

REGULATORY UPDATE FOR AUGUST 30, 2022 (WEEK OF AUGUST 22, 2022)**CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)**New Proposed Decisions and Draft Resolutions¹

None.

Voting Meetings

The CPUC held a voting meeting on August 25, 2022. The agenda included the following energy-related items.

Item 8. R.20-07-013 (Risk-Based Decision-Making Framework). This decision refines certain reporting requirements for the Risk Spending Accountability Reports required of investor-owned utility (IOU) and Small and Multi-Jurisdictional Utility gas and electric utilities pursuant to Decision (D.) 19-04-020 and D.14-12-025. It updates certain requirements for IOU Risk Assessment and Mitigation Phase (RAMP) reports and clarifies information requirements related to RAMP filings for submittal in GRC applications. As such, this decision updates the Rate Case Plan for GRC applications, most recently addressed in D.20-01-002. This decision eliminates the separate gas safety reporting requirements adopted in D.19-09-025, D.17-05-013, D.13-05-010, and D.11-05-018 and directs the IOUs to include any non-duplicative aspects of these reporting requirements into their RSARs or related filings. **Held to September 15.**

Item 9. Draft Resolution E-5220. The CPUC adopted D.21-12-032 on December 17, 2021, which directed the three large IOUs to each file a Tier 2 Advice Letter (AL) modifying their ReMAT tariffs and standard Power Purchase Agreements (PPA) to accommodate the eligibility of facilities enhanced with storage, establish a de minimis threshold for each product category, and include a process through which the IOUs aggregate remaining capacity across one or two of the three Product Categories, if necessary, to meet their individual share of the statewide ReMAT capacity target. Further, D.21-12-032 directed San Diego Gas & Electric (SDG&E) to reopen its ReMAT program. D.21-12-032 also reaffirmed the IOUs' option to provide information-only time-of-delivery factors, as adopted in D.19-12-042, and resolved several petitions for modification. On March 15, 2022, Pacific Gas and Electric Company (PG&E), SCE, and SDG&E filed ALs pursuant to Ordering Paragraph 8 of D.21-12-032. On April 25, 2022, and May 13, 2022, PG&E, SCE, and SDG&E filed supplemental ALs. On April 4, 2022, California Energy Storage Alliance and JTN Energy each filed timely responses and protests. This resolution approves with modification PG&E ALs 6528-E/E-A and SDG&E ALs

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.

3968-E/E-A and approves SCE ALs 4745-E/E-A as they include the required modifications to their ReMAT tariffs and PPAs consistent with D.21-12-032. **Approved.**

Item 14. Draft Resolution E-5225. This resolution approves an energy storage contract with Nextera (Desert Peak Energy Storage II, LLC) for 75 megawatts (MW) of nameplate capacity, expected to provide 72 MW of incremental September net qualifying capacity, which SCE procured to satisfy a portion of its 2023 mid-term reliability requirements. The contract is for a new stand-alone, in-front-of-the-meter energy storage project and is a resource adequacy (RA) with a put option contract, i.e., an RA contract where the seller also has the option to put the energy dispatch rights to SCE. This resolution approves all of the relief requested in AL 4800-E. **Approved.**

Item 16. R.21-10-002 (RA). This decision adopts regional wind ELCCs for the 2023 compliance year and addresses the demand response (DR) qualifying capacity methodology for the 2023 and 2024 compliance years. The Energy Division's regional wind ELCC study values are adopted for 2023 and beyond. The decision also declines to adopt an interim qualifying capacity methodology for DR, finding there is insufficient record support for adopting the methodology. The decision, however, does find it reasonable to apply a load impact protocol (LIP) methodology to DR resources, and directs parties to develop refinements to the LIP methodology so that it can apply to the 24-hour slice framework the CPUC recently adopted, for the 2024 test year. The Energy Division is directed to notice the first workshop to address this issue as soon as practicable; subsequent workshops will be added to the Workstream 2 schedule for this proceeding. **Signed, D.22-08-039.**

Item 26. A.20-03-016 (PG&E Gas Demand Pilot Program). This decision dismisses without prejudice Application 20-03-016 (Application) filed by PG&E for approval of its Gas DR Pilot Programs in compliance with Ordering Paragraph 11 of D.19-09-025. Concurrently with its Application, PG&E filed a motion for a ruling to defer consideration of its Application in order to allow the CPUC to issue a final decision in Track 2 of Rulemaking (R.) 20-01-0071 (Track 2 decision, LT Gas Rulemaking). On June 2, 2020, the assigned Administrative Law Judge (ALJ) issued a ruling granting PG&E's Motion (ALJ Ruling). The ALJ Ruling directed PG&E to file an amended Application in this proceeding within 60 days of the date of issuance of the Track 2 decision. On September 27, 2021, the CPUC issued D.21-09-042 extending the initial statutory deadline for this proceeding by one year to September 29, 2022. On January 5, 2022, the Commissioner in R.20-01-007, the LT Gas Rulemaking, issued an amended scoping memo setting both the scope and the proceeding schedule for Track 2. The Track 2 decision is currently scheduled for Second Quarter 2023. This decision does not prejudice the merits of PG&E's Application. PG&E may file a new application within 18 months of the issuance of this decision. **Held to September 15.**

Item 28. Draft Resolution 5229. SCE filed AL 4747-E on March 16, 2022, requesting CPUC review and approval of a BioMAT contract amendment with Santa Barbara County. The contract is a standard BioMAT PPA for which amendments are requested. SCE's execution of the contract amendments was at the request of Santa Barbara County. This Resolution approves the contract amendment between SCE and Santa Barbara County without modification because it is consistent with the revised BioMAT program terms defined in D. 20-08-043. **Approved.**

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (ISO)

Board of Governors

A Board of Governors Meeting is scheduled for August 31, 2022. The agenda may be found [here](#).

Stakeholder Initiatives: Upcoming Meetings and Deadlines

WEIM Resource Sufficiency Evaluation Enhancements Phase 2. The California ISO has scheduled a stakeholder call on September 2, 2022, to discuss the Western Energy Imbalance Market (WEIM) Resource Sufficiency Evaluation Enhancements (RSEE) Phase 2 draft final proposal. Comments are due September 12.

Washington WEIM Greenhouse Gas Enhancements. The California ISO has launched a new initiative called Washington Western Energy Imbalance Market (WEIM) Greenhouse Gas Enhancements, and held a virtual workshop with stakeholders and Washington joint agencies on August 22, 2022, to discuss the issue paper and straw proposal for this initiative. Written comments are due September 6.

Transmission Service and Market Scheduling Priorities Phase 2. The California ISO held a stakeholder call on August 11, 2022 to discuss the Transmission Service and Market Scheduling Priorities Phase 2 straw proposal. The California ISO has extended the comment deadline for the Transmission Service and Market Scheduling Priorities Phase 2 straw proposal from August 25 to September 8. The deadline extension is in response to requests from stakeholders during the August 11 virtual meeting for the ISO to publish additional data related to the proposal.

Extended Day-Ahead Market (EDAM). The EDAM revised straw proposal has been posted to the initiative webpage. The ISO has scheduled a public meeting, offered in-person and virtually, on September 7-8, 2022, at the Embassy Suites by Hilton Sacramento Riverfront Promenade in Sacramento, California, to hear stakeholders' preliminary feedback on the proposal. The comment deadline for the revised straw proposal has been extended from September 13 to September 20.

2022-2023 Transmission Planning Process. The California ISO has posted the 2022-2023 Transmission Planning Process preliminary reliability results to its website. The request window is open through October 15, 2022.

Energy Storage Enhancements. The California ISO held a public stakeholder call on August 25, 2022, to discuss the draft final proposal for the Energy Storage Enhancements initiative. Written comments are due September 9, 2022.

2023 Net Qualifying Capacity Values

The California ISO has posted the preliminary 2023 Resource Adequacy Net Qualifying Capacity list. Scheduling coordinators are requested to review their information and submit

comments by September 1, 2022.

2023 Effective Flexible Capacity Values

The California ISO has posted the preliminary 2023 Resource Adequacy Effective Flexible Capacity list. Scheduling coordinators are requested to review their information and submit comments by September 8, 2022.

CALIFORNIA ENERGY COMMISSION (CEC)

Offshore Wind

During the August 10, 2022 CEC Business Meeting (see [agenda](#)), the CEC adopted the final report on Offshore Wind Energy Development off the California Coast: Maximum Feasible Capacity and Megawatt Planning Goals for 2030 and 2045 (see agenda item 2). A copy of the final report is available [here](#). A copy of Order No. 22-0810-02, *Adoption Order of the AB 525 Offshore Wind Report Including the Maximum Feasible Capacity and Megawatt Planning Goals for 2030 and 2045*, is available at TN# 245037 in [Docket No. 17-MISC-01](#).

AB 205: Expansion of CEC Siting Jurisdiction

On June 30, 2022, California Governor Gavin Newsom signed [AB 205](#), which, among other things, expands the siting jurisdiction of the CEC to include non-thermal generating facilities, such as solar and wind projects, with a capacity of 50 MW or more. The CEC's siting jurisdiction was previously limited to thermal generating facilities like gas-fired and geothermal power plants 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 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](#).

Integrated Energy Policy Report Update – Equity

The CEC is hosting a series of workshops to explore approaches to ensure meaningful community engagement and develop an equity and environmental justice framework. The upcoming August 31, 2022 workshop will focus on addressing barriers to clean energy adoption and explore approaches to providing effective technical assistance at the local level to accelerate the State's transition to a clean energy future for all. The workshop is scheduled to begin at 10:00 a.m. on Wednesday, August 31, 2022, and there are in-person and remote access options. For additional information, please see TN# 245492 in [Docket No. 22-IEPR-04](#).

CEC Business Meetings

The next CEC Business Meeting is scheduled for September 14, 2022.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Recent Actions

On August 25, 2022, CARB adopted the [Advanced Clean Cars II](#) Regulations. The Regulations phase in stricter tailpipe emission standards starting in 2026 and transition to zero emission vehicles by 2035 for new passenger cars, trucks, and SUVs sold in California.

Meetings and Workshops

On September 1, 2022, CARB will host a joint meeting of the Board and the Assembly Bill (AB) 32 [Environmental Justice Advisory Committee](#). Information on attendance and the agenda for the meeting are available [here](#).

On September 7, 2022, CARB will host a virtual meeting of the [AB 617 Community Air Protection Program](#) Consultation Group. Information on attendance and the agenda for the meeting are available [here](#).

On September 22, 2022, CARB will hold a public meeting on the [Innovative Clean Transit](#) program. Staff will provide an informational update on the program and readiness for regulatory requirements beginning in 2023. The public notice of the meeting is available [here](#).

CARB will hold its next [Board meeting](#) on September 22-23, 2022. The agenda will be available 10 days prior to the meeting.

Opportunities for Public Comment

Comments may be submitted on the proposed [2022 State Strategy](#) for the federal Clean Air Act SIP [here](#) on or before September 12, 2022.

Comments may be submitted in advance of a public meeting on the [Innovative Clean Transit](#) program [here](#) on or before September 12, 2022.

On August 18, 2022, CARB held a [public workshop](#) to discuss potential changes to the [Low Carbon Fuel Standard](#). Feedback on the workshop and proposed changes may be submitted [here](#) on or before September 19, 2022.

A draft [People's Blueprint](#) has been prepared by community and environmental justice advisors to CARB as a starting point for discussion of CARB's update to the AB 617 [Community Air Protection Blueprint](#) that was issued in 2018. Comments on the draft People's Blueprint may be submitted to CARB [here](#) on or before September 30, 2022.

MINNESOTA PUBLIC UTILITIES COMMISSION (MPUC)

September 1, 2022, MPUC Agenda Meeting

The MPUC will meet at 8:00 a.m. PT on September 1, 2022, to address the following matters: (1) Xcel Energy's renewable energy standard rider; (2) Minnesota Department of Revenue's formal complaint against Christensen Communications Co.; (3) Minnesota Power's distribution plan; (4) Dakota Electric's distribution plan; (5) Otter Tail Power Company's distribution plan; (6) the Department of Commerce's guidance for future distribution planning; and (7) Xcel Energy's hosting capacity docket. The MPUC's agenda can be found [here](#).

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

On Tuesday, August 23 at 9:30 a.m., the OPUC held a public meeting to discuss a large number of issues, including updates to the Portland General Electric Schedule 54, Large Nonresidential Renewable Energy Certificates rider, to add geothermal as a resource and allow resource mixing (staff report can be found [here](#)); the joint-utility methodology for calculating the incremental cost of subscribed energy in the Community Solar Program (staff report is found [here](#)); PacifiCorp's proposal to establish a new Schedule 7, Low-Income Discount and the corresponding Low-Income Discount Cost Recovery Mechanism (staff report can be found [here](#)); Idaho Power's Wildfire Protection Plan (staff report can be found [here](#)); and guidance on implementing the new Division 87 Oregon Administrative Rules and amend the Clean Fuels Program Order No. 18-376 to comply with the new rules (staff report can be found [here](#)). The OPUC subsequently issued orders adopting the staff recommendations for each of these issues.

On Wednesday, August 31, the OPUC will host a staff workshop regarding the Investigation into the Interconnection Process and Policies. No meeting information has yet been posted, but the docket can be found [here](#).

OREGON ENERGY FACILITY SITING COUNCIL (EFSC)

EFSC is currently meeting for a three-day hearing to review, discuss, and possibly modify the proposed order on the Boardman [Oregon] to Hemingway [Idaho] Transmission Line proposal. The hearing is taking place at the Gilbert Event Center at Eastern Oregon University in La Grande, and it may also be viewed online. Materials and access information can be found [here](#).

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

There is no open meeting during August, and so here are the highlights from FERC's July 28, 2022, Open Meeting, which resulted in three proposed rulemakings that are currently open for comment:

FERC issued a [Notice of Proposed Rulemaking](#) (NOPR) to modernize its accounting systems to better reflect the rapid changes in electric power market resources and technologies. The NOPR would modify FERC's Uniform System of Accounts by creating new

accounts for wind, solar, and other non-hydro renewable assets; establishing a new functional class for energy storage accounts; codifying the accounting treatment for renewable energy credits; and creating new accounts for computer hardware, software, and communication equipment. Creation of these discrete accounts would provide more accurate information to FERC and the public during the ratemaking process by enabling more reasonable estimates for lifetimes of plant service and their recorded depreciation. Additionally, the NOPR seeks comments on whether the Chief Accountant should issue guidance on accounting for hydrogen. Comments on the NOPR will be due 45 days after publication in the Federal Register.

FERC issued a second [NOPR](#) on improving credit risk management in the organized wholesale electric power markets. The NOPR would allow electric power market operators to share credit-related information among themselves so they can more accurately assess market participants' credit risks. Separately, FERC also issued an Order to Show Cause finding that the existing open access transmission tariffs of the California ISO Corporation, ISO New England Inc., New York Independent System Operator, Inc. (NYISO), and Southwest Power Pool Inc. appear to be unjust and unreasonable because they lack certain credit risk management practices. Specifically, these tariffs do not contain practices intended to ensure that market participants in financial transmission rights markets administered by these market operators maintain sufficient collateral to reduce the risk of defaults and the potential mutualization of costs from any defaults that are not supported by adequate collateral. Comments on the NOPR will be due 60 days after publication in the Federal Register. Market operators' responses to the Show Cause Order are due October 26, 2022.

FERC issued a third [NOPR](#) that would impose a new duty of candor for entities that communicate with FERC or organizations upon which FERC relies to carry out its statutory obligations in the FERC-jurisdictional electric, natural gas, and oil industries and markets. The proposed rule is based on the existing rule governing communications by entities with market-based rate authority and would apply to communications with FERC (including FERC staff), FERC-approved market monitors, FERC-approved regional transmission organizations, FERC-approved ISOs, jurisdictional transmission or transportation providers, and the North American Electric Reliability Corporation (NERC) and its associated Regional Entities. Comments on the NOPR will be due 60 days after publication in the Federal Register.

FERC Chairman Rich Glick and President and CEO of NERC Jim Robb [published a letter](#) encouraging the North American Energy Standards Board to convene a forum to identify solutions to the reliability challenges facing the nation's natural gas system and bulk electric system. Such a forum was one of the key recommendations from the FERC-NERC report on the February 2021 freeze in Texas and the southcentral U.S. caused by Winter Storm Uri.

On August 19, 2022, FERC approved [\(here\)](#) the Cost Sharing and Recovery Agreement filed by the New York Transmission Owners (NYTOs) and accompanying Rate Schedule 19 filed by the NYISO in order to recover the cost of local transmission upgrades that are determined by the New York Public Service Commission (NYPSC) to be necessary to meet New York State's climate and renewable energy goals under State law. FERC rejected LS Power's protest that the proposal was non-compliant with Order 1000, noting that Order 1000 recognizes, and indeed encourages, voluntary participant funding agreements as clarified in its [State](#)

[Agreement Policy Statement](#). FERC also approved cost allocation on a load-ratio share basis because the upgrades are those that the NYPSC has found to facilitate the achievement of statewide mandates applicable to the NYTOs, which benefit customers throughout the State.

On August 30, 2022, FERC issued a deficiency letter to PJM in the ongoing PJM interconnection queue reform docket. FERC asked PJM to respond to seven issues, including questions affecting how interconnection customers demonstrate Site Control on government property or move a generating facility to an alternate site. PJM has 30 days to respond to FERC's questions.

FERC-Related Court Decisions

On August 9, 2022, the D.C. Circuit Court of Appeals vacated FERC's 2020 Order setting the MISO transmission owners' ROE at 10.02% ([Order](#)). The proceeding has lasted nearly a decade and, in its Order, the Court held that FERC's methodology used to determine the latest appropriate ROE was arbitrary and capricious. The proceeding arises from two Section 206 complaints filed by customers who argued that MISO's existing ROE of 12.38% was too high. Since that time, FERC has set three ROE rates: 10.32% in 2016, 9.88% in 2019, and 10.02% in 2020. In determining the 10.02% ROE in 2020, FERC utilized a revised methodology for determining ROE, incorporating the discounted-cash-flow, capital-asset, and risk-premium models to determine a zone of reasonableness and set the ROE at its midpoint. FERC added the use of the risk-premium model despite finding, in its first rehearing order in 2019, Opinion No. 569, that any "additional robustness" the risk-premium model added to its methodology was "outweighed by the disadvantages of its deficiencies," and rejecting its use. While the Court recognized that FERC is entitled to change its mind and now use the risk-premium model, it found that "FERC failed to offer a reasoned explanation for its decision to reintroduce the risk-premium model after initially, and forcefully, rejecting it." FERC will now re-evaluate its methodology in a third rehearing order. With the need to upgrade the transmission system across the MISO footprint, FERC will need to act quickly to ensure investors have the economic certainty necessary to invest in these high-cost upgrades.

Also on August 9, 2022, the D.C. Circuit Court of Appeals vacated several FERC orders that had determined cost responsibility as between New York and New Jersey ratepayers for hundreds of millions of dollars of investment in regional transmission upgrades in northern New Jersey. [Consolidated Edison Company of New York, Inc. v. FERC, Nos. 15-1183, et al. \(D.C. Cir. Aug. 9, 2022\)](#). The Court found fault with FERC's failure to explain why it used the solution-based distribution-factor analysis (DFAX) method of cost allocation for two transmission projects (the Bergen and Sewaren projects) in northern New Jersey, but did not use the DFAX method for the allocation of costs associated with the Artificial Island project. The Court was dissatisfied with FERC's attempt to explain the difference in treatment of costs related to short-circuit issues (Bergen and Sewaren) versus the treatment of flow-based thermal overload or stability issues (Artificial Island). It therefore remanded the orders to FERC for an adequate explanation as to why DFAX cost allocation is appropriate for short-circuit issues but not for stability-related projects.

The Court also found unlawful and remanded to FERC the de minimis threshold aspect of the DFAX cost allocation method. The de minimis threshold exempts transmission zones with a distribution factor below 1% from any cost responsibility. Because the distribution factors are based on the size of the zone rather than the zone's share of the facility's total flow, the Court found that it discriminates against smaller zones that are required to pay higher cost allocations after larger zones are exempted. Notably, this issue is currently being litigated at FERC in another related proceeding, *PPL Electric Utility Corp., et al. v. PJM Interconnection, LLC*, Docket Nos. ER22-1606 and EL21-39.