

## REGULATORY UPDATE FOR MAY 10 (WEEK OF MAY 3)

### CALIFORNIA PUBLIC UTILITIES COMMISSION

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

Draft Resolution E-5150. The Avoided Cost Calculator (ACC) is used in cost-effectiveness analysis of distributed energy resource programs and policies. D.16-06-007 adopted annual updates to the ACC, and D.19-05-019 adopted a schedule for both major and minor changes to the ACC, with minor changes occurring in odd-numbered years by staff-initiated resolution. This resolution provides the final 2021 ACC and related documentation, consistent with policies adopted in D.16-06-007 and D.19-05-019. The documentation provides additional detail about this update, including a comparison of the 2020 and 2021 ACC outputs. This resolution describes the data and minor modeling updates to the 2021 ACC.

#### Voting Meetings

The CPUC's next voting meeting is scheduled for May 20, 2021. The agenda is scheduled to be released on May 10, 2021.

The CPUC held a voting meeting on May 6, 2021. The following items were included on the agenda.

Item 4. Draft Resolution E-5131. This resolution approves utility proposals to modify customer bill statements to include the Power Charge Indifference Adjustment (PCIA) as a line item on utility-bundled customer bills, with modifications to the proposed definition of PCIA. It also approves changes to Pacific Gas and Electric Company's (PG&E) Cost Responsibility tariff and to the respective tariffs of PG&E, Southern California Edison (SCE), and San Diego Gas & Electric Company that will clarify and explain customer cost responsibility for the PCIA.  
**Approved.**

Item 7. Draft Resolution ALJ-406. This resolution denies San José Clean Energy's (SJCE) appeal of Citation No. E-4195-0074 by the Commission's Consumer Protection and Enforcement Division. Citation No. E-4195-0074 cites and fines SJCE for failing to procure certain of its 2020 year-ahead system resource adequacy (RA) obligations. The resolution finds, among other conclusions, that SJCE rejected bids that would have met its system RA obligations, and did so deliberately on the basis of market conditions, notwithstanding the Commission's

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<sup>1</sup> Per California Public Regulatory Commission (CPUC or Commission) 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.

express rejection of a waiver process based solely on market conditions. SJCE must pay the penalty of \$1,116,149.48 within 45 days from the date of issuance of the resolution. **Held to 5/20.**

Item 8. Draft Resolution E-5142. This resolution approves five contracts for incremental system reliability resources that SCE procured through the Standard Track of its System Reliability Request for Offers solicitation in 2020. SCE undertook this procurement to meet its 2022 and 2023 incremental procurement requirements pursuant to D.19-11-016 in the Integrated Resource Plan Rulemaking, 16-02-007. This resolution approves the contracts without modification. The approved contracts are:

Seller/Project	Technology Type	Capacity (MW)	Location and DAC Designation	Contract Type	Initial Delivery Date	Contract Term
Sonoran West Solar Holdings, LLC/ Crimson	IFOM Lithium-Ion Battery	200	Blythe, CA (not in DAC)	RA with Put Options	8/1/2022	14 years 10 months
Silver Peak Solar, LLC/Eldorado Valley	IFOM Lithium-Ion Battery	60	Boulder City, NV (DAC adjacent)	Toll	8/1/2022	10 years
Desert Peak Energy Storage I, LLC/Desert Peak	IFOM Lithium-Ion Battery	325	Palm Springs, CA (not in DAC)	Toll	8/1/2023	14 years 10 months
Sunrun Inc.	BTM Energy Storage-Demand Response	4.5	SCE Territory (not in DAC)	Demand Response	8/1/2023	10 years
Sunrun Inc. DAC Contract	BTM Energy Storage-Demand Response	0.5	SCE Territory (in DACs)	Demand Response	8/1/2023	10 years

**Approved.**

Item 14. Draft Resolution E-5128. This resolution approves PacifiCorp’s Renewable Energy Credit (REC) Purchase and Sale Agreement (Agreement) with Escalante Solar III, LLC (Escalante), executed in May 2020. The Agreement is for Portfolio Content Category 3 RECs commencing from the effective date of the contract and continuing for a 10-year term. The Escalante Solar III facility is owned by Escalante and located in Milford, Utah, in the PacifiCorp East Control Area. It began commercial operations on August 17, 2016 and has been certified as RPS-eligible since October 12, 2017. PacifiCorp is already procuring the energy associated with the RECs from Escalante Solar III under a qualifying facility contract and will continue to procure the energy separately under the same contract. **Approved.**

Item 29. R.17-06-026 (PCIA). This Phase 2 decision (a) removes the cap and trigger for PCIA rate increases, (b) authorizes new Voluntary Allocation, Market Offer, and Request for Information processes for Renewables Portfolio Standard contracts subject to the PCIA, (c) approves a process for increasing transparency of investor-owned utilities' RA resources, and (d) authorizes SCE to continue to apply the approach to greenhouse gas (GHG) free resources approved in Resolution E-5095 through December 31, 2023. This proceeding remains open to consider (i) Phase 2 issues relating to Energy Resource Recovery Account proceedings and (ii) whether GHG-free resources are undervalued in the PCIA methodology, and if so, the appropriate way to address this problem. **Held to 5/20.**

Item 30. A.21-01-004 (PG&E Recovery Bonds). This Financing Order grants PG&E's application for authority under Division 1, Part 1, Chapter 4 of the California Public Utilities Code (Article 5.8) to issue \$7.5 billion of bonds to fund costs and expenses related to 2017 North Bay Wildfires and other financing costs. **Signed, D.21-05-015.**

### **CALIFORNIA INDEPENDENT SYSTEM OPERATOR**

#### Board of Governors/Western EIM Governing Body

At a joint meeting of the ISO Board of Governors and the Western EIM Governing Body on May 6, the two bodies approved part one of the EIM Governance Review Committee's proposal for refinements to the real-time energy market's governing process. The refinements:

- Elevate the representative for the public interest and consumer advocate groups to a voting member of the EIM Governing Body nominating committee;
- Allow the Regional Issues Forum to address or offer opinions on issues that are part of an ongoing stakeholder process, revise the sector definitions, and memorialize a standing agenda item for EIM Governing Body meetings;
- Recommend that the Body of State Regulators consider adding non-voting positions for federal power market agencies and consumer-owned utilities that participate in the Western EIM; and
- Enhance the Western EIM Governing Body's role in market monitoring and market expertise, including shared authority with the ISO Board of Governors to approve Market Surveillance Committee members.

The Governance Review Committee is continuing to address stakeholder comments related to a proposal for joint authority between the ISO Board of Governors and the Western EIM Governing Body on certain rules related to the real-time energy market, with a second package of proposed reforms to be presented within the next few months.

### Stakeholder Initiatives: Upcoming Meetings and Deadlines

**Los Angeles Basin Black Start Service Request for Proposals.** The California Independent System Operator (California ISO) will hold a stakeholder call on May 17, 2021 to discuss the competitive solicitation process for the Los Angeles Basin Black Start Service request for proposals. The discussion will include technical, commercial, and contractual requirements for incremental black start resources.

**Hybrid Resources – Aggregate Capability Constraint for Co-Located Resources: Draft Tariff Language.** The California ISO will hold a stakeholder call on May 11, 2021 to discuss the draft tariff language for the Hybrid Resources Aggregate Capability Constraint for Co-Located Resources.

**New Initiative: Energy Storage Enhancements.** The California ISO has launched a new initiative called Energy Storage Enhancements. Comments are due May 19, 2021.

**2022 Draft Policy Initiatives Catalog Posted.** The California ISO has posted its 2022 Draft Policy Initiatives Catalog to its website. Stakeholder written comments on the draft catalog are due May 21, 2021.

**Proposed Revision Requests to Business Practice Manuals.** The California ISO has posted, and the stakeholder review period has begun for new Proposed Revision Requests (PRRs) to Business Practice Manuals (BPM), the California ISO recommendations, and final decisions on previously submitted PRRs. The ISO posted updated versions of BPM on its BPM change management website.

**Maximum Import Capability Enhancements: Straw Proposal.** The California ISO will hold a public stakeholder call on May 13, 2021, to discuss the straw proposal for the Maximum Import Capability Enhancements initiative. Comments are due May 27.

**20-Year Transmission Outlook.** The California ISO has launched a new effort called the 20-Year Transmission Outlook, which will be in parallel to the 2021-2022 transmission planning process. The California ISO has scheduled a public stakeholder call on May 14, 2021 to discuss this effort. Written comments are due May 28, 2021.

### **CALIFORNIA ENERGY COMMISSION**

The next CEC Business Meeting is scheduled for May 12, 2021. The agenda and remote participation instruction are available [here](#).

### **CALIFORNIA AIR RESOURCES BOARD**

The California Air Resources Board (CARB) is accepting comments on the proposed [Clean Miles Standard](#) (Standard), which will be considered by the Board at its May 20, 2021 meeting. Comments can be submitted electronically [here](#) on or before May 17, 2021. The Standard would set electrification and GHG emissions targets for the light-duty fleets of transportation network

companies like Uber and Lyft. The electrification target, measured by the percentage of electric vehicle miles traveled (eVMT), would commence in 2023 with a target of 2% eVMT and increase to 90% eVMT in 2030. The GHG emissions target would use a metric of grams of CO<sub>2</sub> per passenger-mile-traveled (g CO<sub>2</sub>/PMT), and also encourage a reduction in vehicle miles traveled (VMT) relative to passenger miles traveled. The Standard would require a transportation network company to meet a GHG target of 252 g CO<sub>2</sub>/PMT in 2023, decreasing to 0 g CO<sub>2</sub>/PMT in 2030. Transportation network companies would have various options to reduce company-wide GHG emissions to the annual targets, including improving fleet-wide fuel efficiency, reducing VMT by increasing shared rides, reducing VMT by reducing deadhead miles (i.e., those miles driven without a passenger), and earning CO<sub>2</sub> credits by investing in active transportation infrastructure or by providing integrated fare services to connect riders to mass transit. The Standard will help California meet the statewide mandate to reduce GHG emissions 40% below 1990 levels by 2030. The Standard will be implemented by the CPUC.

CARB has issued a [notice for public comment](#) on proposed modifications to the [Regulation for Reducing Sulfur Hexafluoride Emissions from Gas Insulated Switchgear](#). Amendments to the Regulation were adopted by CARB on September 24, 2020, subject to additional conforming modifications to the Regulation. Comments on the proposed conforming modifications are due May 26, 2021. The amendments expanded the scope of the Regulation to all insulating gases with a global warming potential greater than one, established a timeline for phasing out acquisition of sulfur hexafluoride gas-insulated equipment, and revised reporting requirements. Comments on the proposed conforming modifications can be submitted [here](#).

Electrify America's [ZEV Investment Plan](#) for Cycle 3 is available for public comment. Under Volkswagen's settlement with California for the illegal sale of diesel vehicles equipped with emissions defeat devices, the Volkswagen subsidiary Electrify America is [investing \\$800 million](#) in ZEV infrastructure, education and awareness, and access. The money is being invested in four cycles, the first two of which are already underway. The Investment Plan presented by Electrify America details the \$200 million budget, priorities, and actions for Cycle 3, running from January 2022 to June 2024. Comments on the Plan are due March 28 and can be submitted [here](#).

The agenda for CARB's May 20, 2021 Board meeting is available [here](#).

## **MINNESOTA PUBLIC UTILITIES COMMISSION**

### Minnesota Power Petition re Solar Projects

On Thursday, May 6, 2021, the Minnesota Public Utilities Commission (Commission) met to consider Minnesota Power's pending petition to accelerate three solar projects in its service territory. By way of background, the Commission's order in Minnesota Power's last resource plan noted that additional solar generation could be an economic resource for the Minnesota Power, and Minnesota Power brought the petition in response to the Commission's directive in PUC Docket No. 20-492, seeking proposals from utilities to assist with Minnesota's economic recovery from the COVID-19 pandemic. The petition sought approval to advance approximately \$40 million of new solar energy within Minnesota Power's service territory with the development of three separate (Laskin, Sylvan, and Duluth) projects totaling approximately

20 MW. Because the project sites are owned by other entities and due to other regulatory considerations, Minnesota Power also sought approval of the necessary affiliated interest agreements, leases, and PPAs with costs to be assessed through the appropriate rider while maintaining the existing solar energy standard customer exemptions. The Commission previously approved an expedited review process, and conducted its substantive review on May 6, 2021.

Throughout the stakeholder process, several parties weighed in both in support and against Minnesota Power's proposal. Importantly, both the Department of Commerce and Office of the Attorney General opposed Minnesota Power's petition, because Minnesota Power did not conduct a competitive bidding process as required by previous Commission orders. Parties in support cited job creation and supplier diversity as key elements of the petition. Additionally, Minnesota Power emphasized that its petition was directly responsive and furthered the Commission's stated goals in the COVID-19 economic development docket.

Ultimately, despite the agencies' overarching concerns, the Commission approved Minnesota Power's request by taking the following action: (1) allowing Minnesota Power to execute the three affiliated interest agreements; (2) finding that the projects are in the public interest; (3) authorizing Minnesota Power to recover the PPA and lease costs through Commission-approved methods; (4) approving Minnesota Power's proposed \$40.9 million and other related cost caps; and (5) requiring additional reporting and other follow-up. A written order is pending.

#### Clean Cars Minnesota Rule

On Friday, May 7, an administrative law judge (ALJ) issued a report approving the Clean Cars Minnesota Rule and recommending they be adopted (report and recommendations [here](#)). In summary, the Minnesota Pollution Control Agency (MPCA) sought to amend its rules governing GHG and other emissions from cars, light-duty trucks, and medium-duty vehicles, effectively adopting the state of California's Low Emission Vehicle and Zero Emission Vehicle standards, while also creating an initial credit bank for crediting manufacturers. The MPCA's website on this subject can be found [here](#). The ALJ concluded that the MPCA fulfilled its statutory notice and procedural requirements, demonstrated it had authority to adopt the rule, and demonstrated a need for the rule. Next steps remain to be seen as Republican lawmakers have expressed concerns with the Clean Cars Minnesota Rule, which may impact Minnesota State budget negotiations as the 2021 regular session comes to a close. Related news coverage can be found [here](#).

### **OREGON**

#### Oregon Utilities' 2019 Integrated Resource Plan (IRP) Updates

Last week, the Oregon Public Utility Commission (OPUC) issued an order granting PacifiCorp a one-time waiver of OAR 860-027-0400(8), the administrative rule that requires utilities to submit an annual update on its most recently acknowledged IRP. PacifiCorp's 2019 IRP Update would have been due last Friday, May 7. However, the utility requested a waiver in



order to focus on its 2021 IRP filing due in September 2021. The OPUC ultimately granted this waiver and found it to be in the public's best interest, as it would allow PacifiCorp more time to implement its new modeling system and engage in stakeholder feedback prior to the 2021 filing date. The order can be located [here](#).

Relatedly, the OPUC granted an order last Monday which officially acknowledged Portland General Electric's 2019 IRP Update. The acknowledgement can be located [here](#), along with OPUC recommendations on certain capacity and RFP issues.

#### Commission Grants Waiver of Annual Bill Credit Reconciliation in Community Solar Program (CSP) – UM 1930

According to CSP rules, a participant's excess generation at end of the billing cycle (end of March) is donated to the utility's low-income programs. This requires an annual bill credit reconciliation process whereby the CSP administrator compares data on energy generated vs. consumed. On April 14, the administrator requested a waiver of this requirement due to unexpectedly high subscription during the program's first billing month. The OPUC granted a waiver of the reconciliation after determining that it would only result in the loss of \$1,573 to ratepayers. The order can be located [here](#).

### **SOUTH DAKOTA**

On April 30, 2021, Black Hills Power, Inc. d.b.a Black Hills Energy (Black Hills) filed a petition with the South Dakota Public Utilities Commission to utilize deferred accounting and establish a regulatory asset related to the February 2021 extreme weather event that caused significant increases to natural gas prices. Black Hills typically has approximately \$4 million to \$4.5 million in total system costs during the month of February; however, due to the extreme weather, the utility incurred costs of approximately \$28 million. Black Hills intends to recover costs through a separate line item on customers' bills starting in June 2021 and ending in May 2022. Black Hills also proposes a carrying charge of 1.35%. The matter is currently pending.

### **WASHINGTON**

#### Annual Resource Adequacy Meeting This Week – UE-210096

On Tuesday, May 11, from 9 a.m. to 3 p.m., the Washington Utilities and Transportation Commission will host the first annual meeting on RA in Washington State. Investor-owned utilities, transmission providers, and consumer-owned utilities are expected to gather with key presentations from WECC, California ISO, Bonneville Power Administration, and the NW Power and Conservation Council.

## NEW YORK ISO

Protests filed regarding NYISO Transmission Owners' complaint to amend NYISO Open Access Transmission Tariff (OATT) and Services Tariff to revise the funding methodology for transmission system upgrades caused by generator interconnections.

On April 9, 2021, as summarized in the April 11 Regulatory Update, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation (Complainants) filed a complaint with the Federal Energy Regulatory Commission (Commission) to amend the NYISO OATT to revise the funding methodology for certain updates to Complainants' transmission systems caused by generator interconnections (Complaint). In conjunction with the Complaint, the Complainants filed, pursuant to Section 205 of the Federal Power Act, to amend Section 25.5.4 of the OATT (Tariff Filing).

The Complainants argued that the existing funding mechanism in the OATT requires them to construct, own, and operate the System Upgrade Facilities and/or System Deliverability Upgrades on a non-profit basis by not allowing a return on those assets. The Complaint alleges that this tariff mechanism violates the cost principles established in *Hope* and *Bluefield* that a regulated utility is entitled to a reasonable return to ensure new capital can be attracted.

On May 7, 2021, certain intervenors provided comments in support of the proposal, while others protested the Complaint and Tariff Filing.

WIRES and the Edison Electric Institute support the Complaint and Tariff Filing. They argue that the proposed approach provides the Complainants the option to self-fund network upgrades necessary to accommodate generator interconnection requests and is consistent with judicial and Commission precedent.

Various parties protest the Complaint and Tariff Filing, arguing that the Complainants did not meet their burden of proof under Sections 205 and 206 of the Federal Power Act.<sup>2</sup> These protestors argue that the Tariff Filing lacks information necessary to show that proposed tariff revisions are just and reasonable. Additionally, these protestors argue that the Commission has recognized there exist differences between geographic regions and wholesale markets that warrant disparate approaches regarding funding for upgrades related to interconnecting generators. Accordingly, these protestors argue that the precedent cited by the Complainants related to the Midcontinent Independent System Operator, Inc. (MISO) is inapposite.

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<sup>2</sup> Protest of the New York State Department of State Utility Intervention Unit; Protest of the City of New York, Natural Resources Defense Council, Sustainable FERC Project, and 60 large industrial, commercial, and institutional energy consumers; and Protest of Invenergy Renewables LLC.



Invenergy Renewables LLC (Invenergy) protests the Complaint and Tariff Filing for the above reasons and also argues that the Complainants' claim that interconnection customers' costs would potentially decrease under its proposal because generators often have higher capital costs than Complainants is incorrect. Invenergy argues that costs would increase, stating that capital costs typically charged by MISO transmission owners when self-funding are significantly higher than the cost of capital of the generation project itself. Invenergy adds that the Complainants' analysis fails to account for the additional costs imposed on customers via income tax allowance that would not occur when the interconnection customer funds interconnection costs internally. Invenergy further argues that the Commission should, regardless of the self-funding issue, reject the Complainants' proposal to require additional security under any facilities service agreement (FSA), similar to the MISO base FSA. Invenergy argues that this is not just and reasonable as there is no reason that an interconnection customer would choose to stop making payments under an FSA after constructing a facility because a payment default would result in cross-default under any interconnection agreement, preventing the sale of output of a facility.

NextEra Energy Resources, LLC (NextEra) protests the Complaint and Tariff Filing and argues that the Complainants' self-funding proposal will "exacerbate existing harm to generators by raising the costs and risk that generators are asked to assume over the life of their projects." NextEra argues that the generators already fund the capital costs and that asking them to fund Complainants' rate of return, including a return on equity, over a 20-year period is unjust and unreasonable.

The American Clean Power Association, Alliance For Clean Energy-New York, Independent Power Producers of New York, New York Battery and Energy Storage Technology Consortium, and Energy Storage Association, in addition to protesting for the reasons stated above, add that publicly available information shows that no Complainant has had an issue attracting capital so as to serve the public interest. Accordingly, these protestors argue that the risks cited by the Complainants in the Complaint are without merit. Further, these protestors argue that, following Order 2003, the Complainants specifically requested that the Commission approve "participant funding" in New York and that the Complaint and Tariff Filing amount to a collateral attack on that decision to approve "participant funding" in New York.

### **FEDERAL ENERGY REGULATORY COMMISSION**

1. FERC has extended the timeframe for market-based rate sellers to file their baseline filings in compliance with FERC Order No. 860. Order No. 860 will now go into effect on July 1, 2021, and baseline filings will be due by November 2, 2021. The relational database system is open through June 30, 2021 for testing, and then the system will be open for baseline filings from July through October 2021.
2. FERC has scheduled a [technical conference](#) on June 1-2, 2021 to discuss issues surrounding the threat to electric system reliability posed by climate change and extreme weather events.

3. PJM officials have floated a proposal that, if implemented, may undo some of the impacts that PJM's Minimum Offer Price Rule (MOPR) has on renewable energy projects and other subsidized resources in that market. The proposal would shift the burden of determining whether a resource receives a "State Subsidy" to FERC (rather than PJM and the Market Monitor), and absent a determination each State Subsidy would be considered to be in good faith and would not subject a resource to the MOPR.

4. FERC modified its June 2020 rule prohibiting construction of an approved natural gas project until FERC acts on requests for rehearing. The modification clarifies that the prohibition on construction applies until the earlier of either the date that a qualifying rehearing request is no longer pending before FERC or 90 days following the date that a qualifying request for rehearing may be deemed denied by operation of law. FERC also limited the rule to those cases where a request for rehearing raises issues reflecting opposition to project construction, operation, or need.

5. FERC's next open meeting is May 20.