

**REGULATORY UPDATE FOR FEBRUARY 7, 2023  
(WEEK OF JANUARY 30, 2023)**

**CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)**

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

None.

Voting Meetings

The CPUC held a voting meeting on February 2, 2023. The agenda included the following transportation and energy-related items.

Item 3. R.12-12-011. (Rulemaking to Address Ridesharing and Passenger Carrier Service.) This [decision](#) ends the presumption of confidentiality for the submission of Transportation Network Companies' (TNCs) Annual Reports and requires TNCs to submit their Annual Reports for the years 2014-2019 with limited redactions for information protected on privacy grounds, and denies requests to treat the remaining trip data as private, trade secret-protected information. **Held to February 23, 2023 voting meeting.**

Item 5. Resolution No. L-618. This [Resolution](#) would affirm the determinations made by the CPUC's Legal Division staff to withhold certain records relating to TNCs in response to public records requests, but would also direct staff to produce "reasonably segregable portions of emails [that were withheld] that should have been produced." **Held to February 23, 2023 voting meeting.**

Item 10. R.13-11-005. (Energy Efficiency Rulemaking.) This [decision](#) addresses several issues related to load-serving entities' energy efficiency portfolios, including improvements to the third-party solicitation process, use of strategic energy management approaches, governance and oversight of the CPUC's database tools, and data sharing protocols for CPUC-authorized energy efficiency programs. **Signed, D.23-02-002.**

Item 13. R.19-01-011. (Building Decarbonization.) This decision addresses Assembly Bill (AB) 179 implementation authorizing additional funding for the Technology and Equipment and Clean Heating (TECH) Initiative. The decision moves \$50 million from the CPUC's budget to the Building Decarbonization Pilot Program Balancing Account for TECH Initiative operations held by Southern California Edison and allows the \$50 million to be used on a statewide basis, consistent with AB 179. **Signed, D.23-02-005.**

---

<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.

Item 14. I.17-02-002. (Aliso Canyon Investigation.) This decision extends the statutory deadline for the completion of this proceeding, which is investigating the feasibility of minimizing or eliminating the use of the Aliso Canyon natural gas storage facility pursuant to Senate Bill (SB) 380, until November 10, 2023. **Signed, D.23-02-006.**

Item 24. R.11-03-012, R.14-03-003. (Rulemaking to Address Greenhouse Gas Emissions.) This [decision](#) directs the investor-owned utilities to apply, as soon as practicable, the electric and gas climate credits that would otherwise be applied to their customers' bills in April 2023 to mitigate near-term spikes in customers' utility bills. **Signed, D.23-02-014.**

Item 28. A.20-09-019. This [decision](#) grants Pacific Gas and Electric Company (PG&E) the authority to recover incremental expenses recorded in (1) the Fire Hazard Prevention Memorandum Account, (2) the Fire Risk Mitigation Memorandum Account, (3) the Wildfire Mitigation Plan Memorandum Account, (4) the Catastrophic Events Memorandum Account, (5) the Land Conservation Plan Implementation Account, and (6) the Residential Rate Reform Memorandum Account. This decision denies the Joint Motion for Approval of the Settlement Agreement filed by PG&E and Cal Advocates, and approves a total authorized recovery of \$1,208,909,522. **Withdrawn.**

Item 28A. A.20-09-019. (Wildfire Mitigation/Catastrophic Event Expenditures.) This presents an [alternate decision](#) from President Alice Reynolds. The alternate decision approves a contested Settlement Agreement, subject to modification reducing the settled amount by \$937,500 for Goodwill donations recorded as Operations and Maintenance in the Wildfire Mitigation Plan Memorandum Account. This modification results in an approved total revenue requirement of \$1,036,961,500 for PG&E's operational and capital expenditures. **Signed, D.23-02-017.**

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

### Stakeholder Initiatives: Upcoming Meetings and Deadlines

**Day-Ahead Market Enhancements.** On January 23, 2023, the CAISO announced that it is deferring the decision on the Day-Ahead Market Enhancements (DAME) final proposal to a future joint CAISO Board of Governors and Western Energy Imbalance Market meeting. The CAISO states that this extension will allow it to further consider stakeholder feedback that included potential design alternatives before bringing a final design forward for a joint governance decision. The DAME initiative will remain on the February 1, 2023 meeting agenda as an informational briefing item only. The final proposal may be found [here](#).

**2024 Flexible Capacity Needs Assessment.** The CAISO will hold a public stakeholder call on February 7, 2023, to discuss the Draft 2024 Flexible Capacity Needs Assessment. Written comments on the draft assessment are due by February 21, 2023.

**BPM Change Management.** The CAISO announced the posting and beginning of stakeholder review periods for new Proposed Revision Requests (PRRs) to Business Practice Manuals (BPMs), the California ISO recommendations, and final decisions on previously

submitted PRRs. The ISO has posted updated versions of BPMs on its BPM change management website.

**Minimum State of Charge Extension.** The CAISO will hold a public stakeholder call on February 9, 2023 to discuss the straw proposal for the minimum state of charge extension initiative. Written comments on the straw proposal are due February 23, 2023.

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

### Integrated Energy Policy Report (IEPR)

2022 IEPR: On February 2, 2023, the CEC released a [Notice of Availability and Request for Comments](#) on the [Final 2022 IEPR Update](#). Written comments are due by 5:00 p.m. PT on February 23, 2023.

2023 IEPR: On February 9, 2023 at 1:00 p.m. PT CEC Staff will hold a remote access workshop to solicit comments on proposed data collection and analysis for the 2023 Integrated Energy Policy Report relating to gas demand and rate forecasting information forms and instructions. Additional information including a meeting schedule and related documents is available [here](#).

### Offshore Wind – AB 525

The CEC held a remote access [workshop](#) on December 19, 2022 to present the draft report on Preliminary Assessment of the Economic Benefits of Offshore Wind Related to Seaport Investments and Workforce Needs and Standards (Draft Report). On December 15, 2022, the CEC also [released](#) the draft Conceptual Permitting Roadmap for offshore wind. On December 29, 2022, the CEC extended the comment period on the Draft Report from January 9, 2023 to February 8, 2023.

### CEC Business Meetings

The next CEC Business Meeting is [scheduled](#) for February 15, 2023.

## **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](#) (Notice) 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 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 February 13, 2023, CARB will hold a [public workshop](#) to discuss proposed changes to the draft language of the proposed [Advanced Clean Fleets](#) regulation. The Board heard the draft regulation on October 27, 2022 and directed staff to discuss and make modifications to the proposed regulation to address stakeholder concerns. At the workshop, staff will discuss the proposed changes to the draft regulatory language and solicit feedback from stakeholders on the changes. Registration is available [here](#).

On February 21, 2023, the [Methane Task Force](#), composed of the California Department of Conservation's Geologic Energy Management Division and CARB, and their umbrella agencies the California Natural Resources Agency and the California Environmental Protection Agency, will host the third Task Force public meeting to provide updates on current and upcoming efforts at the agencies to address methane emissions, including an update on CalGEM's Orphan Well Abandonment Program and Prioritization Methodology and CARB's Satellite Monitoring Partnership. Registration for the virtual meeting is available [here](#).

CARB will hold its next Board meeting on February 23-24, 2023. At the meeting, the Board conduct a public meeting to consider recommendations for additional communities for selection for the AB 617 [Community Air Protection Program](#) and receive an update from staff on the annual AB 617 Implementation Memorandum.

### Opportunities for Public Comment

On January 20, 2023, CARB held a [public workshop](#) on potential changes to the California Oil and Gas Methane Regulation. Comments on the draft changes to the regulation may be provided to CARB [here](#) on or before February 10, 2023.

Comments on the recommendations for communities for selection for participation in the AB 617 [Community Air Protection Program](#) may be submitted to CARB [here](#) on or before February 13, 2023, or provided at the February 23-24, 2023 hearing.

## **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION (WUTC)**

On January 12, 2023, the WUTC issued notice that it is postponing activities in the docket of U-210590 (Proceedings to Develop a Policy Statement Addressing Alternatives to Traditional Cost of Service Ratemaking) until April 2023. The policy statement is expected to define regulatory goals, desired outcomes, design principles, and metrics for alternative ratemaking. Until the process restarts, stakeholders may continue to submit comments. The full statement may be found [here](#).

## **MINNESOTA**

### Minnesota Court of Appeals February 6, 2023 Order re *In re City of Cohasset's Decision on the Need for an Environmental Impact Statement for the Proposed Frontier Project*

On February 6, 2023, the Minnesota Court of Appeals (Court) issued an [opinion](#) reversing and remanding the previous determination of the City of Cohasset, Minnesota (City) regarding Huber Engineered Woods LLC's (Huber) proposed Frontier Project. By way of background, the Frontier Project is a planned oriented-strand-board manufacturing facility that will occupy several acres in the City. If built, the proposed facility will occupy land near Minnesota Power's Boswell Energy Center, which is one mile east of the Leech Lake Reservation. During the 2021 legislative session, the state legislature exempted the facility from an environmental impact statement (EIS) contingent upon receipt of financial incentives from two Minnesota agencies. Throughout the remainder of 2021 and into 2022 interested stakeholders provided comments on the Frontier Project. The City was designated as the responsible governmental unit, responsible for determining the scope of environmental review. After delaying the initial process, the City concluded that the Frontier Project did not exceed any of the mandatory EIS thresholds and did not have the potential for significant environmental effects that would trigger an EIS. The Leech Lake Band of Ojibwe (Leech Lake) appealed.

The issue before the Court was whether an EIS is required based on the Frontier Project triggering a mandatory EIS or because the project has the potential to cause significant environmental impacts. The Court distilled its analysis down to two issues in its opinion: (1) was the City's determination that an EIS was not required based upon legal error and unsupported by substantial evidence? and (2) was the City's conclusion that the Frontier Project does not have the potential for significant environmental effects supported by substantial evidence?

With respect to the first issue, Leech Lake challenged the City's determination that an EIS was not required under Minn. R. 4410.4400, subp. 20, which requires an EIS when a project will eliminate a public water or public waters wetland. The Court's analysis turned upon the definition of "eliminate." The Court determined that if after a project a remaining wetland will no longer qualify as the same type as it did previously the project/action will eliminate a public waters wetland and therefore require an EIS. The Court next turned analyzed whether there was substantial evidence to support the City's determination that no public wetlands will be eliminated. The Court determined that the City's conclusory statements were insufficient to meet the substantial evidence standard. Additionally, the Court found that Leech Lake cited

evidence from both the Minnesota Pollution Control Agency and Federal Environmental Protection Agency outlining how development could, indeed, impact the wetlands. Based on these determinations, the Court reversed the City's initial decision and remanded to the City to issue a new EIS determination.

The Court then addressed the second issue analyzing whether the City properly determined that the Frontier Project does not have the potential for significant environmental effects that would also require an EIS. First, the Court analyzed Leech Lake's claim that the City's determination that wetlands removal during construction of the facility will not have significant environmental effects. Leech Lake's comments articulated concerns about the downstream impacts on a wild-rice bed, and that Huber's proposed mitigation efforts would be inadequate to protect these concerns. Both the Minnesota Pollution Control Agency and Department of Natural Resources also commented on the wetlands issue. Ultimately, the Court determined that the City's mitigation measures and arguments lacked scientific analysis and were insufficient. On that basis, the Court also reversed the City on the issue of potential significant environmental effects pertaining to wetlands issues.

Leech Lake also asserted that substantial evidence did not support the City's determinations that both air emissions from the facility and the planned timber harvesting would not have the potential for significant environmental effects. However, in analyzing these issues, the Court found that the City's determinations were supported by substantial evidence in the record, and that Leech Lake failed to satisfy its burden of proof to warrant reversal on these two aspects of the appeal. Notwithstanding these affirmations, the Court's order remands this matter to the City for further review.

Judge Johnson concurred in part and dissented in part. Judge Johnson did not agree with the majority's conclusion that an EIS is required based upon the elimination of public waters or public waters wetlands pursuant to Minn. R. 4410.4400, subp. 20. However, Judge Johnson concurred with the majority's analysis with respect to potential significant environmental effects to the wetlands, and therefore joined the majority's decision to remand the case to the City for further consideration of the potential for environmental effects resulting from the Frontier Project's wetlands removal plan.

The City/Huber now have 30 days to petition the Minnesota Supreme Court for further review otherwise the matter will be remanded to the City. Stoel Rives will continue to provide updates on this matter.

#### Minnesota Public Utilities Commission (MPUC) February 9, 2023 Agenda Meeting

On February 9, 2023, the MPUC will meet to address the formal complaint submitted by Novel Energy against Xcel Energy. The MPUC previously noticed a hearing for Xcel Energy's petition for approval of service to a new large customer; however, that item was removed from the February 9, 2023 agenda meeting.

### Minnesota Legislature

On February 3, 2023, the Minnesota legislature passed a [bill](#) that will require all electric utilities in the state to generate or procure 100% carbon-free electricity by 2040. The bill was carried by the new Democratic-Farmer-Labor Party majority in both houses, and is expected to be signed by Governor Walz in the coming days.

The bill defines which generation resources are carbon-free, including solar wind, limited hydroelectric, hydrogen, and biomass. The bill also provides utilities with potential off-ramps for compliance, which will allow from deviation from the 100% standard based on issues such as affordability or reliability. Although these off-ramps are not new, recent concerns on rates for some customer classes being well above the national average (see recent media coverage [here](#)), as well as the bill's potential impact on existing plans for natural gas plants proposed for reliability purposes (for discussion of these matters see recent Integrated Resource Planning Orders for both [Xcel](#) and [Minnesota Power](#)), there is the potential for the off-ramps to receive newfound consideration. Additionally, the bill seeks to address other social concerns, including, but not limited to, local job creation, low-income customer protections, and host community preferences. The bill also provisionally adopts the U.S. Environmental Protection Agency's (EPA) draft cost of greenhouse gas emissions valuations, released in September 2022, with a mandate to adopt the final estimates from EPA when those estimates become available, as well as any subsequent adjustments by the federal Interagency Working Group that are in excess of MPUC's adopted estimates. Finally, the bill creates utility reporting requirements to track compliance and rate impacts.

While hailed as a success by many, there remains a degree of uncertainty surrounding the legislation. For example, a neighboring state continues to explore litigation based on the premise that the new legislation may interfere or regulate commerce beyond Minnesota. Notwithstanding this development, Minnesota remains poised to enact this legislation with an imminent signature by the Governor.

### **OREGON DEPARTMENT OF ENERGY**

The Oregon Department of Energy has opened applications for the second round of the Community Renewable Energy Grant Program. Grants are expected to total \$12 million, and the program is open to Oregon Tribes, public bodies, and consumer-owned utilities. The application period closes on February 12, 2023, and information can be found [here](#).

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

On Friday, January 20, the OPUC issued Order 23-005 in the docket 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 includes 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 that obviates the need for network upgrades otherwise identified in a NRIS report.

On February 9, 2023 at 9:30 a.m. PT the OPUC will hold a special rulemaking deliberation meeting in the docket of AR 631 (re Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facilities Standard Contracts). Final comments may be submitted by February 10, 2023. Information about the proposed rules can be found [here](#) and meeting access information is available [here](#).

On January 12, 2023, the OPUC held a public meeting in the docket AR 631 (re Procedures, Terms, & Conditions Associated with a Qualified Facility Standard Contracts). The proposed changes, including to the cost allocation of new infrastructure, the procurement of power purchase agreements, and other requirements, can be found [here](#). Final comments are due by 3:00 p.m. PT on February 10, 2023.

### **ILLINOIS COMMERCE COMMISSION**

A Proposed Order from the Assigned ALJ regarding the Beneficial Electrification Plan (BE Plan) filed by Ameren Illinois Company is expected to issue on or around February 10, 2023, and a Proposed Order from the Assigned ALJ regarding the BE Plan filed by Commonwealth Edison Company is expected to issue on or around February 17, 2023.

### **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 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). 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. *Order* 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 the 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.