

**REGULATORY UPDATE FOR NOVEMBER 8, 2022
(WEEK OF NOVEMBER 1, 2022)**

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions¹

A.21-10-010 (PG&E EV Charge 2 Program). This decision approves \$50,728,000 in funding for Pacific Gas and Electric Company (PG&E) to implement phase 1 of its Electric Vehicle Charge 2 program, from January 1, 2023 to December 31, 2025, and support the installation of approximately 2,822 Level 2 and Direct Current Fast Charger ports at multifamily housing, workplace, and public destination sites in PG&E's service territory. This decision sets an equity requirement that PG&E spend at least 65% of program funding in underserved communities.

A.22-05-002/-003/-004 (IOU DR Programs). This decision approves the demand response (DR) programs, pilots, and budgets for PG&E, Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) for 2023. The proceeding remains open to consider utility and intervenor proposals for DR response programs, program modifications, pilots, and budgets for 2024-2027. Per Decision (D.) 17-12-003, PG&E, SCE, and SDG&E were directed to file their 2023-2027 DR programs. PG&E, SCE, and SDG&E filed their applications on May 2, 2022, per an extension provided by a September 30, 2021 letter issued by the CPUC's Executive Director. Due to the late filing of the applications, bridge funding for 2023 would be addressed in this decision, while the CPUC considers programs, pilots, and budgets for the remaining 2024-2027 time period.

R.20-07-013 (Risk-Based Decision-Making Framework). In D.14-12-025, the CPUC established parameters and processes for integrating risk assessments into the general rate cases of large investor-owned utilities, with the goal of promoting transparency and assisting the CPUC and interested parties in evaluating the various processes the energy utilities use to assess their safety risks and to manage, mitigate, and minimize such risks. This decision would modify the Risk-Based Decision-Making Framework adopted in D.18-12-014. It would direct the investor-owned utilities (IOUs) to undertake Environmental and Social Justice Pilots in their next Risk Assessment and Mitigation Phase, and to consider specific action items in those pilots.

Voting Meetings

The CPUC held a voting meeting on November 3, 2022. The agenda included the following energy-related items.

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.

Item 2. Resolution E-5221. The Database for Energy Efficient Resources (DEER) contains information on energy-efficient technologies and measures. DEER provides estimates of the typical energy-savings potential for these technologies in residential and nonresidential applications. DEER is used by California Energy Efficiency (EE) Program Administrators, private sector implementers, and the EE industry across the country to develop and design energy efficiency programs. This resolution approves updates to the DEER for program year (PY) 2024 and a revised version of DEER for PY2023 and PY2022, in compliance with D.15-10-028 and D.21-05-031 and Resolutions E-4818, E-4952, E-5009, E-5082, and E-5152. **Held to November 17, 2022 meeting.**

Item 14. Resolution E-5236. In December 2020, the CPUC issued D.20-12-027, Concerning Low Carbon Fuel Standard Holdback Revenue Utilization, in which it found that Low Carbon Fuel Standard (LCFS) credits are a utility asset that would require a CPUC order for the utility to sell under Pub. Util. Code Section 851 unless an exemption to this requirement is granted pursuant to Section 853(b). The decision found that it is reasonable to require the large electric corporations to file LCFS Holdback revenue return Implementation Plans in order to qualify for an exemption from the requirements of Pub. Util. Code Section 851 pursuant to Pub. Util. Code Section 853(b). This resolution approves in part, with modifications, the request from SCE to seek an exemption to Pub. Util. Code Section 851 and adopt the Implementation Plan of programs and projects funded with LCFS Holdback residential base charging credit and electric forklift credit proceeds. **Approved.**

Item 15. A.21-06-022 (PG&E Microgrid Framework). This decision adopts a framework for substation microgrid resiliency solutions to mitigate public safety power shutoffs for PG&E. The adopted framework contains eight primary elements: (1) a 10-year historical lookback analysis; (2) greenhouse gas (GHG) emissions performance standards; (3) clean technology market development standards; (4) an alternatives analysis; (5) a procurement strategy; (6) a rate architecture and cost allocation methodology; (7) DR measures; and (8) environmental and social justice action. **Signed, D.22-11-009.**

Item 16. R.18-07-003 (RPS Implementation). This decision reviews and approves Voluntary Allocations and modifies the Market Offer process proposals of the load-serving entities (LSEs) to sell excess renewable resources pursuant to D.21-05-030. The decision approves all Voluntary Allocation offers made by the IOUs and accepted by the LSEs (except 3 Phases Renewables, Incorporated (3 Phases Renewables)) in this Voluntary Allocation and Market Offer cycle, as reported in the LSEs' draft 2022 RPS Plans filed on July 1, 2022 or updates filed on August 15, 2022. 3 Phases Renewables must file an updated draft 2022 RPS Plan, incorporating information on the status of its Voluntary Allocations, within seven days of the issuance date of this decision. PG&E, SCE, and SDG&E must each file a Tier 1 Advice Letter within 15 days of the issuance date of this decision to include the changes to the Market Offer process described in this decision, along with updated Market Offer proformas. **Held to November 17, 2022 meeting.**

Item 18. A.21-09-001 (SDG&E Optional Residential Rate). This decision considers SDG&E's proposal for an optional residential rate, TOU-ELEC, with a tiered fixed charge to incentivize beneficial electrification and adopts it as modified, with the following rate design

features: (1) an un-tiered time-of-use (TOU) rate with a flat monthly fixed charge of \$16 for customers who own one or more of the following qualifying technologies: electric vehicles, energy storage, electric heat pump for water heating, or climate control; (2) greater Peak-to-Super-Off-Peak differential in summer and winter, as proposed by SDG&E, to send a stronger signal to use electricity outside the peak period; and (3) lower Off-Peak-to-Super-Off-Peak differential, as proposed by SDG&E, to soften the price signal between the two off-peak periods and allow for greater flexibility between peak- and non-peak period usage. This decision places an enrollment cap of 10,000 accounts on TOU-ELEC to control any potential revenue shortfall, with the option to increase the cap by increments of 10,000 via Tier 2 advice letter filings. This decision also requires SDG&E to supplement its marketing, education, and outreach plan to target customers who do not own the qualified technologies yet. Finally, the decision adopts the partial settlement agreement on the issue of including a medical discount for customers who are otherwise eligible for the Medical Baseline Program for the TOU-ELEC rate. The settling parties are SDG&E, the Center for Accessible Technology, the Public Advocates Office at the CPUC, the Utility Reform Network, and the Utility Consumers' Action Network. **Held to November 17, 2022 meeting.**

Item 19. Resolution E-5234. This resolution approves five mid-term reliability (MTR) energy storage contracts (the MTR Contracts) for 474 megawatts (MW) of nameplate capacity, expected to provide 433 to 445 MW of incremental September net qualifying capacity, which SCE procured to satisfy a portion of its 2023 and 2024 MTR requirements. These contracts include three resource adequacy (RA) only contracts and two RA with put option contracts (i.e., RA contracts where the seller also has the option to put the dispatch rights to SCE). The MTR Contracts are for new in-front-of-the meter energy storage projects. This resolution also approves the form and substance of a 7 MW solar photovoltaic contract, a required condition of two of the energy storage contracts. **Approved.**

Item 31. R. ____ (New DER OIR). Order Instituting Rulemaking to Develop Policy and Create a Consistent Regulatory Framework for Distributed Energy Resource Customer Programs. This rulemaking is a successor proceeding to R.14-10-003. **Held to November 17, 2022 meeting.**

Item 32. A.21-08-013/-014/-015 (IOU Cost of Capital). This decision resolves the narrow issues of whether the extraordinary circumstances requirements of D.08-05-035 have been met and whether the Cost of Capital Mechanism adjustment should apply to the return on equity for the year 2022 for SCE, SDG&E, and PG&E (collectively, the utilities). This decision finds that the utilities experienced the circumstances caused by the COVID-19 pandemic differently as compared to the proxy utilities groups and the overall financial markets. The decision finds that these extraordinary circumstances warrant a departure from the Cost of Capital Mechanism adjustment for 2022, that the Cost of Capital Mechanism adjustment fails to result in a fair and reasonable return on equity given the extraordinary circumstances, and, therefore, that the Cost of Capital Mechanism should not apply in 2022. The decision finds it is reasonable for CPUC to establish a second phase to examine the cost of capital for 2022. This proceeding remains open to consider the next phase. **Withdrawn.**

Item 32A. This is an alternate proposed decision of President Reynolds to the proposed decision above issued by Administrative Law Judges (ALJ) Zhang and Hecht. This alternate differs from the proposed decision in that the return on equity, and other cost of capital components for 2022, are to remain at levels previously approved by D.19-12-056. The alternate closes the proceedings. **Signed, D.22-11-018.**

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Extended Day-Ahead Market. The California ISO has published the Extended Day-Ahead Market draft final proposal, which will be discussed at an upcoming stakeholder meeting, offered in-person and virtually, on November 14, 2022. The deadline for written comments on the draft final proposal has moved from November 30, 2022 to November 22, 2022 to facilitate the publication of a final proposal by December 7, 2022.

Day-Ahead Market Enhancements. CAISO held a public stakeholder call on November 1, 2022 to discuss the Day-Ahead Market Enhancements fourth revised straw proposal. Comments are due November 15, 2022.

Energy Storage Enhancements. CAISO held a public stakeholder call on October 31, 2022 to discuss the final proposal to the Energy Storage Enhancements initiative. Written comments on the final proposal are due November 15, 2022.

WEIM Resource Sufficiency Evaluation Enhancements Phase 2. The California ISO held a stakeholder call on November 7, 2022 to discuss the Revised Final Proposal for the Western Energy Imbalance Market (WEIM) Resource Sufficiency Evaluation Enhancements Phase 2 initiative. Written comments are due November 15, 2022.

Price Formation Enhancements Workshop. The California ISO will host a Price Formation Enhancements initiative virtual public stakeholder workshop on November 16, 2022 focused on price formation principles and price formation foundation.

2022-2023 Transmission Planning Process. The California ISO has posted the final reliability assessment study results for the 2022-2023 transmission planning process.

California ISO Posts Analysis of September Heat Wave in Summer Market Performance Report for September 2022. The California ISO has published its analysis of the September heat wave in the Summer Market Performance Report for September 2022. The report will include a heat wave analysis focusing mainly on the grid's most critical days, September 5-8, 2022. A stakeholder call is scheduled for November 17, 2022 to review the details of the analysis and answer stakeholder questions.

Generator Interconnection Affidavits for Allocating and Retaining Transmission Plan Deliverability Due December 5, 2022. Generator interconnection customers must submit Transmission Plan (TP) Deliverability affidavits to the California ISO by December 5, 2022 to

be eligible to receive or retain deliverability allocations in the annual TP Deliverability allocation process. This notice applies to all active generation interconnection projects who are eligible to seek an allocation or who want to retain an allocation from a prior allocation cycle.

CALIFORNIA ENERGY COMMISSION (CEC)

AB 205 Emergency Rulemaking: Opt-in Certification Provisions

On October 12, 2022, the CEC adopted emergency regulations implementing the opt-in certification provisions of Assembly Bill (AB) 205. The regulations are available at TN# 246379 in [Docket No. 22-OIR-01](#). The California Office of Administrative Law [approved](#) the regulations on October 24, 2022.

As background, on June 30, 2022, California Governor Gavin Newsom signed AB 205, which, among other things, expands the jurisdiction of the CEC to include non-thermal generating facilities, such as solar and wind projects, with a capacity of 50 MW or more. In addition, AB 205 allows the CEC to have siting jurisdiction over energy storage facilities with a capacity of 200 MW hours or more. Unlike with thermal generating facilities, the CEC's expanded siting jurisdiction over solar and non-thermal generating facilities, as well as energy storage facilities, is at the request of the applicant—meaning it is “opt-in.” A summary of the changes to the CEC siting jurisdiction contained in AB 205 can be found on the Stoel Rives [California Environmental Law blog](#) and [Renewable + Law blog](#).

Offshore Wind

CEC staff will hold a workshop at 1:00 p.m. PT on November 10, 2022 to discuss transmission investments and upgrades necessary to support the offshore wind planning goals for 2030 and 2045 as required by AB 525. The workshop discussion will also address potential subsea transmission options. Additional information is available at TN# 247143 in [Docket No. 17-MISC-01](#).

Energy System Reliability

The CEC is seeking to identify clean energy resources and characterize their ability to support grid reliability. To that end, the CEC issued a Request for Information (RFI) on Clean Energy Resources for Reliability in an effort to collect information on the potential resources and attributes for consideration in these analyses. The RFI seeks public comment on various resource types and evaluation attributes set forth in detail in the RFI document, as well as regarding distributed electricity backup assets program design and resource characterization. Comments are due by 5:00 p.m. PT on November 30, 2022. Additional information regarding the RFI is available [here](#).

Climate Innovation Program

On November 15, 2022, the CEC will host a remote-access workshop to discuss implementation of its new Climate Innovation Program (CIP). At the workshop, CEC staff will consider public input and comments received into planning for the CIP and future competitive solicitations to fund technological advancements that will enable California to more quickly meet its GHG reduction goals as well as increase resiliency against climate change impacts. Additional information about the CIP workshop is available [here](#).

Lithium Valley Commission

The next Lithium Valley Commission meeting will be held in hybrid format at 1:00 p.m. PT on November 17, 2022. The physical meeting will be held at the Imperial Valley College Auditorium in Imperial, California. Additional information is available [here](#).

CEC Business Meetings

The next CEC Business Meeting is [scheduled](#) for November 16, 2022.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

CARB will hold its next board meeting on November 17-18, 2022. At the meeting CARB will consider [amendments](#) to the [in-use off-road diesel-fueled fleets](#) regulation. Ten days prior to the meeting, the full agenda for the board meeting will be available [here](#).

Opportunities for Public Comment

On November 17, 2022, CARB will consider amendments to the [in-use off-road diesel-fueled fleets](#) regulation. Comments can be submitted to CARB on the proposed amendments on or before November 7, 2022 [here](#).

On October 20, 2022, CARB held a workshop on development of the state's strategy to achieve net-zero GHG gas emissions in the cement sector in California. Comments can be submitted to CARB on the workshop on or before November 30, 2022 [here](#).

MINNESOTA PUBLIC UTILITIES COMMISSION (MPUC)

Minnesota Power Integrated Resource Plan, MPUC Docket No. 21-33

The MPUC noticed hearings on November 10 and 22, 2022 for Minnesota Power's pending integrated resource plan. The hearing on November 10 will begin at 9:00 a.m. CT. In advance of these hearings, the MPUC also issued Staff Briefing Papers, which can be found [here](#).

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

On October 19, 2022, the OPUC staff hosted a stakeholder workshop in the matter of UM 2143 (re Investigation into Resource Adequacy in the State) and presented a proposed strategy to initiate rulemaking on a long-term RA standard for Oregon. As currently proposed, the Oregon RA standard would be aligned with the Western Regional Adequacy Program. Comments on the rulemaking scope and strategy are due by November 21, 2022. The announcement can be found [here](#), and the staff presentation can be found [here](#).

On November 1, 2022 at 9:00 a.m. PT, the OPUC hosted a remote public hearing and commissioner work session in the matter of docket UM 2225 re Investigation into Clean Energy Plans. The purpose of the meeting was to discuss near-term guidance on analytical improvements in the first clean energy plans and associated integrated resource plans. The agenda and meeting information can be found [here](#), and the staff report can be found [here](#).

On Thursday, November 3, 2022 at 9:30 a.m. PT, at a special public meeting, the OPUC adopted the Energy Trust of Oregon's 2023 budget and action plan. The budget and plan can be found [here](#).

On November 15, 2022 at 1:30 p.m. PT, the OPUC will host a public Notice of Proposed Rulemaking Hearing in the matter of docket UM 638 (re Risk-Based Wildfire Protection Plans). The following day, November 16, 2022, at 1:00 p.m. PT the OPUC will host another public workshop to discuss comments received to date. An agenda and access information has not yet been posted, but the docket can be found [here](#).

OREGON ENERGY FACILITY SITING COUNCIL (EFSC)

On October 28, 2022, EFSC held an open meeting to discuss a variety of energy-related issues, including review of comments related to rulemaking on Protected Areas, Scenic Resources, and Recreation Standards; informational overview of recycling wind turbine components; and initiation of informal proceedings to evaluate potential rule changes to the rules governing the amendment of site certificates. Information about the meeting can be found [here](#).

WASHINGTON LOW CARBON ENERGY SITING STUDY ADVISORY BOARD (WSAB)

WSAB will have its next regular meeting virtually, on November 9 at 1:00 p.m. PT. By way of background, the Washington Department of Ecology is conducting a study on how to improve environmental review and permitting processes for siting low-carbon energy projects. WSAB is made up of many different stakeholders and serves as a forum for those stakeholders to provide perspectives and recommendations. An agenda has not yet been published, but access information, information about the process and past meetings are available [here](#).

ILLINOIS COMMERCE COMMISSION (ICC)

The ICC's next voting meeting is scheduled for November 10, 2022 at 11:30 a.m. CT. The meeting agenda is available [here](#). Included as item E-14 on this meeting agenda is consideration of the assigned ALJ's Proposed Interim Order (PIO) granting in part and denying in part staff's motion to dismiss and to strike components of the BE Plan filed by Commonwealth Edison Company (ComEd) in consolidated docket [Nos. 22-0432 and 22-0442](#).

If adopted by the ICC, the PIO would (1) grant staff's request to remove the Commercial and Industrial and Public Sector Incentive Programs, which offered customer rebates for electric vehicle purchases and for electric vehicle infrastructure development; (2) deny staff's motion to strike the non-transportation components of ComEd's Beneficial Electrification Plan (BE Plan) (e.g., building electrification rebates); and (3) deny staff's motion to modify ComEd's proposed application of the retail rate cap on budget expenditures under the BE Plan.

On November 7, 2022, staff and intervenors filed rebuttal testimony in the consolidated docket ([Nos. 22-0431 and 22-0443](#)) considering whether to approve Ameren Illinois Company's BE Plan. Evidentiary hearings are scheduled for December 1 and December 2, 2022.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

On October 20, 2022, FERC issued the [2022-2023 Winter Energy Market and Reliability Assessment](#), which was updated on October 25, 2022. According to the report, U.S. electricity markets are projected to have adequate amounts of generating capacity to maintain reliable operations this winter, though certain regions may face challenges in extreme weather. The report notes that above-average temperatures are forecasted this winter, except in the Pacific Northwest and West-North Central regions of the U.S. The report also notes that due to the rising demand for natural gas and lower than average storage inventories, it is expected that this winter's natural gas prices will be higher than last year, and will be particularly high in New England. Texas' ability to import power was also raised as a potential challenge if extreme weather arises.

On October 21, 2022, FERC issued an [Order Granting in Part and Denying in Part Petition for Declaratory Order](#) filed by Blue Ridge Power Agency (Blue Ridge) on behalf of four of its member companies requesting a declaration that those companies are permitted to utilize battery storage technologies on their systems to reduce and/or manage (sometimes referred to as "peak shaving") their demands under their full requirements power contracts with Appalachian Power Company (APCO). APCO filed a Motion to Dismiss and Protest Blue Ridge's petition contending that it involves a non-technical contract dispute "unique to the parties," which should be decided by a Virginia state court rather than by FERC. FERC, however, agreed with Blue Ridge that the dispute involves a broader question of whether a full requirements customer's installation of battery storage is compatible with the full requirements nature of the contract, and decided to exercise its primary jurisdiction to resolve the dispute. FERC's order examined the agreements and found that installation and utilization of battery storage was not expressly prohibited under the terms of three of the four full requirements contracts and was therefore

entirely permissible. Commissioners Danly and Christie both dissented on the ground that they would have declined jurisdiction and left it to the state court to resolve the dispute.

Two recent decisions from FERC have the industry focused on investor rights that allow that entity to appoint its own officer or directors to the board of a public utility or a holding company. In *TransAlta*, 181 FERC ¶ 61,055 (2022), and *Evergy Kansas Central, Inc.*, 181 FERC ¶ 61,044 (2022), FERC asserted that such appointments will require approval under Federal Power Act Section 203 and may also create affiliations for purposes of assessing market power with respect to a public utility's ability to sell at market-based rates. In both decisions, the investor acquired less than 10% of the relevant voting securities; however, the acquisition was paired with the appointment of its own officers and directors to the target company's board of directors.

FERC will convene its [Annual Commissioner-led Reliability Technical Conference](#) on November 10, 2022 in person in Washington, D.C. and remotely via Webex.

The next public meeting of the [Joint Federal-State Task Force](#) on Electric Transmission will be held on November 15, 2022 in New Orleans, Louisiana, with a remote Webex option available.

On October 17, 2022, the Indicated PJM Transmission Owners (ITOs) and the New Jersey Division of Rate Counsel (Rate Counsel) each filed an Answer ([here](#) and [here](#)) in opposition to the Motion to Govern Procedures on Remand ([Motion](#)) filed by Consolidated Edison Company of New York, Inc.; Linden VFT, LLC; Hudson Transmission Partners, LLC; and the New York Power Authority (collectively, the New York Entities).

On August 9, 2022, the U.S. Court of Appeals for the District of Columbia Circuit remanded to FERC for further proceedings a number of issues relating to PJM Interconnection, LLC's allocation of the costs of the Bergen-Linden and Sewaren short-circuit transmission projects, using the DFAX methodology, including the 1% *de minimis* threshold. [Consol. Edison Co. of N.Y. Inc., v. FERC, No. 15-1183 \(D.C. Cir. Aug. 9, 2022\)](#). On September 30, 2022, the New York Entities filed a motion seeking approximately \$115 million in refunds, plus interest, based on a recalculation of rates that removes the *de minimis* threshold and assigns all of the costs of the projects to the host zone, Public Service Electric and Gas Company.

In their answers, the ITOs and Rate Counsel argued that the New York Entities' motion is both improper and premature. They noted that the court's decision did not direct the FERC to order refunds. Rather, the court indicated that the FERC's earlier orders did not adequately explain its reasoning for treating the Bergen-Linden and Sewaren short-circuit projects differently from a stability project, like the Artificial Island project. The answers also pointed out that the court did not hold that use of the DFAX method for short-circuit projects violated cost causation principles per se, and that the FERC on remand may be able to provide a more satisfactory explanation for the distinction. Therefore, the ITOs and Rate Counsel urged FERC to hold further proceedings to address the defects identified by the court and, if necessary, to consider alternative cost allocation methodologies.

On November 1, 2022, ALJ Suzanne Krolikowski issued an [Order Denying In Part Respondents' Motion to Compel Responses to Fifth Set of Data Requests/Notice to All Participants Concerning Failure to Comply with Commission Practice Obligations](#) in the proceedings to determine whether Total Gas & Power North America, Inc., Aaron Hall, and Teresa Tran (Respondents) manipulated natural gas prices in the southwestern U.S. between 2009 and 2012, in violation of FERC's Anti-Market Manipulation Rule. [Order Establishing Hearing](#). In addition to addressing substantive arguments in Respondents' motion to compel, Judge Krolikowski's order emphatically put Respondents' counsel on notice that any further unsupported allegations of misconduct against opposing counsel could result in suspension and exclusion of counsel from further participation in the proceeding under [Rule 2102\(b\)](#) of FERC's regulations. According to the order, Respondents' counsel potentially violated this rule by alleging without support that Enforcement Staff "lost or destroyed" relevant evidence in the case and by citing as authority for its position an ALJ order but failing to disclose that the order never went into effect.