REGULATORY UPDATE FOR FEBRUARY 28, 2023
(WEEK OF FEBRUARY 20, 2023)

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions[1]

None.

Voting Meetings

The CPUC held a voting meeting on February 23, 2023. The agenda included the following energy- and transportation-related items.

Item 2. R.12-12-011 (Transportation Network Companies). This decision finds that the presumption of confidentiality granted by Decision (D.) 13-09-045, footnote 42, to the Transportation Network Companies' (TNCs) Annual Reports for the years 2014-2019 should be terminated and that these Annual Reports should be made publicly available. With the exception of matters that should be protected from public discovery on privacy grounds, TNCs shall submit the balance of their Annual Reports for the years 2014-2019 to the CPUC in accordance with the disclosure and redaction templates attached as Attachments A through U to this decision, following the timetable adopted in this decision. **Held to March 16 meeting.**

Item 5. A.20-02-009/20-04-002/20-06-001 (IOU ERRA Phase 2). This decision resolves the 2019 ERRA Compliance Phase Two proceedings of Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively the Joint Utilities), which were consolidated to address issues related to the Public Safety Power Shutoff (PSPS) events they initiated in 2019. Separately, the CPUC opened an Order Instituting Investigation 19-11-013 (PSPS OII) to examine whether the Joint Utilities complied with applicable laws, rules, and regulations when they initiated the PSPS events in 2019. In D.21-06-014 (decision resolving the PSPS OII), the CPUC found that the Joint Utilities were grossly deficient in reasonably identifying, evaluating, and weighing the potential public harms to their customers when initiating the 2019 PSPS events and imposed on them a monetary remedy by prohibiting their collection of all authorized revenue requirement equal to the estimated unrealized volumetric sales and revenues resulting from future PSPS events. This decision prohibits the Joint Utilities from adjusting future rates to collect any revenue shortfalls, recorded as undercollections in their respective balancing accounts, caused by PSPS events in 2019. This decision also adopts a methodology to calculate the estimated unrealized revenues the Joint Utilities incurred in 2019 or will incur during future PSPS events. The consolidated

[1] 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.

2019 ERRA Compliance proceedings of PG&E, SCE, and SDG&E are closed. **Held to March 16 meeting.**

Item 9. Resolution E-5253. This resolution approves four SCE mid-term reliability energy storage contracts and related costs for a total of 372 megawatts (MW) of nameplate capacity expected to come online in June 1, 2024. It also approves amendments to two mid-term reliability energy storage contracts totaling 300 MW of nameplate capacity that were previously approved in Resolution E-5205. **Approved.**

Item 10. Resolution E-5238. This resolution approves PG&E's request to revise Appendix E and Appendix B of its 2014 Conformed Bundled Procurement Plan (BPP). This resolution finds that PG&E's requested revisions are reasonable. PG&E requests authority to modify two aspects of its BPP. The first aspect is regarding modification to its liquidity management strategy in Appendix E of its Electric Portfolio Hedging Plan. PG&E seeks to modify its liquidity management strategy of its BPP in order to optimize liquidity capacity allocation. The second aspect PG&E requests to modify is Appendix B of the BPP to obtain authority to enter bilateral transactions for forward energy for delivery in the same or prompt Resource Adequacy compliance years. **Approved.**

Item 12. A.22-09-014 (SCE Wildfire Hardening Recovery Bonds). This financing order grants the request by SCE for authority under Assembly Bill (AB) 1054 and Public Utilities (Pub. Util.) Code Sections 850(a)(2) and 850.1 to issue Wildfire Hardening Recovery Bonds (Recovery Bonds) totaling up to approximately $772,432,000. These Recovery Bonds will finance additional authorized fire risk mitigation plan capital expenditures pursuant to Pub. Util. Code Section 8386.3(e). The Recovery Bonds will be issued by a legally separate Special Purpose Entity, which will transfer the Recovery Bonds' proceeds to SCE in exchange for the right to receive revenues to repay the Recovery Bonds' principal, interest, and related costs. Those costs will be recovered via a surcharge called the Fixed Recovery Charge. All existing and future consumers of electricity in SCE's service territory (as described in Pub. Util. Code Sections 850(b)(3) and 850.1(a)(2)) will be required to pay the Fixed Recovery Charge, except for those consumers that are exempt pursuant to Pub. Util. Code Section 850.1(i) (Exempt Fixed Recovery Charge Customer Classes). Pursuant to Pub. Util. Code Section 850.1(e), the provisions in this financing order authorizing the issuance of the Recovery Bonds and the recovery of Recovery Bond principal, interest, and certain other Recovery Bond-related costs from consumers are irrevocable. **Signed, D.23-02-032.**

Item 29. R.20-05-003 (IRP Proceeding). This decision addresses two primary topics. First, the decision requires supplemental mid-term reliability procurement of a total of 4,000 MW of net qualifying capacity (NQC) in addition to the 11,500 MW ordered previously in D.21-06-035. In addition to the additional 4,000 MW NQC of procurement ordered in this decision, requirements for procurement of long lead-time resources from D.21-06-035 are automatically postponed to 2028, but the existing February 1, 2023 procurement data filing requirements remain unchanged. Second, this decision recommends electricity resource portfolios to the California Independent System Operator to study in its 2023-2024 Transmission Planning Process. The portfolios would be a base case portfolio of a 30 million metric ton greenhouse gas emissions target in 2030 and one sensitivity portfolio that assumes offshore wind is 13.4 gigawatts (GW) by 2035 as compared to 4.7 GW in the base case. **Signed, D.23-02-040.**

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Day-Ahead Market Enhancements. The CAISO will hold Day-Ahead Market Enhancements (DAME) initiative public stakeholder workshops on March 7-8, 2023 to continue discussions on several key DAME design elements including the granularity of imbalance reserve procurement and energy storage modeling enhancements. The workshop on February 27 is offered in a virtual format, while the workshop on March 7-8 is offered virtually and in person at the CAISO in Folsom, California. Comments on the stakeholder workshop discussions are due by end of day March 24, 2023.

2023-2024 Transmission Planning Process. The CAISO will hold a public stakeholder call on February 28, 2023, to discuss the 2023-2024 Transmission Planning Process draft study plan. Written comments are due March 14, 2023. The draft study plan may be found here.

Price Formation Enhancements. The CAISO will hold a Price Formation initiative public stakeholder workshop on March 16, 2023. The workshop on March 16 will be offered virtually and in person at the CAISO in Folsom, California.

CALIFORNIA ENERGY COMMISSION (CEC)

Energy System Reliability

On February 9, 2023, the CEC published the Joint Agency Reliability Planning Assessment (Assessment) that addresses requirements for electricity reliability reporting in Senate Bill (SB) 846 (Dodd, Chapter 239, Statutes of 2022) and AB 205 (Committee on Budget, Chapter 61, Statutes of 2022). According to the Assessment, the contents include the first quarterly review of the demand forecast, the supply forecast, and potential high, medium, and low risks to reliability in the CAISO territory from 2023 to 2032, as required by SB 846. The Assessment also notes that the analysis contained therein for 2023 is preliminary and will be updated in May 2023. Further, as required by AB 205, the report also provides an evaluation of summer 2022 reliability and the magnitude of reliability problems for 2023-2026.

On February 14, 2023, the CEC published a Notice of Availability and Request for Comments on the Diablo Canyon Power Plant Extension-Draft CEC Analysis of Need to Support Reliability. Comments were due by February 21, 2023. A previous workshop regarding the analysis was held on January 20, 2023 and all workshop materials are available in Docket No. 21-ESR-01. The CEC posted the final analysis on February 24, 2023 at TN# 248971 in Docket No. 21-ESR-01. Item 9 on the February 28, 2023 Business Meeting agenda indicates that the CEC will consider approval of the final report at the February 28, 2023 Business Meeting.

The CEC released the final draft of the Clean Energy Reliability Investment Plan, available here.

CEC Meetings

The next CEC Business Meeting is scheduled for February 28, 2023. In addition, the CEC and CPUC will hold a joint en banc meeting at 9:00 PT a.m. on March 2, 2022 regarding tribal affairs. The meeting will be held in hybrid format, both via remote access and in person at California State Polytechnic University, Humboldt, in Arcata, California. Additional information is available here.

STATE WATER RESOURCES CONTROL BOARD (SWRCB)

On January 4, 2023, the SWRCB published a Notice of Document Availability, Opportunity for Public Comment, and Public Hearing regarding the Draft Staff Report and Draft Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling to Extend the Compliance Schedule for Alamitos, Huntington Beach, Ormond Beach, and Scattergood Generating Stations, and the Diablo Canyon Nuclear Power Plant (OTC Policy Amendment). According to the notice, written comments are due by 12:00 p.m. PT on March 17, 2023. A public hearing is scheduled to occur at the SWRCB meeting scheduled for March 7, 2023. The proposed OTC Policy Amendment would extend the compliance date for the following power plants:

- Alamitos Generating Station (Alamitos) Units 3, 4, and 5; Huntington Beach Generating Station (Huntington Beach) Unit 2; and Ormond Beach Generating Station (Ormond Beach) Units 1 and 2 for three years, from December 31, 2023 to December 31, 2026, to support system-wide grid reliability.
- Scattergood Generating Station (Scattergood) Units 1 and 2 for five years, from December 31, 2024 to December 31, 2029, to support local system reliability.

The amendment also incorporates revisions to the compliance date for Diablo Canyon Nuclear Power Plant Units 1 and 2 to October 31, 2030, which reflects the extension provided by SB 846.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

On March 7, 2023, CARB will host a meeting of the AB 617 Consultation Group. The agenda and a link to the meeting are available here.

CARB will hold its next Board meeting on March 23-24, 2023. The agenda for the meeting will be available here 10 days prior to the meeting.

Opportunities for Public Comment

Comments on the 2022 CARB Board Update on the AB 617 Community Air Protection Program may be submitted here on or before March 4, 2023.

On February 22, 2023, CARB held a public workshop on potential changes to the Low Carbon Fuel Standard. At the workshop, staff presented additional information on potential credit generation opportunities that may affect carbon intensity targets, preliminary fuel mix and cost outputs from the California Transportation Supply model, and concepts related to streamlining implementation. Staff has released draft regulatory text of the proposed changes. Written feedback on the proposed changes may be submitted here through March 15, 2023. Comments on the proposed changes for Tier 1 Simplified Calculators and Lookup Table Values may be submitted here on or before April 30, 2023.

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

On February 21, 2023, the OPUC hosted a public meeting in the docket of UM 2273 (re Investigation into House Bill (HB) 2021 Implementation Issues) to establish the scope of an investigation into HB 2021 implementation issues. Background information can be found here.

On January 20, 2023, the OPUC issued Order 23-005 (Order) in the docket of UM 2032 (re Staff Investigation into Treatment of Network Upgrade Costs for QFs [Qualifying Facilities]). In the Order, the OPUC upheld the current policy of requiring a QF generator to pay for all costs associated with interconnection, including construction upgrades (called "network upgrades," which include upgrades to the distribution system), except to the extent that the generator can show quantifiable system-wide benefits from the network upgrades.

The Order also allows any on-system QF to choose to be studied for both Network Resource Interconnection Service (NRIS) and Energy Resource Interconnection Source (ERIS), at the QF's expense. Currently, QFs are required to study interconnection using NRIS. ERIS determines upgrades needed to safely inject power onto the grid, but NRIS goes a step further by also studying the upgrades needed to safely deliver that power to the utility's load. Utilities are now directed to engage in negotiation of non-standard contracts with QFs that choose to interconnect with a host utility using ERIS, so long as the QF commits to curtailment at a level the obviates the need for network upgrades otherwise identified in an NRIS report.

ILLINOIS COMMERCE COMMISSION

On February 10, 2023, the assigned Administrative Law Judge issued a Proposed Order that would approve, with modifications, the Beneficial Electrification Plan (BE Plan) filed by Ameren Illinois Company in July 2022. (Docket Nos. 22-0431/0442.) The Proposed Order would, among other things, authorize rebates for Electric Vehicle Supply Equipment of up to $20,000 for direct current fast-charging stations in non-equity or low-income communities, and rebates up to $250,000 in equity-based or low-income communities. The Proposed Order would allow for line-extension allowances on the customer side of the meter for make-ready investments. The Proposed Order defers consideration of whether to adopt a reliability (also referred to as an "uptime" standard) requirement for projects funded under the BE Plan due to the ongoing development of such standards at the federal level. Briefs on exceptions to the Proposed Order were filed on February 24, 2023 and replies are due March 6, 2023.

A Proposed Order regarding the BE Plan filed by Commonwealth Edison Company (ComEd) (Docket Nos. 22-0432/0442) was issued on February 21, 2023. The Proposed Order would grant, subject to modifications, ComEd's BE Plan. Briefs on exceptions to the Proposed Order are due on March 3.

MINNESOTA

Minnesota Public Utilities Commission March 2, 2023, Agenda Meeting

The Minnesota Public Utilities Commission (Commission) will meet at 8:00 a.m. PT on March 2, 2023, to review the following matters: (1) Xcel's petition for approval of updated pricing for the Border Winds and Pleasant Valley Wind Repowering projects; (2) the Commission's inquiry into advertising, outreach, and offering of lifeline support by high cost ETCs; (3) the Commission's review of utilities' compliance with state renewable energy standards; (4) Xcel community solar gardens and the calculation of the value of solar rate; and (5) consideration of the technical subgroup's proposed changes to the Minnesota Distributed Energy Resource Technical Interconnection and Interoperability Requirements. here.

NEW YORK

Governor Kathy Hochul, as part of her budget presentation on February 1, 2023, called for legislative authorization for the New York Power Authority (NYPA) to develop, own, and operate renewable energy projects. The proposal would permit, but not require, NYPA to develop own and operate renewable generation, whether alone or in partnership. The proposal calls for NYPA to receive bill credits for projects that provide power to residents of disadvantaged communities. The proposal also would require NYPA to create a plan to phase out its small gas-fired peaker plants by 2035, except when needed for reliability or emergency services.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

On February 14, 2023, the D.C. Circuit Court of Appeals issued an opinion upholding FERC's *Broadview Solar* ruling in March 2021, where FERC overturned a prior ruling and determined that a small power production qualifying facility may install greater than 80 MW of nameplate capacity so long as its send-out capacity at any single point in time is capped at no more than 80 MW. In reaching its decision, the D.C. Circuit focused on all of the components of the qualifying facility working together to produce power, including in Broadview's case the inverters that limited instantaneous output to 80 MW, rather than disqualifying the facility due to the nameplate capacity of any single component. A lengthier client alert is found here.

On February 9-10, 2023, FERC issued 13 separate orders granting waivers to New York renewable energy projects of section 25.6.2.3.1 of Attachment S of the New York Independent

System Operator, Inc. (NYISO) Open Access Transmission Tariff, which requires an interconnection project to have an Interconnection System Reliability Impact Study (SRIS) approved by the NYISO Operating Committee before entering a Class Year Study. *Thousand Island Solar LLC*; *Barrett Hempstead Battery Storage, LLC*; *Microgrid Networks, LLC*; *Boralex Inc.*; *ConnectGen Montgomery County LLC*; *Invenergy Solar Project Development, LLC*; *Gravel Road Solar, LLC*; *York Run Solar, LLC*; *Union Energy Center, LLC*; *North Country Wind, LLC*; *Crane Brook Solar Project, LLC*; *Innisfree Storage LLC*; *and North Seneca Solar Project, LLC*. In each case, the interconnection customer had diligently met all of its milestone obligations leading up to the SRIS process, but ran into processing delays that could jeopardize their inclusion in the 2023 Class Year Study. The projects each claimed to be "similarly situated" to Clean Power New York LLC, which FERC had granted a waiver of section 25.6.2.3.1 in *Clean Path New York LLC*, 181 FERC ¶ 61,236 (2022). The NYISO, NYPSC, NYSERDA, and Alliance for Clean Energy New York all filed comments in support of the waiver requests, indicating that inclusion of the projects in the 2023 Class Year Study is integral to achieving New York's clean energy goals. Consistent with the NYISO's recommendation, FERC granted waivers of section 25.6.2.3.1 and allowed the projects until the completion date on the Annual Transmission Baseline Assessment base cases to have their SRIS approved by the NYISO Operating Committee for inclusion in the 2023 Class Year Study.

On February 3, 2023, FERC issued show cause orders regarding the Large Generator Interconnection Procedures (LGIP) of *Nevada Power Co.*, 182 FERC ¶ 61,051 (2023), and *PacifiCorp*, 182 FERC ¶ 61,050 (2023). In the *Nevada Power* order, FERC preliminarily found that Nevada Power's LGIP may be unjust and unreasonable because it fails to specify a methodology for allocating common network upgrades costs among interconnection customers in the context of a cluster system impact study. In the *PacifiCorp* order, FERC preliminarily found that PacifiCorp's LGIP may be unjust and unreasonable because it provides for a restudy of system impacts on lower-queued interconnection customers when a higher-queued interconnection customer temporarily *suspends* its LGIA, and further would require the suspending interconnection customer to pay the costs of any studies or restudies required as a result of its suspension. FERC specifically found these LGIP provisions (or lack thereof) to be inconsistent with the requirements of Order 2003 and FERC precedent. *Nevada Power*, 182 FERC ¶ 61,051 at PP 5-6; *PacifiCorp*, 182 FERC ¶ 61,050 at PP 7-8. Both Nevada Power and PacifiCorp were given 60 days from the date of publication of the orders in the Federal Register to "show cause why" their LGIPs remain just and reasonable, and not unduly discriminatory or preferential, or alternatively to explain what changes to the LGIP would remedy FERC's identified concerns. Interested parties may respond within 21 days of the utilities' filings.

On January 27, 2023, FERC accepted the MISO Transmission Owner's proposal to eliminate all charges under Schedule 2 of the MISO open access transmission tariff for the provision of reactive power within the standard power factor range (0.95 leading to 0.95 lagging). *Order on Tariff Revisions*, *Midcontinent Independent System Operator*, *Inc*., 182 FERC ¶ 61,033 (2023) (*Order*). FERC reasoned that under Order 2003-A, if a Transmission Provider (TP) pays itself or an affiliated generator for reactive power within the standard power factor range, then the "comparability principle" requires that unaffiliated generators also be compensated for reactive power within the standard range. However, with the elimination of TP compensation for reactive power capability, independent generators are no longer entitled to such compensation. *Id.* at P 52 & n.185. The *Order* dismissed the argument that elimination of reactive power capability compensation would adversely impact system reliability, finding that generators in MISO will still be required to provide reactive power within the standard power factor range as a condition to interconnection. The *Order* was silent regarding the independent generators' alternative proposal of eliminating compensation on a prospective basis while giving effect to the many dozens of settlements reached under FERC's prior practice of setting reactive power compensation cases for hearing. Nor did FERC address how its elimination of reactive power capability compensation in MISO will impact its generic rulemaking regarding the methodology for compensation pending in Docket No. RM22-2.

On February 21, 2023, FERC rejected as moot a proposed rate schedule for the provision of Reactive Service under Schedule 2 of the MISO OATT. *Goose Creek Wind. LLC,* 182 FERC ¶ 61,111 (2023). Goose Creek Wind, LLC (Goose Creek) filed its proposed rate schedule for Reactive Service on November 23, 2022, under the provisions of MISO's then-effective Schedule 2 of the OATT. However, a week later, on November 30, 2022, the MISO Transmission Owners proposed to eliminate all charges under Schedule 2 for the provision of Reactive Service, which proposal FERC accepted, effective December 1, 2022. *Order*, 182 FERC ¶ 61,033. As a result, Goose Creek's filing for compensation of Reactive Service was rejected as moot by FERC.

Also on February 21, 2023, FERC instituted a Section 206 proceeding to investigate the continued justness and reasonableness of several existing Reactive Service rate schedules that were previously approved by FERC under Schedule 2 of the PJM OATT. *Flemington Solar, LLC*, 182 FERC ¶ 61,110 (2023). The filing parties each had submitted informational filings to notify FERC of a proposed transfer of upstream ownership of the facilities, including the Reactive Service rate schedules, and to request waiver of PJM's 90-day prior notice requirement under Schedule 2. While FERC granted the requested waiver, it also found, based on concerns raised by the filing parties' responses to a FERC staff Deficiency Letter, that the rate schedules may no longer be just and reasonable. *Id*. at P 23. FERC specifically noted, among other issues, that the test data supplied by the filing parties showed a substantial degradation of reactive power as compared to the facilities' nameplate capacity used to establish Reactive Service rates. *Id.* at P 23 n.35. Accordingly, FERC set the matter for hearing and settlement procedures and established a refund effective date.

U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION (FHWA)

On February 15, the FHWA announced the issuance of its minimum program standards applicable to federally funded EV charging infrastructure under the National Electric Vehicle Infrastructure (NEVI) Formula Program. Under this program, $2.5 billion in funding will be administered on a statewide basis to support the development of EV charging infrastructure along designated fuel corridors. The FHWA established minimum standards and program requirements applicable to charging stations that receive NEVI Program funding, which standards include minimum power levels applicable to charging infrastructure (150 kW for

DCFC stations), contactless payment standards, and a minimum uptime standard of greater than 97% port reliability. The NEVI Standards and Requirements Final Rule appeared in the Federal Register on February 28, and is available here. 23 C.F.R. pt. 680.