

REGULATORY UPDATE FOR SEPTEMBER 21 (WEEK OF SEPTEMBER 14)**California Public Utilities Commission**New Proposed Decisions and Draft Resolutions¹:

None.

Voting Meetings:

The Commission has a voting meeting scheduled on September 24, 2020. The agenda includes the following items:

Item 4: A.19-10-001 (SCE Surplus Energy Transaction with BPA). On October 1, 2019, SCE filed an application requesting approval to extend, for an additional year, a two-year contract with Bonneville Power Administration (BPA) for the purchase of five MW of surplus electricity delivered around the clock. SCE described the surplus electricity as carbon-free hydroelectric power made available through incremental energy efficiency savings in BPA's service area. This proposed decision would deny approval, finding that the proposed transaction is a standard surplus power purchase contract and not an inter-regional energy efficiency transfer. Moreover, the purchased power carries an emission factor, and is not carbon-free. Finally, the contract does not provide sufficient policy benefits to justify its costs.

Item 6: A.18-07-003 (RPS Implementation). This proposed decision deems as final and accepts the 2019 Renewables Portfolio Standard Procurement Plans submitted by four new Community Choice Aggregators but cautions the CCAs that more detail is required in their future RPS Plans. The four affected CCAs are the following: Butte Choice Energy Authority; Clean Energy Alliance; the City of Santa Barbara; and San Diego Community Power. Each of these CCAs is anticipated to start providing electricity to customers in 2021. This decision also deems as final and accepts PacifiCorp's on-year supplement to its 2019 Integrated Resource Plan. This decision grants the request of EnerCal USA, LLC (DBA Yep Energy) for a waiver from filing RPS Plans, until such time that EnerCal serves retail load.

Item 9: R.18-12-006 (Vehicle Electrification). This proposed decision holds that the providers of medium- and heavy-duty electric vehicle charging services, and off-road electric transportation charging services, are not public utilities, based on an analysis of Public Utilities (Pub. Util.) Code Sections 740.2, 740.3, 740.12, 216, and 218.

Item 10: R.16-02-007 (IRP Proceeding). This proposed decision grants the petition for modification (PFM) of D.19-11-016 filed by the California Community Choice Association

¹ Per 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 twenty days after the draft resolution appears in the Commission's daily calendar, per Rule 14.5.

(CalCCA) on May 14, 2020. In its PFM, CalCCA sought to have the qualifying capacity (QC) methodology for counting capacity procured from hybrid projects, to satisfy the capacity procurement requirements in D.19-11-016, updated to the Commission's most recent definitions adopted in the resource adequacy proceeding, R.19-11-009. This decision confirms the QC counting methodology. In addition, CalCCA requested that the Commission modify the cost allocation principles articulated in D.19-11-016, to require that load-serving entities be billed for capacity procured on behalf of their customers, rather than having the customers themselves billed through a non-bypassable surcharge. This decision allows for that possibility, but does not require it; record development and final decision-making on this topic is ongoing in the new integrated resource planning proceeding, R.20-05-003. The Commission will address the finer points of cost allocation for capacity procured to comply with D.19-11-016 in R.20-05-003.

Item 22: R.17-07-007 (Rule 21 Proceeding). This proposed decision modifies Electric Tariff Rule 21 of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (Utilities), which governs the interconnection of distributed energy resources. The primary objective in adopting the modifications is to streamline the interconnection process by incorporating the Integration Capacity Analysis results from Rulemaking 14-08-013, the Distributed Resources Planning proceeding.

Item 23: R.18-07-003 (RPS Proceeding). This proposed decision modifies aspects of the Renewable Market Adjusting Tariff (ReMAT) Program. It adopts an electricity pricing methodology based on a weighted average of the utilities' recent executed long-term Renewables Portfolio Standard contracts. The proposed decision also eliminates caps on procurement during bimonthly Program Periods and instead authorizes procurement at the authorized rate on a first-come, first-served basis until each electric utility fulfills its proportionate share of procurement under § 399.20, along with additional changes. These modifications do not affect ReMAT contracts that have already been executed.

California Independent System Operator

Policy Initiatives Catalog Posted: The California ISO has posted the 2021 Final Policy Initiatives Catalog to its website at <http://www.caiso.com/Documents/2021FinalPolicyInitiativesCatalog.pdf>. The updated catalog reflects market participants' initiative requests submitted during the January through July submission window. The Policy Initiatives Catalog documents current, potential, planned and ongoing policy initiatives to develop enhancements to the ISO markets or to related requirements or policy. These are enhancements requiring a stakeholder process and typically result in the ISO tariff changes.

Upcoming Meetings and Deadlines:

Extended Day-Ahead Market. The California ISO has extended the deadline to submit written comments on the Extended Day-Ahead Market bundle 1 straw proposal from Oct. 8, 2020 to Nov. 12, 2020.

Resource Adequacy Enhancements. The California ISO held public stakeholder working group calls on Sept. 14, 15, and 17, 2020, to further discuss various aspects of the Resource Adequacy Enhancements initiative. Comments are due October 1.

Energy Storage and Distributed Energy Resources: Storage Default Energy Bid. The California ISO will hold a public stakeholder meeting on Sept. 22, 2020, to discuss the default energy bid proposal for the Energy Storage and Distributed Energy Resources Phase 4 initiative. Written comments are due by October 6.

Minnesota Public Utilities Commission

COVID-19 Pandemic Economic Recovery Docket Filings

Pursuant to the Minnesota Public Utilities Commission's ("Commission") notice of comment period, several utilities filed proposals for approval of their first tranche of accelerated investments to assist with economic recovery. By way of background, the COVID-19 Pandemic Economic Development Docket (MPUC Docket No. 20-492) is an ongoing docket that was initiated by Commissioner Sullivan's memorandum seeking proposals from utilities to accelerate certain renewables projects and other investments for the stated goal of economic recovery. As noted in previous regulatory updates, this docket was initiated without stakeholder feedback, and it was not clear how it would proceed until the Commission filed a notice of comment period in early August. The Commission's notice in August directed utilities to file their proposed first tranche of accelerated investments for implementation by the middle of 2021. Specifically relevant for this update, Minnesota Energy Resources Corporation ("MERC"), Minnesota Power, and Xcel Energy ("Xcel") all submitted investment proposals, which are briefly described below.

1. MERC

MERC noted that its June 17, 2020 report detailed various capital projects it has underway or planned for the near future; however, MERC is committed to its current capital budget. Additionally, MERC also noted that it would expect to invest additional funds subject to recovery through the Gas Utility Infrastructure Cost ("GUIC") and Natural Gas Expansion Project ("NGEP") riders along with a Farm Tap Replacement Project. Though MERC's filing provides an update on these various dockets, MERC is not requesting Commission approval of any of these projects outside of the already established dockets for each specific proposal. As such, MERC does not believe a new or special review process is required at this time.

2. Minnesota Power

On August 31, 2020, Minnesota Power filed its proposed investments through a supplemental report. Minnesota Power's proposed economic-recovery proposals include: (1) extending the existing energy-intensive, trade-exposed ("EITE") discount until final rates are implemented in its next rate case, which will be filed no later than November 1, 2021; (2) beginning land sales of property near its traditional hydro reservoirs; (3) delaying the implementation of capacity charges from the Manitoba Hydro PPA until 2022; (4) expanding demand response options that will be noted in the next resource plan; (5) implementing a mine

truck electrification pilot; (6) repowering the Taconite Ridge Energy Center; and (7) extending depreciation of transmission assets.

3. Xcel Energy

On September 15, 2020, Xcel proposed a suite of investments, including a preview of its first and second tranches of investments, that together will cost \$3 billion. Xcel claims that these investments will bring 3,000 jobs to Minnesota over the next five years, and they will reduce CO₂ by 500,000 tons annually. Xcel's immediate (first tranche) proposals can be distilled down to three basic categories: (1) approval of another rate-case stay-out; (2) a suite of transmission, distribution, gas, and energy supply projects; and (3) expansion of existing electric vehicle programs.

Like last year, Xcel's stay-out petition includes: (1) an annual sales true-up operating similarly to the true-up approved in the 2015 rate case; (2) a capital true-up consistent with the previous rate case; (3) an annual property tax true-up consistent with the previous rate case; and (4) the postponement of any increase to the Nuclear Decommissioning Trust accrual until 2022. Xcel successfully petitioned for and received Commission approval of a similar stay-out mechanism last year.

Xcel's transmission proposals include a portfolio of asset renewal, reliability requirements, and physical security and resiliency on an accelerated construction timeline. Xcel estimates that these projects will create approximately 700 new jobs in Minnesota over the next several years. The Company estimates that this portfolio will have a \$36.6 million revenue requirement impact through 2025, and Xcel is proposing recovery through the existing capital true-up. Xcel also proposed a suite of distribution projects focused on system resilience and public worker safety. The proposed investments would cost \$132.3 million through 2025, but Xcel notes that these costs are included in the five-year budget and will be part of the base plan in Xcel's upcoming rate case or addressed separately if the rate case is withdrawn pursuant to the stay-out proposal outlined above. Xcel's filing also proposes a small suite of natural gas investments totaling \$1.1 million through 2025, which it intends to recover through its 2021 GUIC filing. Lastly, Xcel proposes to initiate an accelerated asset removal portfolio that will cost approximately \$1.5 million through 2025, which it intends to recover through the capital true-up.

The last portion of Xcel's first tranche of proposals includes several new electric vehicle ("EV") proposals. These proposals include: (1) implementing an electric vehicle rebate for customers who purchase light-duty EVs and electric buses, tied to participation in a managed (Xcel) charging program tariff; (2) installing 21 public and fast charging stations; (3) accelerating Xcel's own fleet by purchasing 40 vehicles and necessary charging equipment; and (4) modifying the existing EV fleet pilot to open participation to more private entities, including car dealerships. Xcel requests that the Commission approve the EV-specific proposals as part of its first tranche of investments.

Xcel is requesting that the Commission review all of its proposals through a standard notice and comment process with the goal of obtaining Commission approval by December 2020. Xcel argues that the short turnaround is necessary for it to begin projects in 2021.

The remainder of Xcel's filing previews its second tranche of proposed investments, which includes projects that will take a bit more time for Xcel to initiate. Xcel's proposed second tranche includes: (1) repowering of owned and existing PPA wind resources that are already in service; (2) installation of a solar and storage facility at Sherco with a projected cost of \$650 million for the solar and \$19 million for the storage; (3) implementation of a low income rooftop solar program; and (4) facilitating a non-wires alternative pilot program with the City of Minneapolis. In recognition of the volume of the proposed investments, Xcel also proposes various rate-mitigation tools for the Commission's consideration. First, Xcel proposes offsetting increased costs by flowing through the return of specific ADIT tax benefits. Second, Xcel proposes a residential rate relief program providing \$17.5 million in bill credits, which will be funded through the low income surcharge for two years. Lastly, Xcel believes avoiding a rate case will help mitigate customer increases.

Stakeholders are in the process of reviewing the various utilities' filings to provide initial comments. Though the original notice appears to contemplate Commission action in only one docket, a clear process for how the Commission intends to approve the first tranche of proposals is still unclear.

Minnesota Court of Appeals

On September 21, the Minnesota Court of Appeals affirmed decisions from the Minnesota Public Utilities Commission ("MPUC") regarding three electric vehicle ("EV") pilot programs proposed by Northern States Power Company d/b/a Xcel Energy ("Xcel"). A group of large industrial customers of Xcel appealed the MPUC's decisions approving Xcel's EV pilot programs. At issue were behind-the-meter investments associated with Xcel's EV pilot programs, and whether those investments could properly be characterized as "service" under Minnesota law and, alternatively, whether the MPUC's approval of Xcel's proposed cost-recovery was arbitrary and capricious. The Minnesota Court of Appeals, applying the *de novo* standard of review, determined that the MPUC's decisions did not exceed its statutory authority and that EV charging infrastructure fell within the plain meaning of "service" under Minnesota law. With respect to cost recovery, the Minnesota Court of Appeals did not find the MPUC's decisions to be an arbitrary and capricious departure from prior MPUC decisions.

Washington Utilities and Transportation Commission

On September 1, 2020, WUTC issued draft rules under its Washington State's Energy Independence Act rulemaking to clarify REC purchasing practices (WUTC Docket No. UE-190652). Comments on the draft rules are due by October 1, 2020.

Federal Energy Regulatory Commission

September 17 Open Meeting

At its September 17 open meeting, FERC issued Order No. 2222, which requires each ISO and RTO to revise its tariff to establish distributed energy resource aggregators as a type of market participant and to accommodate the physical and operational characteristics of distributed energy resource aggregations. Order No. 2222 will therefore kickoff a lengthy compliance process that will cause the ISOs/RTOs to establish rules that allow distributed energy resource aggregations to participate directly in wholesale energy, capacity, and ancillary services markets, as well as address locational and metering requirements for such aggregations. Compliance filings are due with 270 days of the publication of Order No. 2222 in the Federal Register. Commissioner Danly issued a dissenting opinion, calling the order an “imprudent exercise of the Commission’s power” insofar as FERC’s decision violates the boundaries of federal and state jurisdiction. *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020).

FERC also rejected new complaints that were raised by the American Wind Energy Association in the years-long battle over the self-funding of network upgrades in the Midcontinent ISO region. On remand of this case from the DC Circuit, FERC determined that transmission owners in MISO could reopen interconnection agreements that had been negotiated while appeals in this dispute were pending (agreements that became effective between June 24, 2015 and August 31, 2018) in order to retroactively elect self-funding and earn a rate of return on the costs of network upgrades. AWEA sought rehearing of that determination, arguing that FERC’s decision would upset settled expectations about the costs of interconnection service and violated the filed-rate doctrine. On Thursday, however, FERC rejected AWEA’s arguments and permitted transmission owners in MISO to revisit the issue of self-funding with respect to those interconnection agreements made effective during the appeals period. Commissioner Glick dissented. *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,248 (2020).

FERC also partially granted Bonneville Power Administration’s (“Bonneville”) Complaint against Avista Corporation (“Avista”), holding that Avista cannot assess firm point-to-point transmission service for the delivery of self-supplied operating reserves located outside of Avista’s balancing area. Under the FERC’s *pro forma* Open Access Transmission Tariff, load-serving transmission customers must acquire operating reserves and other ancillary services from the transmission provider or from a third party, or they may self-supply the operating reserves from their own generation resources. In this case, Bonneville sought to self-supply operating reserves for its Avista load from its own generation located outside of Avista’s balancing area. But Avista took the position that Bonneville would have to purchase firm point-to-point transmission service to move these operating reserves into Avista’s balancing area. FERC disagreed and held that transmission used by operating reserves from designated network resources (whether located within or outside of the applicable balancing area) is part of the network transmission service for which the network transmission customer has paid. The Commission reasoned that the point-to-point transmission purchase requirement “inappropriately restricts the network customers use of its transmission service” and “prevent the network

transmission customer from using its transmission service on a basis that is comparable to Avista’s use of the transmission system...” *Bonneville Power Administration v. Avista Corporation*, 172 FERC ¶ 61,239 at P 38 (2020).

Other matters

FERC released more information on its [September 30 technical conference on carbon pricing](#) in organized wholesale electricity markets. The conference will address state adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with Commission-jurisdictional organized wholesale electricity markets. Panels will address legal considerations for state-adopted carbon pricing and RTO/ISO markets, an overview of carbon pricing mechanisms and interactions with RTO/ISO markets, and considerations for market design. Panelists will include individuals from universities, the ISOs/RTOs, the PJM Market Monitor, the Western Power Trading Forum, and various market participants. The conference will be webcast.

FERC has a [technical conference scheduled for October 27 on offshore wind generation integration in RTOs/ISOs](#). The conference will address whether existing Commission transmission, interconnection, and merchant transmission facility frameworks in RTOs/ISOs can accommodate anticipated growth in offshore wind generation in an efficient and effective manner that safeguards open access transmission principles and to consider possible changes or improvements to the current framework should they be needed to accommodate such growth. Commissioners may participate in the technical conference.