

**REGULATORY UPDATE FOR AUGUST 16, 2021 (WEEK OF AUGUST 9)****CALIFORNIA PUBLIC UTILITIES COMMISSION**Recent Orders and Rulings

R.21-11-003 (Summer 2021 Reliability). In response to the Governor's July 20, 2021 Emergency Proclamation and a California Energy Commission draft stack analysis showing a capacity deficit of up to 5,000 MW during summer 2022, CPUC President Batjer issued an "Assigned Commissioner's Amended Scoping Memo and Ruling for Phase 2" in this proceeding. Phase 2 will address reliability for 2022-2023 on an expedited schedule. Opening testimony is due September 1, 2020, and a final decision is contemplated by November 2021, according to the schedule set forth in the Scoping Memo and Ruling.

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

Draft Resolution WSD-021. This Resolution approves Pacific Gas and Electric Corporation's (PG&E) 2021 Wildfire Mitigation Plan Update pursuant to Public Utilities Code Section 8386.

Voting Meetings

The Commission's next voting meeting is scheduled for August 19, 2021. The agenda includes the following energy-related items.

Item 2. A.19-07-021 (SCE 2017 Drought and Firestorm Recovery). This decision grants Southern California Edison Company (SCE) the authority it requests to recover the incremental expenses recorded in the Catastrophic Event Memorandum Account, incurred in 2017-2018 responding to catastrophic drought conditions, but denies without prejudice recovery of capital costs incurred in 2017 for responding to catastrophic firestorms.

Item 9. Draft Resolution E-5158. On October 31, 2019, Shell Energy filed a waiver request via Advice Letter (AL) 20-E for its 2020 year-ahead local Resource Adequacy (RA) requirement in three of the disaggregated PG&E Other local areas in compliance years 2020, 2021, and 2022. This Resolution grants the waiver for compliance years 2021 and 2022, but denies it for compliance year 2020.

Item 11. Draft Resolution E-5156. On October 31, 2019, 3 Phases filed a waiver request via AL 57-E for its 2020 year-ahead local RA requirement in two of the disaggregated PG&E

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<sup>1</sup> Per California Public Regulatory Commission (CPUC or Commission) Rules of Practice and Procedure Rule 14.3, comments on proposed decisions are due 20 days after issuance of the proposed decision, and reply comments are due five days thereafter. Comments on draft resolutions are due 20 days after the draft resolution appears in the CPUC's daily calendar, per Rule 14.5.

Other local areas for compliance year 2021. This Resolution grants the waiver for compliance year 2021.

Item 12. Draft Resolution E-5157. On October 31, 2019, Pilot Power Group (Pilot) filed a waiver request via AL 52-E for its 2020 year-ahead local RA requirement in one of the disaggregated PG&E Other local areas in compliance years 2020, 2021, and 2022. On December 6, 2019, Pilot filed a supplemental AL 52-E-A to amend the local waiver AL 52-E pursuant to the Energy Division's deficiency notice. In AL 52-E-A, Pilot seeks waiver of an additional local area requirement in 2020. This Resolution grants the waiver for compliance years 2021 and 2022, but denies it for compliance year 2020.

Item 13. Draft Resolution E-5048. This Resolution approves maintaining the threshold for requiring telemetry for projects sized one (1) megawatt (MW) or greater, requires the implementation of certain technical requirements for telemetry, and directs PG&E, San Diego Gas & Electric Company (SDG&E), and SCE to continue development of a telemetry solution using the IEEE 2030.5 communications standards.

Item 14. R.20-05-002 (Climate Credits). This decision reviews the current customer climate credits the state provides through the California Air Resources Board's (CARB) Cap-and-Trade Program and adopts revisions to ensure that the credits are compliant with current statute and regulation and streamlines certain existing processes. This decision determines the volumetric dispersion of the small business California Climate Credit and the volumetric dispersion of residential California Climate Credit for Bear Valley Electric Service (Bear Valley) customers do not currently comply with CARB's Cap-and-Trade Regulation. This decision modifies the small business California Climate Credit to be a flat rate approach mirroring the other investor-owned utilities' residential California Climate Credit. This decision directs Bear Valley to utilize the same allocated allowance auction proceed distribution methods for Emissions Intensive Trade-exposed (EITE), small business, and residential customers as other investor-owned utilities. This decision directs, if and when CARB implements an adopted process to obtain sole responsibility for crediting large EITE facilities to minimize leakage associated with Cap-and-Trade Program costs in purchased energy, the transition procedure recommended in the Staff Straw Proposal on Electric Investor Owned Utility Cap-and-Trade Program Allowance Proceeds Use and updated in Appendix A of this decision be instituted. With respect to the California Industry Assistance for small and medium as well as large EITE facilities, this decision (1) amends the dollar conversion factor formula to eliminate the need for the true-up process; and (2) replaces the existing emissions factors with emission factors calculated by CARB as part of the calculation of the allowance allocations for CARB's California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation. For small and medium EITE facilities only, this decision continues the existing once-per-compliance-period self-attestation auditing requirements for 2021-2030. Further, the Energy Division will retain responsibility for calculating small and medium EITE facility credits. The current distribution of the residential California Climate Credit in April and October is retained. After 2021, SDG&E will return to the April and October distribution in alignment with the other investor-owned utilities. This decision authorizes the Energy Division to hold and host a workshop on August 29, 2021 to discuss updates to Templates D-1 through D-5 of Appendix D

of Decision (D.) 14-10-033, needed to align with changes in this decision. To ensure the California Climate Credits are able to adapt to new energy challenges and opportunities, this decision authorizes the Energy Division to solicit informal comments, when the need arises, and, depending upon the responses, hold a workshop and, if necessary, propose a new rulemaking. Having resolved the issues in the scope of the proceeding, Rulemaking (R.) 20-05-002 is closed.

Item 15. Draft Resolution E-5163. This Resolution acknowledges SDG&E's failure to fully meet the Combined Heat and Power (CHP) procurement and emission reduction targets adopted in D.10-12-035 and modified in D.15-06-028. This Resolution orders SDG&E to conduct an additional CHP-only solicitation in 2021.

Item 30. Draft Resolution WSD-020. This Resolution ratifies the Action Statement of the Office of Energy Infrastructure Safety approving SCE's 2021 Wildfire Mitigation Plan Update pursuant to Public Utilities Code Section 8386.

## **CALIFORNIA ISO**

### Additional Significant Event Capacity Procurement Mechanism Designations

On August 11, 2021, the California ISO issued additional Capacity Procurement Mechanism designations to an additional resource (RUSCTY\_2\_UNITS) for an additional 350 MW of capacity.

### First Summer Report on Market Performance Released

The California ISO released the first of four monthly reports assessing how its markets perform over the summer and giving updates on the Summer Readiness initiatives aimed at helping to ensure grid reliability during heat events. The report may be accessed here: [SummerMarketPerformanceReportforJune2021.pdf \(caiso.com\)](https://www.caiso.com/SummerMarketPerformanceReportforJune2021.pdf).

### Board of Governors and EIM Governing Board Meeting August 20, 2021

The Board of Governors and Western Energy Imbalance Market (EIM) Governing Body will hold a joint general session teleconference meeting, which includes a Board of Governors executive session teleconference meeting, on August 20, 2021. The agenda includes a decision on the EIM Governance Review part 2 draft final proposal.

### Stakeholder Initiatives: Upcoming Meetings and Deadlines

**New Initiative: 2021 Contract Management Enhancements.** The California ISO has launched a new initiative called 2021 Contract Management (COMA) Enhancements, and will hold a public stakeholder call on August 17, 2021 to discuss the related issue paper and straw proposal. Comments are due by August 31, 2021. This initiative will update and clarify a number of policies related to generator interconnection contracts. These changes include the topics: the ISO as an affected system language and pro forma agreement, clarify and expand

retirement and repower language, aligning modification timelines among the various study processes, allow asynchronous projects to convert to 100 percent storage, revise the droop and dead-band for asynchronous generators, and adjust the effective date of the Generator Interconnection Study Process Agreement. The policy updates will impact Tariff section 25, Appendix DD, Appendix U, Appendix EE, and Appendix FF.

**New Initiative: Clarifications to Reliability Must-Run Designation Process.** The California ISO has launched a new initiative called Clarifications to Reliability Must-Run (RMR) Designation Process, and will hold a public stakeholder call on August 17, 2021 to discuss the related issue paper. Comments are due by August 31, 2021. Through this initiative, the primary type of RMR designation will be determined when both local and system reliability need exists simultaneously.

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

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

**Hybrid Resources Phase 2b.** The California ISO will hold a stakeholder call on August 26, 2021 to discuss the second revised draft tariff language for Phase 2(b) the Hybrid Resources initiative. Comments are due by August 19, 2021.

**2021-2022 Transmission Planning Process.** The California ISO has posted the Preliminary Reliability Assessment Results for the 2021-2022 Transmission Planning Process. The preliminary results are available here: [California ISO - 2021-2022 Transmission planning process \(caiso.com\)](https://www.aiso.com/2021-2022-Transmission-Planning-Process). In addition, the request window is now open for the submission of proposed transmission alternatives for the reliability-driven needs identified in the studies.

## **CALIFORNIA ENERGY COMMISSION**

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

As background, the CPUC established EPIC in 2012 to fill a critical gap in funding for public investments in clean energy research and technology innovation that can provide benefits to electric ratepayers through greater reliability, lower costs, and increased safety. On September 2, 2020, the CPUC renewed EPIC for an additional 10 years (January 1, 2021 through December 31, 2030) in D.20-08-042. The CPUC approved the CEC as an EPIC administrator

with an annual budget of \$148 million for the first five years and ordered the investor-owned utilities to collect funds for the renewed EPIC starting January 1, 2021. The decision requires the CEC to file an investment plan to the CPUC by October 1, 2021 to cover the period of January 1, 2021 to December 31, 2025 (referred to as EPIC 4). According to the Public Notice, CEC Staff anticipates that the CPUC will issue a decision on the EPIC 4 Investment Plan in spring 2022. More information on the CEC's administration of the EPIC program is available [here](#).

The series of CEC Staff workshops started on June 14, 2021 and culminated in an August 4, 2021 workshop entitled "Draft Initiatives for EPIC 4" that reviewed the research initiatives proposed in the draft EPIC 4 Investment Plan and solicited public input. A copy of the draft initiatives is available [here](#). The comment deadline for the August 4, 2021 workshop ends on August 18, 2021.

**2021 IEPR.** As part of the 2021 Integrated Energy Policy Report (2021 IEPR) process, on August 24, 2021 the CEC will host two sessions of a workshop regarding the evolving role of energy efficiency in achieving California's decarbonization goals (CEC Docket 21-IEPR-06). The first session will begin at 9:30 a.m. and the second session is scheduled to begin at 1:30 p.m. Additional information regarding the workshop, including remote attendance instructions, is available [here](#).

The CEC will host another 2021 IEPR workshop on August 30, 2021 at 1:00 p.m. regarding natural gas forecasting efforts and preliminary results as part of the state's long-term energy planning efforts (CEC Docket 21-IEPR-05). Additional information regarding the workshop, including remote attendance instructions, is available [here](#).

For additional information about the 2021 IEPR, please visit <https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2021-integrated-energy-policy-report>.

**CEC Business Meetings.** The next CEC Business Meeting will be held on August 17, 2021 at 2:30 p.m. The meeting agenda, including remote attendance instructions, is available [here](#). Items on the [agenda](#) directly relate to the Governor's July 30 Emergency Proclamation. On August 13, 2021, CEC staff added two proposed orders (labeled "backup materials") to the Business Meetings [website](#), which the Commission will consider at the August 17 meeting. The orders specifically relate to the July 30 Emergency Proclamation and set forth a proposed (i) expedited process for approval of petitions for changes to facilities licensed by CEC, and (ii) an emergency approval process for new facilities greater than 10 MW. In each case, the orders only apply to facilities that will contribute to reducing the energy shortfall by October 31, 2021.

**Building Decarbonization.** The CEC's Final Commission Report: California Building Decarbonization Assessment, Publication No. CEC-400-2021-006, is now available [here](#).

## **CALIFORNIA AIR RESOURCES BOARD**

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

The next ARB Board meeting will be held September 9, 2021. The full meeting agenda will be made available [here](#) 10 days prior to the meeting. At the meeting, ARB will consider the Community Emissions Reduction Program for Eastern Coachella Valley, developed under the Assembly Bill 617 Community Air Protection Program. Details of the draft Community Emissions Reduction Program are available [here](#) and comments on the draft Program can be submitted [here](#) on or before August 30, 2021.

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

## **MINNESOTA**

### **Minnesota Public Utilities Commission**

#### **Xcel Energy Community Solar Garden Program, PUC Docket No. E002/M-13-867**

On August 12, 2021, the Minnesota Public Utilities Commission (Commission) met to consider Xcel's current community solar garden (CSG) program. The issue before the Commission was whether it should extend the residential adder for Xcel's CSG program or take other actions. Ultimately, the Commission extended the residential adder for two more years, covering vintage years 2021 and 2022. The adder for the CSG program will remain at the current 1.5 cents per kWh. In addition to extending the initial adder, Xcel must also file an initial residential adder evaluation report by May 1, 2022, covering CSG subscription data for vintage years 2017-2021. Xcel must also file a final report by May 1, 2023. The report must contain: (1) CSG project subscription data by VOS vintage year; (2) current number of residential subscribers uploaded to the Salesforce portal for each year reported on; (3) current metrics regarding the number of active subscriptions, subscribers, DC capacity allocation, AC monthly production allocation, and incremental bill credits; and (4) total number of low-income customer recipients participating in the CSG program. Xcel must also work with stakeholders to provide an updated bill payment proposal and coordinate other changes to the program.

#### **Formal Complaints by SunShare, LLC Against Xcel Energy, PUC Docket Nos. E002/C-21-125, E002/C-21-126**

On August 12, 2021, the Commission met to consider two formal complaints made by SunShare, LLC against Xcel Energy alleging, among other things, that Xcel seeks unreasonable interconnection costs and fails to issue a timely interconnection agreements for certain projects. With regard to both complaints, the Commission opened formal investigations, with expedited answer and reply comment deadlines.

## **OREGON**

### **Portland General Electric (PGE) Seeks Immediate Suspension of Its Green Product Mix Offering**

Last Thursday, PGE filed Advice No. 21-21 with respect to Schedule 54 (Large Nonresidential Renewable Energy Certificates Rider). In its filing, PGE requests immediate suspension of PGE's Green Product Mix offering for renewable energy certificate (REC) sales beyond those that the utility already committed to via contract. Under the offering, PGE's stated price for RECs is \$3.00 per certificate. However, due to recent price and supply volatility in the market, PGE is requesting a 90-day suspension in order to revise the tariff schedule and adjust to market conditions. PGE's filing can be located [here](#).

## **FEDERAL ENERGY REGULATORY COMMISSION**

The Federal Energy Regulatory Commission (FERC) takes a recess in August, so FERC's next monthly meeting is September 23, 2021.

FERC will hold a staff-led [technical conference](#) on September 14, 2021 addressing energy and ancillary services markets administered by the RTOs/ISOs. The technical conference will discuss potential energy and ancillary services market reforms, such as market reforms to increase operational flexibility, that may be needed as the resource fleet and load profiles change over time.

FERC's annual Commissioner-led [reliability technical conference](#) will take place on September 30, 2021.

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

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

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

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

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

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

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

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

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

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