

**REGULATORY UPDATE FOR OCTOBER 18, 2022
(WEEK OF OCTOBER 10, 2022)**

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions¹

A.20-09-019 (PG&E Wildfire/Catastrophic Event Costs). This decision grants Pacific Gas & Electric Company (PG&E) the authority to recover incremental expenses recorded in (1) the Fire Hazard Prevention Memorandum Account, (2) the Fire Risk Mitigation Memorandum Account, (3) the Wildfire Mitigation Plan Memorandum Account, (4) the Catastrophic Events Memorandum Account (CEMA), (5) the Land Conservation Plan Implementation Account, and (6) the Residential Rate Reform Memorandum Account. This decision denies the Joint Motion for Approval of the Settlement Agreement filed by PG&E, the Public Advocates Office, and certain federal executive agencies. The total authorized recovery amount is \$1,208,909,522, broken down by account as follows:

1. Fire Hazard Prevention Memorandum Account authorized recovery amount: \$167,219,913.
2. Fire Risk Mitigation Memorandum Account and Wildfire Mitigation Plan Memorandum Account authorized recovery amount: \$810,780,317.
3. CEMA authorized recovery amount: \$251,327,000.
4. Land Conservation Plan Implementation Account authorized recovery amount: \$77,000.
5. Residential Rate Reform Memorandum Account authorized refund amount: (\$20,494,708).

The cost allocation shall be consistent with the methodology the Commission adopted in Decision (D.) 21-11-016, PG&E's most recent cost allocation and rate design proceeding. Furthermore, PG&E shall only collect the difference between the \$447,034,500 in interim rate relief granted in D.20-10-026 and what is authorized in the instant decision.

A.20-09-019 (PG&E Wildfire/Catastrophic Event Costs). Alternate Proposed Decision of President Reynolds. This decision would approve the contested Settlement Agreement, as modified by the decision to make certain disallowances permanent. PG&E may recover in total revenue requirement \$1,036,961,500 for its operational and capital expenditures associated with recorded amounts in (1) the Fire Hazard Prevention Memorandum Account, (2) the Fire Risk Mitigation Memorandum Account, (3) the Wildfire Mitigation Plan Memorandum Account, (4) the CEMA, (5) the Land Conservation Plan Implementation Account, and (6) the Residential Rate Reform Memorandum Account. This decision authorizes a revenue requirement amount of \$1,036,961,500, broken down by account as follows:

1. Fire Hazard Prevention Memorandum Account authorized recovery amount: \$240,041,000 in Operations and Maintenance (O&M).

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.

2. Fire Risk Mitigation Memorandum Account and Wildfire Mitigation Plan Memorandum Account, collective authorized recovery amount: \$588,648,500 in O&M and \$15,834,000 in Capital Expenditures.
3. CEMA authorized recovery amount: \$142,772,000 in O&M and \$63,172,000 in Capital Expenditures.
4. Land Conservation Plan Implementation Account authorized recovery amount: \$63,000 in O&M.
5. Residential Rate Reform Memorandum Account authorized recovery amount: (\$13,569,000) in O&M.

The rate allocation shall be consistent with what the Commission adopted in D.21-11-016, in A.19-11-019, PG&E's most recent cost allocation and rate design proceeding. Furthermore, PG&E shall only collect \$559,927,000, the difference between the \$477,034,500 in interim rate relief granted in D.20-10-026 and what is authorized in this decision.

Draft Resolution M-4864. This resolution authorizes PG&E to exit from Step 1 of the Enhanced Oversight and Enforcement Process set forth in Resolution M-4852, in accordance with D.20-05-003. Resolution M-4852 previously placed PG&E into Step 1 based upon findings that PG&E had made insufficient progress on risk-driven wildfire mitigation efforts.

R.18-12-006 (Vehicle Electrification OIR). This decision adopts a statewide transportation electrification framework that includes a long-term transportation electrification policy and a third-party administered rebate program for electric vehicle infrastructure, and directs the California electrical corporations, specifically PG&E, Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Liberty Utilities (CalPeco Electric) LLC, Bear Valley Electric Service Inc., and PacifiCorp d/b/a Pacific Power to jointly fund the program and associated activities. For a further discussion of the proposed decision, see our Renewables + Law blog post [here](#).

Voting Meetings

The CPUC will hold a voting meeting on October 20, 2022. The agenda includes the following energy-related items.

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, D.21-05-031, and Resolutions E-4818, E-4952, E-5009, E-5082, and E-5152.

Item 4. Resolution E-5224. PG&E, SDG&E and SCE filed a Joint Utility Advice Letter (AL) (PG&E AL 6365-E, SDG&E AL 3872-E, and SCE AL 4610-E), requesting approval of a Vehicle-Grid Integration Emerging Markets and Technology Program. This draft resolution

denies the Joint Utility AL for several reasons: (1) the Joint Utility AL does not adequately justify the proposed budget; (2) the Joint Utility AL lacks success metrics linked to clear end goals; and (3) the need for the program is unclear due to other efforts that may overlap with the proposed program activities.

Item 5. Resolution E-5227. On April 27, 2021, SCE filed AL 4480-E, to request approval for its low port rebate level to cover up to \$5,000 per port as a one-time payment for Charge Ready 2 customers installing four or fewer charge ports. As proposed, the rebate would only cover customer-side infrastructure costs, including electric vehicle supply equipment, with none of the budget nor Charge Ready 2 program funds applied to cover utility-side infrastructure work. This resolution approves, with modifications, the low port rebate program. The resolution requires modifications to SCE's low port rebate proposal for sites installing four or fewer ports under the Charge Ready 2 program. Specifically, this resolution directs SCE to include customer and utility-side costs for participating sites as part of the originally allocated funds from the \$333 million Commission-approved budget for the Make Ready Expansion program and to maintain the original \$16,000 per port cap which includes customer and utility-side costs.

Item 6. A.20-10-012 (SCE CARD Application). This is the second and final decision for the Phase 2 General Rate Case (GRC) filed by SCE for cost allocation and rate design. An earlier decision adopted five unopposed partial settlements between SCE and various groups of interested parties. Those settlements left open only a few issues which were litigated and resolved in this decision. They are: (1) Real Time Pricing (RTP) rate design proposals; (2) Solar Energy Industries Association (SEIA) proposal to increase the rate differentials for Schedules TOU-D-4-9PM and TOU-D-5-8PM; and (3) SEIA proposal to implement a new Option S rate for medium and large power customers that includes a daily demand charge. This decision disposes of these issues in the following manner:

1. Adopts SCE's proposal to leave its existing RTP rate offerings in place while a second pilot program is underway testing a new RTP offer that uses the California Independent System Operator's (CAISO) real time prices and new customer technology; SCE's proposal to implement another concurrent trial of an RTP tariff also with CAISO market prices is not adopted.
2. Denies the proposed changes to TOU-D-4-9PM and TOU-D-5-8PM. SCE is ordered to file a detailed proposal for the possible adoption of just and reasonable rates for TOU-D-4-9PM and TOU-D-5-8PM with its next Phase 2 GRC.
3. Denies the proposed adoption of an Option S. SCE is ordered to file a detailed proposal for the possible adoption of an Option S in its next Phase 2 GRC.

Item 10. Resolution E-5235. This resolution approves SDG&E amendments to one system reliability contract for capacity procured to meet requirements of D.19-11-009. The contract with Ortega Grid, LLC is amended to delay the online date by one year to June 1, 2023, in exchange for a reduction in the agreement's original contract price.

Item 11. A.20-10-011 (PG&E EV Pilot). This decision adopts an uncontested settlement establishing export compensation rules for certain customers of PG&E taking service on a real

time pricing rate. The uncontested settlement was jointly filed by PG&E, the Vehicle-Grid Integration Council, the Public Advocates Office, and Electrify America, LLC.

Item 21. R.20-05-012 (SGIP OIR). This decision grants the petition of SCE to modify D.22-04-036, Decision Establishing Heat Pump Water Heater Program Requirements. Accordingly, D.22-04-036 is modified to allow SCE to transfer the Heat Pump Water Heater program funds to the third-party program administrator/program implementer quarterly, based on: (1) quarterly budgets submitted by the third-party and approved by the Energy Division, and (2) actual, reasonable expenditures supported by quarterly reporting with documentation to the Energy Division.

Item 22. R. ___ - ___ - ___ (New BioMAT OIR). The purpose of this rulemaking is to implement Assembly Bill (AB) 843 (Aguiar-Curry), Stats. 2021, ch. 234, and authorize Community Choice Aggregators to participate in the Bioenergy Market Adjusting Tariff (BioMAT) program.

Item 29. 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.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Western Energy Imbalance Market Regional Issues Forum. The Western Energy Imbalance Market Regional Issues Forum will take place November 8, 2022, at the SAFE Credit Union Convention Center in Sacramento, CA. The draft agenda may be found [here](#).

Transmission Development Forum. The CAISO, in conjunction with the CPUC and the participating transmission owners, will hold its quarterly public stakeholder call on October 28, 2022, to provide status updates on the transmission projects previously approved through the transmission planning process and network upgrades identified in the generation interconnection process.

Assembly Concurrent Resolution 188 Public Meeting. The CAISO has scheduled a public stakeholder call on October 17, 2022, to discuss Assembly Concurrent Resolution (ACR) 188. ACR 188 requires that the CAISO prepare a report summarizing recent relevant studies on the impacts of expanded regional cooperation on California and, among other things, discuss engagement between neighboring states on regional transmission organizations in the West.

2023 effective flexible capacity values for resource adequacy resources. The CAISO has posted the final 2023 Resource Adequacy Effective Flexible Capacity list.

2021-2022 Transmission Planning Process: Accessing out-of-state wind resources in Idaho area update. The CAISO released a request for expressions of interest on August 25,

2022, as an extension to the 2021-2022 Transmission Planning Process to determine interest from California load-serving entities in out-of-state resources in the Idaho area. As noted in the request for expressions of interest, the CAISO planned to have a follow-up stakeholder call on October 19, 2022; however, it has been delayed until November.

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 AB 205. The regulations are available at TN# 246379 in [Docket No. 22-OIR-01](#).

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 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](#).

AB 205 also established a new CEC program, which was slightly modified by AB 209 on September 6, 2022, to respond to potential climate-related threats to the reliability of electricity in California. This program authorizes the CEC to implement an expedited certification process for Department of Water Resources (DWR) facilities, which include certain new emergency and temporary power generators, new energy storage systems, new zero-emission fuel technology generation facilities, and facilities supporting development of zero-emission generation capacity with a point of interconnection at a California balancing authority. On October 12, 2022, the CEC adopted emergency regulations to implement the certification of certain new DWR facilities. Additional information can be found at TN# 246549 in [Docket No. 22-OIR-02](#).

Energy System Reliability

The CEC will hold a Lead Commissioner workshop on October 28, 2022, to discuss clean energy resources that may support grid reliability. According to the workshop [Notice](#), information discussed at the workshop will be used to shape an assessment of portfolios of alternative resources to replace the Diablo Canyon Nuclear Power Plant. The workshop will be held in two sessions as discussed [here](#) (Session 1) and [here](#) (Session 2).

Offshore Wind

CEC staff will hold a workshop at 9:30 a.m. on October 26, 2022, to present CEC staff's approach to identifying suitable sea space for wind energy areas in federal waters sufficient to

accommodate offshore wind planning goals for 2030 and 2045 as required by AB 525. Additional information is available at TN# 246531 in [Docket No. 17-MISC-01](#).

Lithium Valley Commission

The Blue Ribbon Commission on Lithium Extraction (Lithium Valley Commission) is tasked to review, investigate, and analyze eight topics relating to lithium extraction in California as set forth in AB 1657. As part of its duties, the Lithium Valley Commission must submit a report to the California legislature documenting its findings and any recommendations developed after conducting the required review and analyses. On September 21, 2022, the Lithium Valley Commission released its draft report of the Blue Ribbon Commission on Lithium Extraction in California. According to the [Notice of Availability](#), oral comments on the draft report will be accepted at community and tribal workshops during October 2022 and at future Blue Ribbon Commission meetings, both in person and remotely. In addition, written comments on the draft report must be submitted by 5:00 p.m. on October 28, 2022. Please see [Docket No. 20-LITHIUM-01](#) for future notices regarding upcoming workshops and opportunities for public comment. The draft report and additional information are also available [here](#).

CEC staff will hold three (3) in-person workshops from October 18 to 20 in different physical locations in Imperial Valley and Coachella Valley, and a remote Zoom workshop on October 24. On October 18, there will be a workshop in Niland, CA; on October 19, there will be a workshop in North Shore, CA; and on October 20, CEC staff will hold a workshop in Salton City, CA. Additional details regarding these three in-person workshops, plus details regarding the October 24 Zoom workshop, are available at TN# 246351 in [Docket No. 20-LITHIUM-01](#).

CEC Business Meetings

The next CEC Business Meeting is [scheduled](#) for October 24, 2022.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

On October 18, 2022, CARB will hold a public workshop on its updated [biomethane monitoring](#) recommendations specific to source testing requirements. Under AB 1900 (Gatto, 2012), CARB and the California Office of Environmental Health and Hazard Assessment are required to compile a list of constituents of concern that could pose risks to human health and that are found in biogas at concentrations that significantly exceed the constituents in natural gas. The CPUC institutes corresponding standards for biomethane that specify acceptable concentrations of these constituents and requirements for monitoring, testing, reporting, and recordkeeping. The workshop notice and information on attendance are available [here](#).

On October 20, 2022, CARB will host a kick-off workshop on the [net-zero emissions strategy for the cement sector](#). Under SB 596 (Becker, 2021), CARB is required to develop by July 1, 2023, a comprehensive strategy for cement use in California to achieve a GHG emissions

intensity 40% below baseline levels by 2035 and net-zero GHG emissions by 2045. The workshop notice and information on attendance are available [here](#).

On October 24-25, 2022, CARB will host a public meeting of the [AB 32 Environmental Justice Advisory Committee](#). Information on the meeting agenda and virtual or in-person attendance can be found [here](#).

CARB will hold its next Board meeting on October 27, 2022. At the meeting, CARB will hold the first of two planned hearings on the proposed [Advanced Clean Fleets](#) regulation. The full meeting agenda is available [here](#).

On October 28, 2022, CARB will hold a public workshop on modeling for the draft [2022 Scoping Plan Update](#). Information on the workshop and attendance is available [here](#).

On November 3, 2022, CARB will conduct a joint public meeting with the California Transportation Commission and the California Department of Housing and Community Development. The public meeting notice and information on attendance are available [here](#).

Opportunities for Public Comment

CARB has recirculated the [draft environmental analysis](#) for the 2022 Scoping Plan Update. Comments may be submitted to CARB [here](#) on or before October 24, 2022.

A draft [People's Blueprint](#) has been prepared by community and environmental justice advisors to CARB as a starting point for discussion of CARB's update to the [AB 617 Community Air Protection Blueprint](#) that was issued in 2018. Comments on the draft People's Blueprint may be submitted to CARB [here](#) on or before October 31, 2022.

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

On Friday, October 7, the OPUC issued Order No. 22-364 adopting the staff's recommendation on Direct Access caps and opening formal rulemaking to adopt revisions to Direct Access rules in Oregon Administrative Rules, Chapter 860, Division 038. The order, including background and the staff recommendation can be found [here](#).

On Tuesday, October 18, the OPUC held a special public meeting in the matter of Docket No. AR 631 (Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facilities Standard Contracts). The agenda and discussion items can be found [here](#).

OREGON DEPARTMENT OF ENERGY (ODOE)

On September 15, 2022, in accordance with Oregon House Bill 3375 (2021), the ODOE submitted its report to the Oregon legislature on its study into the opportunities and challenges of integrating up to three gigawatts of floating offshore wind into the grid by 2030. The report concluded that federal waters off Oregon's coast hold the potential to develop dozens of gigawatts of floating offshore wind, but there is broad support for further study, engagement, and

collaboration to balance the potential benefits and challenges. The final report can be found [here](#).

ILLINOIS COMMERCE COMMISSION (ICC)

An all-party settlement meeting scheduled for September 29 in the consolidated docket ([Nos. 22-0432 and 22-0442](#)) considering Commonwealth Edison Company's (ComEd) Beneficial Electrification Plan (BE Plan) filed pursuant to the Climate and Equitable Jobs Act (20 ILCS 627/45), was postponed to October 27 due to party requests. ComEd's rebuttal testimony is due to be served on October 20.

On October 12, 2022, Ameren Illinois Company (Ameren) filed rebuttal testimony in the consolidated docket ([Nos. 22-0431 and 22-0443](#)) considering whether to approve Ameren's BE Plan.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

On September 22, 2022, FERC [issued an order](#) requiring almost 200 market-based rate entities to submit their delinquent market-based rate database baseline submissions and that absent such submissions, their market-based rate authorizations would be revoked on October 7, 2022.

On September 22, 2022, FERC [issued a Notice of Proposed Rulemaking](#) (NOPR) to establish rules providing incentive-based rate treatment for utilities making certain voluntary cybersecurity investments. In the Infrastructure Investment and Jobs Act of 2021, Congress directed FERC to establish incentive-based rate treatments to encourage utilities to invest in advanced cybersecurity technology and participate in cybersecurity threat information sharing programs. Comments on the NOPR are due 30 days after publication in the Federal Register.

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, LA, 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. [Consolidated Edison Co. of N.Y. Inc. v. FERC, Nos. 15-1183, et al. \(D.C. Cir. Aug. 2022\)](#). 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 argue that the New York Entities' Motion is both improper and premature. They note 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 point 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 urge the FERC to hold further proceedings to address the defects identified by the court and, if necessary, to consider alternative cost allocation methodologies.