REGULATORY UPDATE FOR JANUARY 3, 2022 (WEEK OF DECEMBER 27, 2021)

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC or COMMISSION)

Commissioner John Reynolds Appointed to CPUC

Commissioner John Reynolds was appointed to CPUC by Governor Newsom on December 23, 2021. According to the short biography on the CPUC website, Commissioner Reynolds had previously served as Managing Counsel at Cruise LLC since 2019. Prior to that, he held multiple positions at the CPUC, including Interim Chief of Staff to Commissioner Genevieve Shiroma in 2018, Advisor to former Commissioner Carla J. Peterman from 2015 to 2018, and Public Utilities Counsel from 2013 to 2015. He was Associate at De la Pena & Holiday LLP in 2012. Commissioner Reynolds earned a Juris Doctor degree from the University of California, Hastings College of Law.

New Proposed Decisions and Draft Resolutions[1]

None.

Workshops and Hearings

R.13-11-005 (Energy Efficiency). Workshop scheduled for 9:30 a.m. on January 4, 2022.

R.19-11-009 (Resource Adequacy). Workshop on hedging components scheduled for 10:00 a.m. on January 5, 2022. A second workshop on January 19, 2022 will cover UCAP and multi-year compliance issues.

Voting Meetings

The Commission's next voting meeting will be held on January 13, 2022. The agenda is scheduled to be published on January 3, 2022.

CALIFORNIA ISO (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

EIM Resource Sufficiency Evaluation Enhancements. The CAISO held a stakeholder call to discuss the revised draft final proposal for Phase 1 of the Energy Imbalance Market (EIM) Resource Sufficiency Evaluation Enhancements initiative on December 21, 2021. Comments on

[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.

the workshop materials and discussion are due on January 10, 2022.

Interconnection Process Enhancements 2021 Initiative. The CAISO held a public stakeholder call on December 13, 2021 to discuss the issue paper/straw proposal for the Interconnection Process Enhancements 2021 initiative. Comments are due January 3, 2022. For more information on the issue paper/straw proposal, see our Renewable + Law blog post here.

Energy Storage Enhancements Straw Proposal. The CAISO held a stakeholder call on December 14, 2021 to discuss the straw proposal for the Energy Storage Enhancements initiative. Comments are due January 12, 2022.

Reliability Demand Response Resource Bidding Enhancements. The CAISO held a stakeholder call on December 22, 2021 to discuss the revised straw proposal for the Reliability Demand Response Resource Bidding Enhancements initiative. Comments are due January 7, 2022.

Central Procurement Entity Implementation and RAAIM Settlement Modification. The California ISO will hold a public stakeholder call on January 6, 2022 to discuss the draft final proposal for the Central Procurement Entity Implementation and Resource Adequacy Availability Incentive Mechanism (RAAIM) Settlement Modification initiative. Written comments on the draft tariff language are due January 6, 2022 and on the draft final proposal on January 20, 2022.

Transmission Service and Market Scheduling Priorities Phase 1 Revised Draft Tariff Language. The California ISO has scheduled a stakeholder call on January 14, 2022 to review the revised draft tariff language for the Transmission Service and Market Scheduling Priorities Phase 1 initiative. Comments on the draft tariff language are due January 7, 2022.

CALIFORNIA ENERGY COMMISSION (CEC)

2021 Integrated Energy Policy Report (IEPR)

On December 7, 2021, the CEC published a Notice of Availability and Request for Comments on the Draft 2021 IEPR. Copies of the Notice and the Draft 2021 IEPR are available here. Note that only three of the four 2021 IEPR volumes have been released for public comment. Volume III will be released for public comment at a later date under a separate notice of availability. As set forth in the CEC's March 16, 2021 scoping order, the 2021 IEPR volumes cover the following:

- **Volume I** addresses actions needed to reduce GHGs related to the buildings in which Californians live and work, with an emphasis on energy efficiency. It also addresses reducing GHGs from the industrial and agricultural sectors.
- **Volume II** examines actions needed to increase the reliability and resiliency of California's energy system.
- **Volume III** looks at the evolving role of gas in California's energy system, both the importance in near-term reliability and the need for the system to evolve as California

works to achieve carbon neutrality—the point at which the removal of carbon pollution from the atmosphere equals or exceeds emissions—by 2045. This volume is not yet available for comment.

- **Volume IV** reports on California's energy demand outlook, including a forecast to 2035 and long-term energy demand scenarios to 2050. The analysis includes the electricity, gas, and transportation sectors.
- The **Appendix** evaluates the benefits of California's clean transportation system.

The CEC held over 20 workshops between February 2021 and December 16, 2021 on the topics identified in the scoping order. Written comments on the three volumes of the Draft 2021 IEPR were due on December 21, 2021. Comments received by the CEC are available here.

CEC Business Meetings

The next CEC Business Meeting is scheduled for January 26, 2022. In addition to the regular monthly Business Meeting, the CEC will hold a meeting on January 13, 2022 at 9:00 a.m. to discuss issues and topics related to the respective subject matter areas led by each commissioner. Officers of the CEC will also provide updates related to the administration and budget of the CEC for commissioner discussion. According to the meeting notice, the meeting is intended to facilitate communication between the commissioners in a public setting. No action will be taken on any item of business. The topics that will be discussed during the meeting include:

- Commissioner Discussion on Assigned Subject Matter Areas
- Administration of the Energy Commission
    - CEC Operations Overview
    - Budget
- Update on Data Efforts
- Update on Commission Offices
- Public Comment

Instructions regarding remote attendance at the January 13, 20022 meeting are set forth in the meeting notice.

CALIFORNIA AIR RESOURCES BOARD (ARB)

ARB is holding virtual public workshops as part of the Assembly Bill (AB) 32 Scoping Plan Update. Comments on the recent technical workshop on modeling land management scenarios for natural and working lands can be submitted here on or before January 5, 2022. Comments on the public workshop on building decarbonization can be submitted to ARB here on or before January 7, 2022. Recordings of past AB 32 Scoping Plan Update meetings and workshops are available here.

ARB held a recent workshop on potential future changes to the Low Carbon Fuel Standard program. Comments on the workshop can be submitted here on or before January 7, 2022.

ARB's next regular Board meeting will be held January 27-28, 2022. The agenda will be available here 10 days prior to the meeting.

MINNESOTA PUBLIC UTILITIES COMMISSION (MPUC)

January 6, 2022 Agenda Meeting

The MPUC will hold its first agenda meeting of 2022 at 10:00 a.m. on January 6, 2022. In the first hearing, the MPUC will consider the following four matters: (1) Great Plains Natural Gas Company's pending 2020 Conservation Improvement Program Tracker and Demand Side Management Incentive; (2) Northern States Power Company, dba Xcel Energy's pending Freeborn Wind site permitting matter; (3) Great River Energy's and Nexus Line, LLC's Petition to Transfer a portion of a site permit; and (4) Northern States Power Company, dba Xcel Energy's Petition for approval of certain Load Flexibility Pilot Programs.

MIDCONTINENT ISO (MISO)

Later this month, MISO's Planning Advisory Committee (PAC) will consider draft changes to the business practices for generator interconnection that address how interconnection customers and transmission owners go about adjusting "interim milestones" within generator interconnection agreements—those milestones that precede COD. To date, the process for adjusting such milestones has been ad hoc and used side letters between customers and utilities—something MISO generally stayed out of—but soon the PAC will consider a more official process for these changes. If approved they would become effective immediately

OREGON PUBLIC UTILITY COMMISSION (OPUC)

Oregon's Community Solar Program (CSP) – UM 1930

Last Wednesday, the OPUC approved the Wood River Solar project for pre-certification under Oregon's CSP. The project is approximately 360 kW and is located in City of Klamath in PacifiCorp's utility service territory. Further details on the project can be located here.

The same day, the OPUC issued Order 21-491 which granted a waiver of the CSP rule requiring that project managers execute the CSP purchase agreement with their local utility for the delivery of power and collection of on-bill charges for subscriptions. Instead, OPUC granted a waiver to seven projects in the CSP that allowed their respective project owners to counter sign the CSP purchase agreements. The final order can be located here.

OPUC Approves Portland General Electric's (PGE) Two-Meter Solution for New Net-Metering Customers – UM 2099

Last Wednesday, the OPUC issued Order 21-493 that approved PGE's continued use of the temporary two-meter practice for new metering customers throughout 2022. PGE's two-meter practice applies to future net-metering applicants who are located near a feeder with limited generation. The second meter performs remote disconnection for the net-metering project during periods of high generation and low demand on the feeder. This practice was temporarily approved via Order 20-402, and was extended this week for new 2022 net-metering applicants. The final order can be located here.

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO)

NYISO Proposes Revisions to Market Power Mitigation Measures

On December 22, 2021, NYISO submitted amendments to the Market Power Mitigation measures that are set forth in Section 23 of the Market Administration and Control Area Services Tariff (Services Tariff). The Services Tariff requires NYISO to monitor for and mitigate uneconomic production and uneconomic withdrawal. Uneconomic production is increasing the output of an electric facility to levels that would otherwise be uneconomic in order to cause and obtain benefits from a transmission constraint. Uneconomic withdrawal is energy withdrawn at a price that is uneconomic for the withdrawal-eligible generator and that causes or contributes to transmission congestion. NYISO imposes mitigation if conduct is detected that (i) meets criteria and (ii) causes a market impact that exceeds the thresholds, both as specified in the Services Tariff.

Working with Potomac Economics and various stakeholders, NYISO developed a proposal to modify mitigation measures applicable to uneconomic production and uneconomic withdrawal. The proposal:

1. seeks to eliminate subjectivity by redefining uneconomic production and uneconomic withdrawal. NYISO argues that this will align with the objective analysis that determines whether the party's conduct violated the relevant conduct threshold (dollars or megawatts) and caused a market impact (a change to Locational Based Marginal Price revenues or guarantee payments), in order to impose mitigation;
2. in response to the increase in intermittent power resources, such as renewable wind and solar facilities, in the New York power system, modifies the applicable conduct and impact tests that trigger mitigation measures; and
3. amends the applicable mitigation measures to more thoroughly address guarantee payments to market parties and affiliates that result from uneconomic production or uneconomic withdrawal.

Comments on the filing are due by January 12, 2022.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

FERC has extended the waiver of its requirement that filings be notarized or supported by sworn declarations until March 31, 2022. FERC also extended the waiver of its requirements to hold in-person meetings or submit notarized documents for open access transmission tariffs.

Market-Based Rate (MBR) Database: Just over one month left! The deadline for baseline submissions to the new MBR relational database is February 1, 2022. Baseline submissions are required for all entities with MBR authorization.

PJM's Reserve Market Rules: On December 22, 2021, FERC reversed portions of a May 2020 decision and ordered PJM to revise its reserve market rules—specifically its operating reserve demand curves—within 60 days from the decision. FERC's decision will also cause further delays to PJM's upcoming capacity auctions; FERC ordered PJM to file a new auction schedule within 30 days of the decision.

Reactive Power Capability Compensation: On November 18, 2021, FERC issued a Notice of Inquiry (NOI) seeking comments on reactive power capability compensation and market design. (Link to NOI here.) Reactive power is a critical component of the bulk electric system and over the last decade has become a key component in cost recovery for renewable resources including solar and wind facilities. In 1999, FERC approved a method proposed by American Electric Power Service Corporation (AEP) for allocating costs for a synchronous generator between real and reactive power capability. This so-called AEP methodology is now recommended by FERC when an entity seeks to recover reactive power capability costs. In the NOI, FERC is performing a holistic review of the applicability of the AEP methodology to renewable resources.

Initial Comments are due January 31, 2022, and Reply Comments are due February 28, 2022. Please see our related blog post for details regarding this NOI.

DC Circuit Reverses FERC on Cost Recovery for Certain PATH Abandonment Costs: On December 28, 2021, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) granted the petition for review filed by pro se applicants and ruled that the developers of the now-abandoned Potomac-Appalachian Transmission Highline (PATH) transmission project must refund more than $6 million spent on "Expenditures for Certain Civic, Political and Related Activities."

The PATH project, approved by PJM in 2007 to address reliability concerns, was a 765-kV "coal by wire" project running from a coal generator in West Virginia to Maryland. From 2009 through 2011, PATH spent more than $6 million on various advertisements and lobbying of public officials, to support its applications for Certificates of Public Convenience and Necessity. In 2012, PJM determined that there was no longer a projected reliability shortfall and canceled the PATH project. To incentivize investment in energy transmission infrastructure, FERC rules generally authorize public utilities to recover qualifying investments if an approved project must be abandoned for reasons beyond the utility's control. PATH made FERC filings to recover $121 million in abandonment costs, including the $6 million at issue in this proceeding.

At issue in the proceeding was the accounting treatment for the $6 million. Expenses booked into Account 426.4, "Expenditures for Certain Civic, Political and Related Activities," are not recoverable as abandonment costs. PATH booked the $6 million in accounts designated for "Outside Services Employed" and "General Advertising Expenses," which are both recoverable as abandonment costs. In 2017, FERC rejected recovery of these expenses; however, it reversed the ruling in January 2020. After denying rehearing, the pro se applicants filed a petition with the DC Circuit. The DC Circuit reviewed the statutory history of Account 426.4 and found that it includes "expenditures aimed at indirect as well as direct forms of influence of public officials." The DC Circuit agreed with the petitioners that PATH's own internal statements confirmed that the spending was intended to indirectly influence the decisions of public officials. Accordingly, the DC Circuit held that the expenses belonged in Account 426.4 for "Expenditures for Certain Civic, Political and Related Activities," which excludes them from being passed to ratepayers. The DC Circuit vacated FERC's opinions and remanded the case to FERC.