

**REGULATORY UPDATE FOR DECEMBER 6, 2022  
(WEEK OF NOVEMBER 28, 2022)**

**CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)**

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

A.22-05-025 (SDG&E 2023 ERRa Forecast). This decision approves San Diego Gas & Electric Company's (SDG&E) 2023 Electric Procurement Revenue Requirement Forecasts, 2023 Electric Sales Forecast, and Greenhouse Gas (GHG) Related Forecasts for inclusion in its retail rates effective January 1, 2023. The decision adopts SDG&E's updated 2023 revenue requirement forecast of \$783.821 million, which is \$78.364 million less than its currently effective revenue requirement of \$862.185 million. High forecasted power costs in 2022 caused undercollections in the Energy Resource Recovery Account (ERRA) and some PABA subaccounts, combined with further increased costs in 2023 combined with decreased forecasted sales resulting in an increase in bundled customer rates. In total, the adopted revenue requirement is projected to result in an increase to the current system average bundled rate of 5.969 cents per kilowatt hour (kWh), or 19.56%. Based on these numbers, it is projected that a typical bundled non-California Alternate Rates for Energy (CARE) residential customer using 400 kWh per month would expect to see a monthly bill increase of 15.00%, or \$22.58. On the other hand, a typical bundled CARE residential customer using 400 kWh per month would expect to see a monthly bill increase of approximately 15.83%, or \$14.67. The decision also adopts SDG&E's Electric Sales Forecast for 2023, GHG Allowance Return Rates, Power Charge Indifference Adjustment (PCIA) rates, two rate components for the Green Tariff Shared Renewables Program, proposed disposition of the 2020 PCIA Undercollection Balancing Account and 2020 ERRA balances, and proposed modifications to the ERRA data disclosure requirements. The decision requires SDG&E to incorporate program budgets for the Disadvantaged Communities Green Tariff and Community Solar Green Tariff programs and address the shortfall in retained Renewable Portfolio Standard. Finally, the decision directs SDG&E to include in its next ERRA filing, a new proposal that addresses the sufficiency of time for reviewing and implementing alternative sales forecasts. This proceeding is closed.

A.22-05-029 (PG&E 2023 ERRa Forecast). This decision adopts the 2023 ERRa and related energy costs, as well as the amortization of energy-related balancing accounts, and the 2023 electric sales forecast to be used by Pacific Gas and Electric Company (PG&E) to recover these costs. The decision also adopts PG&E's 2023 forecast of revenue requirements for GHG and climate-related costs. The decision adopts a 2023 net revenue requirement for PG&E of \$1,995,957,000. This translates to a non-CARE bundled residential rate increase of 0.9% compared to current effective rates, or an average of \$1.55 monthly bill increase for an average non-CARE residential customer. Bundled System Average Rates will decrease by roughly 0.6%.

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

As a result of the costs and other adjustments approved in this decision, PG&E's rate for an average residential customer (including GHG revenue return) will be \$0.28891/kWh effective January 1, 2023, an increase of 0.9%. This decision orders PG&E to conduct a sales forecast methodology workshop no later than March 31, 2023 to examine and then incorporate into its 2024 ERRRA sales forecast the continued impacts of COVID-19 on electricity sales. The results of this workshop will directly affect the next ERRRA application and will be known to PG&E as it prepares its Phase 2 general rate case. This decision otherwise denies the proposal to adjust the 2023 sales forecast for possible COVID-19 impacts potentially not reflected in the current sales forecast methodology. This decision rejects PG&E's proposal for a "floor" applicable to the PCIA rate charged to bundled and departed customers of PG&E. Until now, the PCIA rate charged to customers has required a payment meant to ensure bundled service customers are indifferent to customers departing PG&E. For 2023, PG&E forecasts that the indifference amount for some departing customers would be negative; that is, the methodology would result in payments to, instead of from, departing and bundled customers. Under PG&E's floor proposal, the forecast payment to customers would be deferred and would later offset any subsequent forecast of PCIA payments to be made by customers. We find no persuasive argument for this proposal. PG&E must continue the current practice and flow through the PCIA adjustment whether positive or negative to all bundled and departed customers. This proceeding is closed.

A.21-02-018 (LS Power Grid California Gates 500 kV Dynamic Reactive Support PTC). This decision grants LS Power Grid California LLC's request for a permit to construct the Gates 500 kilovolt Dynamic Reactive Support Project. This proceeding is closed.

#### Voting Meetings

CPUC held a voting meeting on December 1, 2022. The agenda included the following energy-related items.

Item 5. Resolution M-4864. This resolution authorizes PG&E to exit from Step 1 of the Enhanced Oversight and Enforcement Process set forth in Resolution M-4852, in accordance with D.20-05-003. Resolution M-4852 previously placed PG&E into Step 1 based upon findings that PG&E had made insufficient progress on risk-driven wildfire mitigation efforts. **Approved.**

Item 8. P.22-06-012 (Bloom Petition for 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 Code Section 1708.5 and Rule 6.3 of CPUC's Rules of Practice and Procedure. The decision finds that the issues presented in this petition were considered in CPUC proceedings within the previous 12 months, and that the proposal is not appropriate for a rulemaking, and is more appropriately considered in other proceedings. **Signed, D.22-12-003.**

Item 12. 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 (DR) 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 DR customers who attest that they have a prohibited resource on their premises but will not use it to defer load during a DR event. The annual DR prohibited resource monitoring will 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, Southern California Gas Company (SoCalGas), and 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 DR programs benefit all ratepayers. Applicants are directed to track these costs in the same DR account as costs for the annual Verification Plan. These costs will be reviewed for reasonableness in the annual ERRA process for each of the Applicants. **Signed, D.22-12-004.**

Item 15. Resolution E-5243. This resolution approves PG&E amendments to four contracts for capacity procured to meet mid-term reliability requirements of 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. **Approved.**

Item 16. Resolution E-5230. PG&E, SCE, and SDG&E (collectively, Large IOUs) submitted Tier 3 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 processes 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 will be recorded and publicly posted on the Energy Division's website. The workshops will 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. **Approved.**

Item 17. 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. **Signed, D.22-12-005.**

Item 20. R.21-03-001 (Wildfire Fund Non-Bypassable Charge (WF 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 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 an \$866.7 million revenue requirement for January 1, 2023 through December 31, 2023. **Signed, D.22-12-007.**

Item 23. A.22-05-002/-003/-004 (IOU DR Programs). This decision approves the DR programs, pilots, and budgets for PG&E, SCE, and SDG&E for 2023. The proceeding remains open to consider utility and intervenor proposals for DR programs, program modifications, pilots, and budgets for 2024-2027. Per D.17-12-003, PG&E, SCE, and SDG&E were directed to file their 2023-2027 DR programs. PG&E, SCE, and SDG&E filed their applications on May 2, 2022, per an extension provided by a September 30, 2021 letter issued by CPUC's Executive Director. Due to the late filing of the applications, bridge funding for 2023 would be addressed in this decision, while CPUC considers programs, pilots, and budgets for the remaining 2024-2027 time period. **Signed, D.22-12-009.**

Item 24. A.22-04-006 (SoCalGas Debt Issuance). This decision grants SoCalGas authority to issue up to \$2.820 billion in new debt securities. This decision also authorizes SoCalGas to take various actions to improve the terms and conditions of SoCalGas's debt portfolio and lower the cost of financing, and to take additional actions. **Signed, D.22-12-010.**

Item 25. A.22-04-007 (SDG&E Debt Issuance). This decision grants SDG&E authority to issue up to \$3.050 billion of new debt securities. This decision also authorizes SDG&E to issue \$1.050 billion in rollover debt securities, to utilize certain debt security features or enter into derivative transactions, and hedge planned issuances of debt securities. **Signed, D.22-12-011.**

Item 26. A.22-05-014/A.22-09-017 (SCE 2023 ERRR Forecast/2022 ERRR Trigger Application). This decision approves SCE's total 2023 ERRR electric procurement cost revenue requirement forecast of \$5,242.224 million, modifying SCE's requested revenue requirement of \$5,237.858 million to account for a correction to the Solar on Multifamily Affordable Housing Program funding true-up. As a result of the costs and other adjustments approved in this decision, on January 1, 2023, SCE's system average rates for bundled customers will increase by 2.9% as compared to rates effective October 1, 2022, to 24.444¢/kWh in 2023. The PCIA rates

will be negative for most customer vintages in 2023 due to overcollections in 2022, resulting in credits for customers in those vintages. This decision also adopts Cost Responsibility Surcharge rates and approves SCE's ERRR Trigger Mechanism application. SCE's procurement-related revenue requirement will be updated to reflect 2022 year-end balances with recorded actuals through November 2022 and forecast for December 2022. SCE will implement the rate changes on January 1, 2023, pending approval of the Tier 1 AL filed in conformance with this decision. **Signed, D.22-12-012.**

Item 28. A.22-02-013 (Southwest Gas Debt Issuance). This decision grants Southwest Gas Corporation (SWG) authority to issue up to \$600 million of new debt. This decision also authorizes SWG to refinance previously issued short-term debt securities, to refinance previously authorized securities under the Evergreening Authority Guidelines, and to enter into interest rate risk management contracts. **Signed, D.22-12-014.**

Item 35. 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 PG&E, SoCalGas, and 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 AL requesting changes to the reporting requirements contained in the GO in Appendix A suggested by parties and agreed to by the gas corporations. **Signed, D.22-12-021.**

## **CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)**

### **Stakeholder Initiatives: Upcoming Meetings and Deadlines**

**Review of Final 2023 Resource Adequacy Compliance Filings and Determination of Deficiency.** CAISO has posted its aggregate assessment of the annual resource adequacy (RA) plans submitted by LSEs and central procurement entities along with the reliability-must-run units designated by CAISO for 2023. LSEs and central procurement entities may submit revised annual RA plans by close of day on December 12, 2022.

**Subscriber Participating Transmission Owner Model.** CAISO will hold a public stakeholder call on December 5, 2022, to discuss implementation of a new Subscriber

Participating Transmission Owner model, giving the ISO operational control of the transmission lines without increasing the ISO's transmission access charge, and TransWest Express, LLC's request to become a participating transmission owner. Please submit written comments by end of day December 19, 2022.

**Capacity Procurement Mechanism Enhancements.** CAISO will host a public stakeholder call on December 6, 2022 to discuss the track 1 revised draft final proposal for the Capacity Procurement Mechanism Enhancements initiative.

**FERC Order No. 881 - Managing Transmission Line Ratings Phase 2.** CAISO will hold a public stakeholder call on December 13, 2022, to discuss FERC Order No. 881 - Managing Transmission Line Ratings Phase 2 initiative scope, and respond to questions from stakeholders.

**Day-Ahead Market Enhancements.** CAISO has scheduled a public stakeholder call on December 7, 2022, to discuss the Day-Ahead Market Enhancements draft final proposal. Comments are due December 21.

**Interconnection Process Enhancements 2021 Phase 2.** CAISO will hold a public stakeholder call on December 20, 2022, to discuss tariff revisions for the Interconnection Process Enhancements 2021 Phase 2 initiative. Comments on the proposed tariff revisions are due prior to the stakeholder call, by the end of the day on December 15, 2022.

**Price Formation Enhancements Workshop.** CAISO will host a Price Formation Enhancements initiative virtual public stakeholder workshop on December 16, 2022, focused on fast-start pricing initial framework.

## **CALIFORNIA ENERGY COMMISSION (CEC)**

### **Integrated Energy Policy Report (IEPR)**

An IEPR Commissioner workshop has also been scheduled for Friday, December 2, 2022 regarding [Western Electricity System Integration](#) that will address three key dimensions of western integration: markets, transmission, and RA. The meeting will be held both in person and via remote access. For more information, please visit the CEC's [Western Electricity System Integration](#) workshop website.

Lastly, the CEC will host a remote access-only workshop at 10:00 a.m. on December 7, 2022, to present the energy demand analysis for the 2022 IEPR. According to the [Notice](#), the workshop will address results from the 2022 California Energy Demand Forecast, including the annual electricity forecasts and the hourly and peak electricity demand forecast. For more information, please visit the IEPR California Energy Demand 2022-2035 Forecast [webpage](#).

### Supply Side Demand Response

On December 5, 2022, the CEC published the *Commission Report: Qualifying Capacity of Supply-Side Demand Response Working Group Final Report*, CEC 200-2022-001-F ([Report](#)). According to the Report Abstract, “the report provides the CEC’s final findings and recommendations from the CEC’s working group on supply-side demand response to the CPUC. The CPUC requested these findings and recommendations last year in Decision 21-06-029 and earlier this year in Decision 22-06-050.”

### Long-Term Gas Research and Development (Gas R&D) Strategy

CEC Staff will hold a webinar at 10:00 a.m. on December 12, 2022 to present research recommendations for CEC’s Long-Term Gas R&D Strategy. According to the webinar [notice](#), a detailed agenda will be posted in [Docket No. 19-ERDD-01](#) prior to the webinar.

### Renewables Portfolio Standard

On November 23, 2022, CEC Staff released (i) the Renewables Portfolio Standard Verification and Compliance Methodology Staff Report, 3rd Edition, CEC-300-2022-012-SF//Docket # 21-RPS-01, available [here](#), and (ii) the Renewables Portfolio Standard Staff Draft 2017-2020 Retail Sellers Procurement Verification Report, CEC-300-2022-011-SD/Docket #21-RPS-01, available [here](#). CEC will consider adopting the 2017-2020 Retail Sellers Procurement Verification Report, CEC-300-2022-011-SD, at the December 14, 2022 CEC Business Meeting. According to the [Notice of Availability](#), CEC Staff “strongly encourages the submission of written comments prior to the business meeting if possible” and then notes that “[w]ritten comments may be submitted to the Docket Unit by 5:00 p.m. on December 8, 2022.” For more information, please see the [Notice of Availability](#) or visit [Docket No. 21-RPS-01](#).

### CEC Business Meetings

The next CEC Business Meeting is scheduled for December 14, 2022. The meeting agenda and backup materials are available [here](#).

## **STATE WATER RESOURCES CONTROL BOARD (SWRCB)**

On December 7, 2022, the Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS) will present its recommendation and updates from the 2022 Special Report of the SACCWIS (approved by the SACCWIS on September 30, 2022) to the SWRCB. The presentation is [item #11](#) on the December 7, 2022 SWRCB meeting [agenda](#). According to the [agenda](#), the presentation contains recommendations to extend compliance dates for Alamitos, Huntington Beach, Ormond Beach, and Scattergood Generating Stations, as follows:

- Extend the compliance date of Alamitos Generating Station Units 3, 4, and 5 for three years from December 31, 2023, to December 31, 2026.
- Extend the compliance date of Huntington Beach Generating Station Unit 2 for three years from December 31, 2023, to December 31, 2026.
- Extend the compliance date of Ormond Beach Generating Station Units 1 and 2 for three years from December 31, 2023, to December 31, 2026.
- SACCWIS supports the Los Angeles Department of Water and Power's request to extend the Scattergood Generating Station Units 1 and 2 OTC Policy compliance date five years from December 31, 2024, to December 31, 2029.

A copy of the September 30, 2022 SACCWIS report is available [here](#).

## **CALIFORNIA AIR RESOURCES BOARD (CARB)**

### Meetings and Workshops

CARB will hold its next Board meeting on December 15-16, 2022. At the meeting, CARB will consider adoption of the final draft AB 32 [Scoping Plan Update](#). The agenda for the Board meeting is available [here](#).

On December 6, 2022, CARB will host a virtual workshop on revisions to the Community Air Protection Program Blueprint and the fifth annual [community recommendations and selection process](#) for the Assembly Bill 617 [Community Air Protection Program](#). Information and registration for the workshop can be found [here](#).

On December 8, 2022, CARB will host a virtual meeting of the [AB 617 Community Air Protection Program](#) Consultation Group. Information on the meeting is available [here](#).

### Opportunities for Public Comment

On November 9, 2022, CARB held a workshop to discuss potential changes to the [Low Carbon Fuel Standard](#). The [workshop](#) focused on options for increasing the stringency of the carbon intensity targets for 2030 and beyond, the design of initial scenarios for modeling, the modeling approach, and alternatives. The deadline to provide feedback on the workshop has been extended. Comments related to the workshop may be submitted to CARB [here](#) on or before December 21, 2022.



On November 30, 2022, CARB held a public workshop on the [U.S. Forest Projects Compliance Offset Protocol](#) under the California cap-and-trade program. The [workshop](#) included a discussion of requirements of the approved Protocol and the state of forest and forest carbon science, data, and tools relevant to the Protocol. Comments related to the workshop may be submitted to CARB [here](#) on or before December 15, 2022.

On December 6, 2022, CARB is hosting a workshop on revisions to the Community Air Protection Program Blueprint and the fifth annual [community recommendations and selection process](#) for the AB 617 [Community Air Protection Program](#). Comments related to the workshop and the [Community Air Protection Program Blueprint 2.0 Draft Expanded Concepts Outline](#) may be submitted to CARB [here](#) on or before January 19, 2023.

### **OREGON PUBLIC UTILITIES COMMISSION (OPUC)**

On December 1, OPUC issued order number 22-468 in the matter of UM 2011 (re General Capacity Investigation). The order adopts the Staff's recommendation to adopt the Capacity Contribution Best Practices (Best Practices) and close matter UM 2011. This order closes an investigation that began in April 2019. The Best Practices are derived from the Principles of Valuation report produced by Energy and Environmental Economics, summarized by OPUC [here](#). The order and adopted Best Practices can be found [here](#).

On Tuesday, December 13 at 9:30 a.m. OPUC will have a public meeting to discuss a variety of issues, including in docked UM 1158 (re Equity performance measure recommendations for Energy Trust of Oregon) and UM 2225 (re Request to issue notice of proposed rulemaking for Clean Energy Plan procedural rules). A link to the agenda and meeting access information can be found [here](#).

On Thursday, December 15 OPUC will host a special public meeting in the matter of UM 2225 (re HB 2021 Clean Energy Plans Resiliency Technical Conference). A detailed agenda has not been published, but access information can be found [here](#).

### **OREGON ENERGY FACILITIES SITING COUNCIL (EFSC)**

The comment period for EFSC's proposed amendments to its Protected Areas, Scenic Resources, Recreation Standards closes at 5:00 p.m. on December 8. The Amended Notice of Proposed Rulemaking can be found [here](#). Public comments may be submitted through ODOE's public portal, which can be accessed [here](#).

### **ILLINOIS COMMERCE COMMISSION (ICC)**

On November 29, Commonwealth Edison Company (ComEd) filed its Surrebuttal Testimony, which included both a "Revised BE Plan" and an "Alternative BE Plan" in the consolidated docket [Nos. 22-0432 and 22-0442](#). ComEd proposed the Alternative BE in the event the Commission granted its Application for Rehearing of the Interim Order, issued on November 10, 2022, and which had struck several components of ComEd's BE Plan as it was originally filed on July 1, 2022, including EV purchase rebates and rebates for EV charging

equipment. On December 1, 2022, however, ICC denied ComEd's Verified Application for Rehearing, filed on November 21, 2022. Evidentiary hearings are scheduled for December 7, 2022.

On December 1, 2022, ICC held evidentiary hearings in the consolidated docket (Nos. 22-0431 and 22-0443) considering whether to approve Ameren Illinois Company's BE Plan.

## **NEW YORK**

On November 22, 2022, Governor Kathy Hochul signed a [two-year moratorium](#) on permitting for certain cryptocurrency mining operations. The moratorium adds a new section to New York's environmental conservation law and states that the Department of Public Service will not approve an application for a new air emissions permit or renewal of an existing air emissions permit for an electric generating facility that uses carbon fuel to provide behind-the-meter electricity to operations that use proof-of-work authentication methods to validate blockchain transactions.

The law does not impact existing operations or applications filed before November 23, 2022. Additionally, cryptocurrency mining operations that are powered solely by zero-emissions sources of electricity, such as hydropower, are not affected.

## **FEDERAL ENERGY REGULATORY COMMISSION (FERC)**

Last week, FERC approved PJM's comprehensive interconnection queue reform proposal, significantly altering how interconnection requests will be processed in the region. Our full client alert is available here: [PJM Queue Reform Client Alert](#).

Two other decisions from FERC last month have the industry focused on investor rights that allow an entity to appoint its own officer or directors to the board of a public utility or a holding company. In [TransAlta Energy Marketing \(U.S.\), Inc.](#), 181 FERC ¶ 61,055 (2022), and [Evergny 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 the investor's own officers and directors to the target company's board of directors.

On December 2, 2022, FERC issued an [Order Approving Settlement](#) (Settlement) regarding the rates for point-to-point transmission service at the border of PJM Interconnection, L.L.C. (PJM) for delivery to neighboring regions (Border Rate) over the objections of the New Jersey Board of Public Utilities (NJBPU). The Settlement modifies the formula rate for calculating the Border Rate and provides two sets of discounts to the Border Rate for customers reserving firm service on three specified transmission paths (MTF Paths). From 2021 to 2027, PJM will provide the MTF Discount Rate, a specified discount rate to any new or existing firm transmission customer taking Border Rate service using any of the MTF Paths. From January 1, 2028, through December 31, 2039, PJM will offer the MTF Discount Percentage, a percentage

reduction based upon the total amounts owed for transmission enhancement charges assigned to a merchant transmission facility or its transmission customers. The Long Island Power Authority, Neptune Regional Transmission System, LLC, the New York Power Authority, Hudson Transmission Partners, LLC, and Linden VFT, LLC (collectively, MTF Parties) reserved the right to challenge, object to, or protest such formula method and any rates, terms and conditions for Border Rate service, as applied to reservations after December 31, 2039.

For non-firm Border Rate service using an MTF Path, the Settlement establishes a rate freeze at the current discounted rate of \$.067/MWh through December 31, 2027. Until January 1, 2028, PJM agrees not to oppose an effort by the MTF Parties to change certain loading rules so that they apply to a merchant transmission facility customer taking service over a merchant transmission facility with firm transmission withdrawal rights. The MTF Parties also reserved the right to challenge inclusion in the border yearly charge formula, the revenue requirement of a transmission enhancement project subject to a funding agreement. Finally, revisions to the Settlement are subject to the *Mobile-Sierra* “public interest” standard of review.

The Commission approved the contested Settlement as a package, finding that the overall effect is just and reasonable, and that the NJBPU is in “no worse position” under the Settlement than if the case were litigated. The Commission found that the benefits of the Settlement outweigh the expense and uncertainties of further litigation, and provides a clear framework for Border Rate service on the MTF Paths until 2039. Regarding the discounts offered for the MTF Paths, the Commission found those discounts comply with Commission regulations, Order No. 888-A, and PJM OATT Schedule 7, Section (3).

Also on December 2, 2022, FERC accepted PJM’s tariff revisions, made on behalf of the PJM Transmission Owners, to establish a new Schedule 12 – Appendix C. [\*PPL Electric Utilities Corp. et al.\*](#), 181 FERC ¶ 61,178 (2022). The revisions were made to reflect the State Agreement Approach, which is a supplementary transmission planning and cost allocation mechanism in PJM’s Amended and Restated Operating Agreement through which one or more state governmental entities authorized by their respective states, individually or jointly, may agree to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state public policy requirements identified by the state.

In January 2020, New Jersey formally set forth a policy goal to expand the transmission system to accommodate 7,500 MW of offshore wind generation by 2035. On November 18, 2020, NJBPU issued an order requesting that PJM, pursuant to the State Agreement Approach, open a competitive proposal window to solicit transmission proposals to interconnect and ensure deliverability of 7,500 MW of offshore wind generation by 2035. The Commission accepted the proposed tariff revisions meant to accommodate this buildout by assigning cost responsibility for the transmission projects that NJBPU determines are necessary to support New Jersey state law, on a load-ratio share basis to Network Customers in New Jersey and to Point-to-Point Customers with a Point of Delivery within New Jersey.

