

**REGULATORY UPDATE FOR MAY 31, 2023
(WEEK OF MAY 22, 2023)**

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions¹

Resolution E-5270 (ReMAT). Adopts the 2023 updated administratively set fixed avoided-cost rates for the Renewable Market Adjusting Tariff (ReMAT) program pursuant to Commission Decision 20-10-005, and directs PG&E, SDG&E, and SCE to amend their tariffs accordingly.

Rulemaking (R.)21-10-002 (RA). This proposed decision adopts Local Capacity Requirements for 2024 to 2026, Flexible Capacity Requirements for 2024, and refinements to the Resource Adequacy program scoped as Phase 3 of the Implementation Track, including modifying the planning reserve margin for 2024 and 2025 and modifying the demand response counting requirements.

Application (A.)20-02-009; 20-04-002; 20-06-001 (ERRA Compliance). The revised proposed decision of Administrative Law Judge Elaine Lau addresses one of two issues in the consolidated Phase Two proceedings. Specifically, the revised proposed decision adopts a methodology to calculate a utility's unrealized volumetric sales and unrealized revenues resulting from PSPS events. The consolidated 2019 ERRA Compliance proceedings of PG&E, SCE, and SDG&E remain open to address the remaining issue in Phase Two, which is whether it is appropriate for the utilities to return the revenue requirement equal to the unrealized volumetric sales and unrealized revenue resulting from the 2019 PSPS events.

A.20-02-009; 20-04-002; 20-06-001 (ERRA Compliance). The alternate proposed decision of Commissioner John Reynolds addresses one of two issues in the consolidated Phase Two proceedings. Specifically, this decision adopts a methodology to calculate a utility's unrealized volumetric sales and unrealized revenues resulting from PSPS events. The alternate proposed decision declines to address the second issue, which is whether it is appropriate for the utilities to return the revenue requirement equal to the unrealized volumetric sales and unrealized revenue resulting from the 2019 PSPS events, and closes the proceeding.

A.22-02-005, et al. (PG&E Energy Efficiency Plan). This proposed decision addresses the applications for energy efficiency portfolios during the period 2024 to 2027 and the business plans for 2024 to 2031 from nine portfolio administrators. The decision authorizes a total budget of \$4.3 billion over the four-year period beginning in 2024, with benefits to customers of at least \$3.5 billion during the same period. This decision also adopts a forecasted budget of an additional \$4.6 billion in the period 2028 to 2031, makes adjustments to the allocation of costs

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.

for statewide programs to account for changes in the mix of programs and fuels (electricity and natural gas), and makes changes to the statewide portfolio to eliminate obsolete programs and introduce new ones. The decision approves a new regional energy network (REN) called Rural REN, to deliver energy efficiency benefits to underserved customers and communities in the rural areas all over California in four different regions. The decision also includes a number of elements addressed to the equity and market support segments of the energy efficiency portfolios, and oversight of programs.

Voting Meetings

The next CPUC voting meeting will be held on June 8, 2023.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

None to report.

CALIFORNIA ENERGY COMMISSION (CEC)

Offshore Wind

On May 10, 2023, the CEC [adopted](#) the [Energy Commission Report on AB 525 Offshore Wind Energy Permitting Roadmap](#). According to the Report's Executive Summary:

While the CEC held a public workshop and allowed for a comment period, the process for developing the Draft Conceptual Permitting Roadmap was condensed to meet the statutory deadline. After consideration, the CEC believes it is important that additional options and suggestions — some from comments received and those identified through additional engagement — be carefully and fully evaluated and vetted before deciding the best permitting pathway.

As a result, in this report, the CEC includes additional information on state permitting agencies and processes for a more complete picture of the permitting landscape beyond the various federal processes. This report outlines additional permitting options or frameworks for consideration in developing a final permitting roadmap. *The CEC anticipates inclusion of a final permitting roadmap as part [of] the AB 525 offshore wind strategic plan.*

Several approaches are available to serve as a framework for permitting and environmental reviews of offshore wind facilities. In addition to the option described in the Draft Conceptual Permitting Roadmap, several other options could be considered.

California Energy Comm'n, *Commission Report re Assembly Bill 525 Offshore Wind Energy Permitting Roadmap* at 1-2 (Apr. 2023) (emphasis added).

The CEC has been holding and will continue to hold remote-access AB 525 offshore wind workshops, as follows:

- [May 23, 2023](#) – Ports and Workforce Development to Support Floating Offshore Wind Development ([agenda](#))
- [May 25, 2023](#) – Assessing Transmission Upgrades and Investments for Offshore Wind Development off the Coast of California ([agenda](#))
- [June 1, 2023](#) – Identifying Additional Suitable Sea Space and Assessing Impacts and Mitigations for Offshore Wind Energy Development
- [June 2, 2023](#) – Offshore Wind Energy Permitting Roadmap

Integrated Energy Policy Report (IEPR)

The CEC’s [2023 IEPR Workshop Schedule](#) has been released. Forthcoming workshops include:

- [July 6](#): Hydrogen – canceled; to be rescheduled
- [August 15](#): California Electricity Demand Forecast: Inputs and Assumptions
- [August 18](#): California Electricity Demand Forecast: Load Modifier Scenario Development
- [September 8](#): Topic TBD
- [November 15](#): California Electricity Demand Forecast: Load Modifier Scenario Results
- [December 6](#): California Electricity Demand Forecast: Electricity Forecast Results

The schedule is also accessible on the [2023 IEPR website](#).

Energy System Reliability

The CEC held a remote-access workshop on May 17, 2023 to provide an outlook regarding 2023 summer reliability. According to the workshop [Notice](#), Staff from the CPUC, the Department of Water Resources, and CAISO met to discuss and provide information on anticipated summer conditions, including “a summary of new clean energy resources coming online, hydroelectric resource availability, and fire conditions” as well as a presentation on 2023 summer reliability analyses. Additional information is available at [Docket No. 21-ESR-01](#).

The CEC published [Senate Bill 846 Load-Shift Goal Report \(May 2023\)](#) (Report). The Report addresses the CEC’s requirement to develop a statewide goal for load shifting to reduce net peak electrical demand and outlines the approach used to develop a load-shift goal in consultation with the CPUC and CAISO.

Demand Analysis Working Group

The CEC's Demand Analysis Working Group meeting is scheduled for June 1, 2023 from 2:00 to 4:00 p.m. PT. The meeting will include the following topics of discussion:

- Overview of forecast improvements for 2023
- Overview of state-funded climate research supporting energy planning
- Improvements to capturing climate change impacts in the 2023 IEPR forecast
- Longer-term recommendations for improving how climate change is captured in the forecast

Additional information, including a meeting agenda, is available [here](#).

Clean Hydrogen Program

The CEC issued a *Draft Solicitation Concept* (Draft Concept) regarding large-scale hydrogen production, storage, and delivery projects that meet the requirements of [Assembly Bill \(AB\) 209](#). According to the CEC's May 18, 2023 email regarding release of the Draft Concept, "eligible projects under AB 209 are specific to hydrogen derived from water using eligible renewable energy resources, as defined in Section 399.12 of the Public Utilities Code or produced from these eligible renewable energy resources." Specifically, "the Draft Concept outlines proposed funding, eligibility requirements, project focus, evaluation process, and specific questions for stakeholders." The CEC is requesting that interested stakeholders provide feedback on the Draft Concept by 5:00 p.m. on June 9, 2023. More information is available on the CEC's [Clean Hydrogen Program website](#).

CEC Business Meetings

The next CEC Business Meeting is [scheduled](#) for May 31, 2023.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

On May 31, 2023, CARB is holding a workshop on the SB 596 [Cement Sector Net-Zero Emissions Strategy](#). Information and registration for the workshop are available [here](#).

On May 31 and June 1, 2023, CARB is holding virtual [community meetings](#) on potential changes to the [Low Carbon Fuel Standard](#) (LCFS). The goal of the meetings is to hear from community members interested in how the LCFS works and how to improve it in the future. Information and registration for the meetings are available [here](#). These meetings are rescheduled from their original dates of May 2 and 4, 2023.

On June 2, 2023, CARB will host a meeting of the [AB 32 Environmental Justice Advisory Committee](#). Information on the meeting is available [here](#).

On June 6 and 7, 2023, CARB will hold [kickoff meetings](#) in communities near the Inglewood Oil Field for the Study of Neighborhood Air near Petroleum Sources, or SNAPS, an air quality monitoring program. Information on the [June 6](#) meeting is available here; information on the [June 7](#) meeting is available here.

CARB will hold its next Board meeting on June 22 and 23, 2023. At the meeting, CARB will conduct a [public hearing](#) on proposed amendments to the Oil and Gas Methane Regulation, which provides greenhouse gas emission standards for crude oil and natural gas facilities. The full agenda for the Board meeting will be available [here](#) 10 days prior to the meeting. Comments on the Oil and Gas Methane Regulation amendments may be submitted to CARB [here](#) on or before June 12, 2023, or at the hearing.

Opportunities for Public Comment

On February 22, 2023, CARB held a [public workshop](#) on potential changes to the LCFS. 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. Comments on the proposed changes for Tier 1 Simplified Calculators and Lookup Table Values may be submitted [here](#) on or before May 31, 2023.

On May 23, 2023, CARB held a [public workshop](#) on an auto-acceleration mechanism for the [LCFS](#). Stakeholder feedback on the potential changes to the LCFS may be submitted to CARB [here](#) until June 6, 2023.

Comments on the proposed amendments to the Oil and Gas Methane Regulation may be submitted to CARB [here](#) on or before June 12, 2023, or at the hearing on the proposed amendments on June 22, 2023.

ILLINOIS COMMERCE COMMISSION (ICC)

On May 25, Commonwealth Edison Company (ComEd) filed its compliance Beneficial Electrification Plan (BE Plan) consistent with the ICC's March 23, 2023 Order in consolidated Docket Nos. 22-0432 and 22-0442. The BE Plan includes a range of funding and rate proposals designed to spur the adoption of electric vehicles and other electrification measures within ComEd's service territory.

The next ICC voting meeting will be held on June 1, 2023 at 11:30 a.m. CT and can be viewed online by clicking [here](#). The agenda for the June 1 voting meeting is available [here](#).

OREGON PUBLIC UTILITY COMMISSION (OPUC)

On May 17, 2023, the OPUC approved a recommendation from Staff to establish an interim solar plus storage standard avoided cost for Qualifying Facilities (QFs), and the OPUC directed each of Portland General Electric, Idaho Power, and PacifiCorp to file its solar plus

storage rates by July 31, 2023, using the approved methodology. The proposal will cause utilities to pay for capacity from such resources during four premium peak hours of the day, which will be determined according to each utility's highest loss of load probability hours in each month. Eligible QFs may have up to 3 MW of solar PV capacity with collocated storage with a capacity of between 25% and 100% of the capacity of the solar resources and two to four hours in duration. Lastly, the interim solar plus storage rates will only be available until a utility has reached 50 MW of such resources under the interim rates; provided, however, that resources 100 kW and smaller are not subject to the cap. However, the OPUC may raise or eliminate the cap in the future.

MINNESOTA

Minnesota Public Utilities Commission (MPUC) Agenda Meetings

Following oral argument on May 23 and 24, 2023, the MPUC will conduct deliberations on Northern States Power Company d/b/a Xcel Energy's pending multi-year rate plan (PUC Docket No. 21-630). A link to the live webcast, briefing papers, and more can be found [here](#).

Minnesota Legislature

On the heels of passing legislation that puts Minnesota on the path toward 100% carbon-free electricity generation by 2040, the state legislature also passed a significant energy omnibus, impacting a variety of aspects of the energy industry. Among other things, the legislation provides further guidance on transportation electrification plans, changes the existing community solar garden program, makes updates to the solar for schools program, expands the intervenor compensation program for participants in MPUC proceedings, creates an energy benchmarking program, and authorizes the MPUC to adopt rules for siting certain energy storage projects. More information is available [here](#), and a substantive update is to follow.

PUBLIC UTILITY COMMISSION OF TEXAS AND ERCOT

As detailed in our May 23, 2023 regulatory update, Texas lawmakers in the Senate have continued their push to punish renewables in the wake of Winter Storm Uri by advancing several bills to the House. With many of the bills, including SB 6, which would provide funding for 10 GW of gas generation, dead in the House, legislators added amendments to the PUC's sunset bill (HB 1500) to find a way to hurt the renewable sector. There were 12 amendments added to the bill that has now been approved by the Senate and heads to the governor's desk. Among these amendments, one requires that generators interconnected to ERCOT after December 1, 2026, be able to produce power for at least 15 hours when called upon, one adds SB 1287, which caps how much of a company's interconnection costs can be paid by Texas consumers, and one adds SB 624, which imposes permitting requirements on renewable facilities.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

On May 18, 2023, in [Docket No. EL23-42-000](#), FERC issued an order granting a Petition for Declaratory Order filed by Soltage Executive Employees, LLC (Soltage). In the Petition for Declaratory Order, Soltage, on behalf of itself and its current and future subsidiary companies (collectively with Soltage, the Soltage Companies) that are holding companies or associated service companies under the Public Utility Holding Company Act of 2005 (PUHCA), requested an exemption from PUHCA. The Soltage Companies had been entitled to automatic exemption from PUHCA because they had been holding companies solely with respect to electric utility companies that are owners or operators of QFs under the Public Utility Regulatory Policies Act of 1978.

Soltage explained that certain of its new subsidiaries are developing grid-charged battery energy storage systems (BESS) that will engage exclusively in retail sales. These grid-charged BESS will not otherwise qualify for exemption from PUHCA because they (1) do not satisfy the fossil fuel requirements for QFs; (2) cannot be exempt wholesale generators by virtue of their retail sales; and (3) will be located in the United States, so cannot be Foreign Utility Holding Companies. As a result, the Soltage Companies would have lost automatic exemption from PUHCA, barring FERC's decision.

Based on the representations made by Soltage, FERC found, pursuant to Section 366.3(b)(1) of its regulations, that Soltage's books, accounts, memoranda, and other records are not relevant to the jurisdictional rates of the Soltage Companies, and it is appropriate to exempt the Soltage Companies from the requirements of Sections 366.2, 366.21, 366.22, and 366.23. FERC further found that Soltage and its current and future subsidiaries are solely holding companies with respect to QFs, exempt wholesale generators (EWGs), and non-traditional utilities, and therefore are exempt from Sections 366.2, 366.21, 366.22, and 366.23 of FERC's regulations.

The order provides a roadmap for companies developing grid-charging retail batteries to avoid PUHCA regulation where EWG status or the QF exemption from PUHCA is not available.

Also in its monthly open meeting, FERC [granted in part, and denied in part](#), a request for waivers filed by Arroyo Solar LLC, which had sought relief from certain open access-related obligations that applied to it as the result of owning certain network facilities pursuant to an option to build. FERC determined that Arroyo Solar should be exempt from the several open access-related obligations, in part, because Arroyo Solar had transferred operational control of the subject facilities to the interconnecting utility although Arroyo Solar did maintain ownership. However, FERC denied Arroyo Solar's request to make the waivers effective retroactively to May 2022 when the subject facilities were energized.

FERC approved North American Electric Reliability Corporation's (NERC's) [plan](#) describing how it will identify and register owners and operators of inverter-based resources that are connected to the Bulk-Power System, but that are not otherwise required to register with NERC under its bulk electric system definition.

FERC's Joint Federal-State Task Force on Electric Transmission will [meet](#) on July 16, 2023.

FERC [announced](#) a Commissioner-led PJM Capacity Market Forum to take place on June 15, 2023. The forum will include three panels to solicit varied perspectives on the current state of the PJM capacity market, potential improvements, and related proposals to address resource adequacy. The first panel, the overview panel, will explore whether the PJM capacity market is achieving its objectives of ensuring resource adequacy at just and reasonable rates. The second panel, the technical panel, will discuss potential market design reforms that may be needed to ensure PJM's capacity market is achieving its objectives. The third panel, a roundtable with state representatives (including state commissioners), will discuss their views and respond to the first and second panels' discussions.

FERC issued a [Final Rule](#) providing incentive-based rate treatment for utilities making certain voluntary cybersecurity investments. The final rule largely tracks the Notice of Proposed Rulemaking (NOPR) issued in September but includes some important additions: First, FERC expanded the definition of eligible cybersecurity investments to include not only a pre-qualified list of cybersecurity investments, but also those investments that are done on a case-by-case basis, allowing utilities to request incentives for a variety of solutions tailored to their specific situations. Second, FERC will allow utilities to seek incentives for early compliance with new cybersecurity reliability standards. The final rule adopts the NOPR's proposed requirement that expenditures materially improve a utility's cybersecurity posture. It also adopts the proposal to allow deferred cost recovery that would enable the utility to defer expenses and include the unamortized portion in its rate base but does not adopt the proposed return on equity adder of 200 basis points. The rule also states that approved incentives, with certain exceptions, will remain in effect for up to five years from the date on which expenses are incurred, provided that the investments remain voluntary.

U.S. DEPARTMENT OF TRANSPORTATION (DOT)

Pursuant to a May 15, 2023 notice, the deadline to submit applications for the DOT's Charging and Fueling Infrastructure Competitive Grant Program (CFI Program), which opened on March 14, 2023, has been extended from May 30 to June 13, 2023. (See [here](#).) This discretionary grant funding opportunity includes \$2.5 billion over five years, with \$700 million in funding available from fiscal years 2022 and 2023, and is in addition to the \$5 billion in funding that was authorized under the National Electric Vehicle Infrastructure Formula Program. The CFI Program is designed to "fill gaps" in the alternative fuel corridors network and to prioritize disadvantaged communities. There are two funding categories under the CFI Program: (1) Community Charging and Fueling Grants (Community Program), and (2) Alternative Fuel Corridor Grants (Corridor Program).

DOT-hosted webinars on the CFI Program were recorded and are available for viewing [here](#), together with additional information regarding the CFI grant opportunity. Additionally, on May 5, 2023, DOT posted a CFI Program Questions and Answers document that is available [here](#).