not own the qualified technologies yet. Finally, the decision adopts the partial settlement agreement on the issue of including a medical discount for customers who are otherwise eligible for the Medical Baseline Program for the TOU-ELEC rate. The settling parties are SDG&E, the Center for Accessible Technology, the Public Advocates Office at the CPUC, the Utility Reform Network, and the Utility Consumers' Action Network.

Item 19. Resolution E-5234. This resolution approves five mid-term reliability (MTR) energy storage contracts (the MTR Contracts) for 474 megawatts (MW) of nameplate capacity, expected to provide 433 to 445 MW of incremental September net qualifying capacity, which

SCE procured to satisfy a portion of its 2023 and 2024 MTR requirements. These contracts include three resource adequacy (RA) only contracts and two RA with put option contracts (i.e., RA contracts where the seller also has the option to put the dispatch rights to SCE). The MTR Contracts are for new in-front-of-the meter energy storage projects. This resolution also approves the form and substance of a 7 MW solar photovoltaic contract, a required condition of two of the energy storage contracts.

Item 31. R.__-__-___ (New DER OIR). Order Instituting Rulemaking to Develop Policy and Create a Consistent Regulatory Framework for Distributed Energy Resource Customer Programs. This rulemaking is a successor proceeding to R.14-10-003.

Item 32. A.21-08-013/-014/-015 (IOU Cost of Capital). This decision resolves the narrow issues of whether the extraordinary circumstances requirements of D.08-05-035 have been met and whether the Cost of Capital Mechanism adjustment should apply to the return on equity for the year 2022 for SCE, SDG&E, and PG&E (collectively, the utilities). This decision finds that the utilities experienced the circumstances caused by the COVID-19 pandemic differently as compared to the proxy utilities groups and the overall financial markets. The decision finds that these extraordinary circumstances warrant a departure from the Cost of Capital Mechanism adjustment for 2022, that the Cost of Capital Mechanism adjustment fails to result in a fair and reasonable return on equity given the extraordinary circumstances, and, therefore, that the Cost of Capital Mechanism should not apply in 2022. The decision finds it is reasonable for CPUC to establish a second phase to examine the cost of capital for 2022. This proceeding remains open to consider the next phase.

Item 32A. This is an alternate proposed decision of President Reynolds to the proposed decision above issued by Administrative Law Judges Zhang and Hecht. This alternate differs from the proposed decision in that the return on equity, and other cost of capital components for 2022, are to remain at levels previously approved by D.19-12-056. The alternate closes the proceedings.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Western Energy Imbalance Market Regional Issues Forum. The Western Energy Imbalance Market Regional Issues Forum will take place November 8, 2022 at the SAFE Credit Union Convention Center in Sacramento, California. The draft agenda may be found here.

2021-2022 Transmission Planning Process. CAISO has posted a list of project sponsors whose applications CAISO has deemed qualified for the Collinsville and Manning 500/230 kV substation projects. CAISO will now initiate the selection process to determine which qualified project sponsor should finance, construct, own, operate and maintain each transmission solution.

Extended Day-Ahead Market. CAISO has scheduled an Extended Day-Ahead Market public stakeholder meeting, offered in-person and virtually, on November 4, 2022 at the

Sacramento Marriott Rancho Cordova in Rancho Cordova, California, to discuss the draft final proposal for the initiative. Written comments are due by November 30, 2022.

Day-Ahead Market Enhancements. CAISO has scheduled a public stakeholder call on November 1, 2022 to discuss the Day-Ahead Market Enhancements fourth revised straw proposal. Comments are due November 15, 2022.

Energy Storage Enhancements. CAISO held a public stakeholder call on October 31, 2022 to discuss the final proposal to the Energy Storage Enhancements initiative. Written comments on the final proposal are due November 15, 2022.

CALIFORNIA ENERGY COMMISSION (CEC)

AB 205 Emergency Rulemaking: Opt-in Certification Provisions

On October 12, 2022, the CEC adopted emergency regulations implementing the opt-in certification provisions of AB 205. The regulations are available at TN# 246379 in Docket No. 22-OIR-01. The California Office of Administrative Law approved the regulations on October 24, 2022.

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

Offshore Wind

CEC staff will hold a workshop at 1:00 p.m. PT on November 10, 2022 to discuss transmission investments and upgrades necessary to support the offshore wind planning goals for 2030 and 2045 as required by AB 525. The workshop discussion will also address potential subsea transmission options. Additional information is available at TN# 247143 in Docket No. 17-MISC-01.

CEC Business Meetings

The next CEC Business Meeting is scheduled for November 16, 2022.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

On November 3, 2022, CARB will conduct a joint public meeting with the California Transportation Commission and the California Department of Housing and Community Development. The public meeting notice and information on attendance are available here.

On November 9, 2022, CARB will hold a workshop to discuss potential changes to the Low Carbon Fuel Standard. The workshop will focus on options for increasing the stringency of the carbon intensity targets for 2030 and beyond, the design of initial scenarios for modeling, describing the modeling approach, and soliciting alternatives. Information on the workshop is available here.

CARB will hold its next board meeting on November 17-18, 2022. At the meeting CARB will consider amendments to the in-use off-road diesel-fueled fleets regulation. Ten days prior to the meeting, the full agenda for the board meeting will be available here.

Opportunities for Public Comment

On November 17, 2022, CARB will consider amendments to the in-use off-road diesel-fueled fleets regulation. Comments can be submitted to CARB on the proposed amendments on or before November 7, 2022 here.

On October 20, 2022, CARB held a workshop on development of the state's strategy to achieve net-zero greenhouse gas emissions in the cement sector in California. Comments can be submitted to CARB on the workshop on or before November 30, 2022 here.

MINNESOTA PUBLIC UTILITIES COMMISSION (MPUC)

MPUC Agenda Meeting,

At 8:00 a.m. PT on November 3, 2022, the MPUC will conduct its weekly agenda meeting to cover the following matters: (1) Minnesota Power's, Otter Tail Power Company's, and Xcel Energy's service quality dockets; (2) Local Exchange Carriers notice to rural digital opportunity fund grant winners; and (3) Xcel Energy's matter relating to its tariff on interconnection standards for distributed generation.

Minnesota Power Integrated Resource Plan, MPUC Docket No. 21-33

The MPUC noticed hearings on November 10 and 22, 2022 for Minnesota Power's pending integrated resource plan. In advance of these hearings, the MPUC also issued Staff Briefing Papers, which can be found here.

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

On October 19, 2022, the OPUC staff hosted a stakeholder workshop in the matter of UM 2143 (re Investigation into Resource Adequacy in the State) and presented a proposed strategy to initiate rulemaking on a long-term RA standard for Oregon. As currently proposed, the Oregon RA standard would be aligned with the Western Regional Adequacy Program. Comments on the rulemaking scope and strategy are due by November 21, 2022. The announcement can be found here, and the staff presentation can be found here.

On November 1, 2022 at 9:00 a.m. PT, the OPUC hosted a remote public hearing and commissioner work session in the matter of docket UM 2225 re Investigation into Clean Energy Plans. The purpose of the meeting was to discuss near-term guidance on analytical improvements in the first clean energy plans and associated integrated resource plans. The agenda and meeting information can be found here, and the staff report can be found here.

On November 3, 2022 at 9:30 a.m. PT, the OPUC will host a special public meeting and presentation of the Energy Trust of Oregon's 2023 budget and action plan. More information and a link to the meeting can be found here.

On November 15, 2022 at 1:30 p.m. PT, the OPUC will host a public Notice of Proposed Rulemaking Hearing in the matter of docket UM 638 (re Risk-Based Wildfire Protection Plans). The following day, November 16, 2022, at 1:00 p.m. PT the OPUC will host another public workshop to discuss comments received to date. An agenda and access information has not yet been posted, but the docket can be found here.

OREGON ENERGY FACILITY SITING COUNCIL (EFSC)

On October 28, 2022, EFSC held an open meeting to discuss a variety of energy-related issues, including review of comments related to rulemaking on Protected Areas, Scenic Resources and Recreation Standards; informational overview of recycling wind turbine components; and initiation of informal proceedings to evaluate potential rule changes to the rules governing the amendment of site certificates. Information about the meeting can be found here.

WASHINGTON LOW CARBON ENERGY SITING STUDY ADVISORY BOARD (WSAB)

WSAB will have its next regular meeting virtually, on November 9 at 1:00 p.m. PT. By way of background, the Washington Department of Ecology is conducting a study on how to improve environmental review and permitting processes for siting low-carbon energy projects. WSAB is made up of many different stakeholders and serves as a forum for those stakeholders to provide perspectives and recommendations. An agenda has not yet been published, but access information, information about the process and past meetings are available here.

ILLINOIS COMMERCE COMMISSION (ICC)

On October 28, 2022, parties to Commonwealth Edison Company (ComEd)'s Application for Approval of its Beneficial Electrification Plan (BE Plan) (Docket Nos. 22-0432 and 22-0442) filed reply briefs on exceptions to the assigned Administrative Law Judge's Proposed Interim Order (PIO) granting in part and denying in part staff's motion to dismiss and to strike components of the BE Plan. If adopted by the ICC, the PIO would: (1) grant staff's request to remove the Commercial and Industrial and Public Sector Incentive Programs, which offered customer rebates for electric vehicle purchases and for electric vehicle infrastructure development; (2) deny staff's motion to strike the non-transportation components of ComEd's BE Plan (e.g., building electrification rebates); and (3) deny staff's motion to modify ComEd's proposed application of the retail rate cap on budget expenditures under the BE Plan. Parties submitted Opening Briefs on Exceptions to the PIO on October 25, 2022.

On October 12, 2022, Ameren Illinois Company (Ameren) filed rebuttal testimony in the consolidated docket (Nos. 22-0431 and 22-0443) considering whether to approve Ameren's BE Plan. Evidentiary hearings are scheduled for December 1 and December 2, 2022.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

On October 20, 2022, FERC issued the 2022-2023 Winter Energy Market and Reliability Assessment, which was updated on October 25, 2022. According to the report, U.S. electricity markets are projected to have adequate amounts of generating capacity to maintain reliable operations this winter, though certain regions may face challenges in extreme weather. The report notes that above-average temperatures are forecasted this winter, except in the Pacific Northwest and West-North Central regions of the U.S. The report also notes that due to the rising demand for natural gas and lower than average storage inventories, it is expected that this winter's natural gas prices will be higher than last year, and will be particularly high in New England. Texas' ability to import power was also raised as a potential challenge if extreme weather arises.

On October 21, 2022, FERC issued an Order Granting in Part and Denying in Part Petition for Declaratory Order filed by Blue Ridge Power Agency (Blue Ridge) on behalf of four of its member companies requesting a declaration that those companies are permitted to utilize battery storage technologies on their systems to reduce and/or manage (sometimes referred to as "peak shaving") their demands under their full requirements power contracts with Appalachian Power Company (APCO). APCO filed a Motion to Dismiss and Protest Blue Ridge's petition contending that it involves a non-technical contract dispute "unique to the parties," which should be decided by a Virginia state court rather than by FERC. FERC, however, agreed with Blue Ridge that the dispute involves a broader question of whether a full requirements customer's installation of battery storage is compatible with the full requirements nature of the contract, and decided to exercise its primary jurisdiction to resolve the dispute. FERC's order examined the agreements and found that installation and utilization of battery storage was not expressly prohibited under the terms of three of the four full requirements contracts and was therefore entirely permissible. Commissioners Danly and Christie both dissented on the ground that they would have declined jurisdiction and left it to the state court to resolve the dispute.

Two recent decisions from FERC have the industry focused on investor rights that allow that entity to appoint its own officer or directors to the board of a public utility or a holding company. In *TransAlta*, 181 FERC ¶ 61,055 (2022), and *Evergy 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 its own officers and directors to the target company's board of directors.

FERC will convene its Annual Commissioner-led Reliability Technical Conference on November 10, 2022 in person in Washington, D.C. and remotely via Webex.

The next public meeting of the Joint Federal-State Task Force on Electric Transmission will be held on November 15, 2022 in New Orleans, Louisiana, with a remote Webex option available.

On October 17, 2022, the Indicated PJM Transmission Owners (ITOs) and the New Jersey Division of Rate Counsel (Rate Counsel) each filed an Answer (here and here) in opposition to the Motion to Govern Procedures on Remand (Motion) filed by Consolidated Edison Company of New York, Inc.; Linden VFT, LLC; Hudson Transmission Partners, LLC; and the New York Power Authority (collectively, the New York Entities).

On August 9, 2022, the U.S. Court of Appeals for the District of Columbia Circuit remanded to FERC for further proceedings a number of issues relating to PJM Interconnection, LLC's allocation of the costs of the Bergen-Linden and Sewaren short-circuit transmission projects, using the DFAX methodology, including the 1% *de minimis* threshold. *Consol. Edison Co. of N.Y. Inc. v. FERC*, No. 15-1183 (D.C. Cir. Aug. 9, 2022). On September 30, 2022, the New York Entities filed a Motion seeking approximately $115 million in refunds, plus interest, based on a recalculation of rates that removes the *de minimis* threshold and assigns all of the costs of the projects to the host zone, Public Service Electric and Gas Company.

In their answers, the ITOs and Rate Counsel argued that the New York Entities' Motion is both improper and premature. They noted that the court's decision did not direct the FERC to order refunds. Rather, the court indicated that the FERC's earlier orders did not adequately explain its reasoning for treating the Bergen-Linden and Sewaren short-circuit projects differently from a stability project, like the Artificial Island project. The answers also pointed out that the court did not hold that use of the DFAX method for short-circuit projects violated cost causation principles per se, and that the FERC on remand may be able to provide a more satisfactory explanation for the distinction. Therefore, the ITOs and Rate Counsel urged FERC to hold further proceedings to address the defects identified by the court and, if necessary, to consider alternative cost allocation methodologies.