

REGULATORY UPDATE FOR SEPTEMBER 13, 2021 (WEEK OF SEPTEMBER 7)**CALIFORNIA PUBLIC UTILITIES COMMISSION****Energy Division Issues ELCC Values for D.21-06-035 (Mid-Term Reliability) Procurement**

R.20-05-003 (IRP). On September 10, 2021, the Energy Division staff issued the Effective Load Carrying Capability or ELCC values that are to be used by load-serving entities in meeting the procurement requirements established by Decision (D.) 21-06-035. D.21-06-035 directed load-serving entities to procure at least 11,500 megawatts (MW) of net-qualifying capacity to meet mid-term reliability (covering the years 2023 through 2026). The ELCCs provided by Energy Division staff set out the percentage of a resource's nameplate capacity that can count toward a load-serving entity's procurement target (e.g., the ELCC value for solar in 2023 is 7.8%, meaning 7.8 MWs of a 100 MW solar resource will count toward a load-serving entity's procurement obligation). Energy Division staff provided ELCCs for wind, solar, battery storage, and paired renewables and storage resources for 2023 and 2024. Staff also provided indicative information about the ELCCs for 2025 and 2026 compliance dates for these resource types, as well as for pumped storage hydro, out-of-state wind, and offshore wind for 2026 only. Final values for 2025 and 2026 will be provided by the end of 2022. At this stage the ELCCs provided are only for use in the IRP proceeding. For more information on the ELCC values, see our Renewable + Law Blog [here](#).

New Proposed Decisions and Draft Resolutions¹

None.

Voting Meetings

The Commission's held a voting meeting on September 9, 2021. The following energy-related items were on the agenda.

Item 4. Draft Resolution E-5166. This Resolution certifies San Jose Clean Energy's request in Advice Letter 17-E and supplemental Advice Letter (AL) 17-E-A to elect to administer its Energy Efficiency Program Administration Plan, submitted pursuant to Public Utilities Code Section 381.1(e) and (f) and the CPUC's direction in D.14-01-033. The CPUC approves a budget for San Jose Clean Energy of \$5,066,776.20 over the course of its three-year Energy Efficiency Program Plan. This funding will come from Pacific Gas & Electric Company's (PG&E) Energy Efficiency Portfolio Budget and thus not result in any incremental

¹ Per California Public Utilities 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.

costs for PG&E's ratepayers. **Approved.**

Item 5. Draft Resolution WSD-022. This Resolution ratifies the Action Statement (Appendix A of the Resolution) of the Office of Energy Infrastructure Safety approving Bear Valley Electric Service, Inc.'s (BVES) 2021 Wildfire Mitigation Plan (WMP) Update pursuant to Public Utilities Code Section 8386. **Approved.**

Item 7. Draft Resolution E-5164. This Resolution (1) requires PG&E to pursue a new clean substation microgrid project and (2) approves PG&E's proposed use of Demand Response (DR) programs during Public Safety Power Shutoff (PSPS) events. In D.21-01-018, the Commission required that any utility reserving temporary generation to mitigate transmission-level PSPS events "document its plans to establish clean substation microgrid projects located at, or able to serve, at least one substation," or alternatively "document the specific conditions [for clean substation pilots] that have not been met in its Advice Letter." The Resolution finds that PG&E has not documented its plans to establish a clean substation microgrid project. The Resolution also finds that PG&E has not adequately documented specific conditions that make such a project infeasible. The Resolution concludes that although PG&E provided evidence for the infeasibility of temporary projects, it did not provide adequate evidence for the infeasibility of permanent projects, which may still meet the requirements of D.21-01-018. The Resolution directs PG&E to meet its obligation under D.21-01-018 by pursuing a new clean substation project. PG&E is required to issue a Request for Proposals that allows for permanent projects, and submit a Tier 3 AL requesting approval for at least one project through the framework approved in D.21-01-018. This Resolution also approves PG&E's request to use two existing DR programs to reduce the use of temporary generation during PSPS events. **Approved.**

Item 9. R.13-11-005 (Energy Efficiency). This decision approves a settlement agreement between San Diego Gas & Electric Company (SDG&E), the Public Advocates Office of the CPUC, and The Utility Reform Network, related to SDG&E's administration of an upstream lighting energy efficiency program between 2017 and 2019. The settlement agreement provides for refunds to SDG&E customers in the amount of \$45.44 million, a return to customers of \$6.162 million in shareholder awards associated with the program, and a fine in the amount of \$5.5 million for SDG&E knowingly submitting inaccurate information to the CPUC. In addition, if SDG&E pursues recovery of additional funds from manufacturers who participated in the program and violated its terms, 33 percent of any amount collected from those manufacturers will be returned to SDG&E customers. Finally, SDG&E will conduct whistleblower training within one year of this decision, at shareholder expense. **Signed, D.21-09-002.**

Item 10. Draft Resolution E-5130. This Resolution approves, with modification, Lancaster Choice Energy's AL 13-E, Pico Rivera Innovative Municipal Energy's AL 8-E, and San Jacinto Power's AL 6-E to create tariffs to implement the Disadvantaged Communities Green Tariff and/or Community Solar Green Tariff programs. **Approved.**

Item 11. R.19-10-005 (EPIC Program). In this decision, the Commission authorizes PG&E, Southern California Edison (SCE), and SDG&E to continue in their role as administrators of the Electric Program Investment Charge (EPIC) Program, subject to additional

administrative requirements. Like the California Energy Commission (CEC), the Investor-owned Utilities (IOU) are authorized to file two five-year investment plans, with the first cycle covering 2021-2025 (EPIC 4) and the second cycle covering 2026-2030 (EPIC 5). The Commission authorizes EPIC 4 investment plan budgets of \$18.444 million annually for PG&E, \$3.24 million annually for SDG&E, and \$15.131 million annually for SCE. To bring greater focus to the EPIC Program and improve transparency, the Commission adopts a number of administrative requirements, as well as the guiding principles and mission statement contained in Appendix A of the Proposed Decision. Given the number of revisions in this decision, the Commission extends the filing deadline for the CEC's EPIC 4 investment plan from October 1, 2021 to December 1, 2021. Although the Commission authorizes the IOUs as administrators, and authorize their investment plan budgets, this decision does not approve their investment plans. **Held to September 23, 2021 voting meeting.**

Item 12. Draft Resolution E-5168. On February 26, 2021, PacifiCorp d/b/a Pacific Power (PacifiCorp) filed AL 643-E, which was withdrawn on May 17, 2021 and replaced with AL 649-E on May 21, 2021. PacifiCorp filed AL 649-E-A on June 18, 2021, which clarifies language within its May 21 filing. On March 1, 2021, BVES filed AL 413-E and Liberty Utilities (Calpeco Electric) LLC (Liberty) filed AL 166-E. The three IOUs request approval to establish a new Electric Rule: Rule 24 for BVES, Liberty, and PacifiCorp—known as the EV Infrastructure Rules. The ALs also request approval of associated Electric Vehicle Infrastructure Memorandum Account to track the costs associated with offering these new rules. This Resolution requires modifications to the proposed EV Infrastructure Rules to create consistency in policy across the IOU service territories, increase transparency for customers, and ensure additional protections for ratepayers. This Resolution requires each IOU to file a Tier 1 AL within 60 days of adoption of this Resolution to make the modifications that this Resolution orders and to address the outstanding implementation details related to the rules. The Resolution additionally orders each IOU to also file a Tier 2 AL to address outstanding implementation details that the Tier 1 AL filing does not cover. **Held to September 23, 2021 voting meeting.**

Item 13. Draft Resolution E-5167. On February 26, 2021, SCE filed AL 4429-E, SDG&E filed AL 3705-E, and PG&E filed AL 6102-E that was later replaced by AL 6102-E-A filed on March 17, 2021. The ALs request the establishment of new rules—Electric Rule 45 for SDG&E and Electric Rule 29 for SCE and PG&E—known as the EV Infrastructure Rules (Rules) and request associated Memorandum Accounts (Memo Accounts) to track the costs associated with offering these new Rules. This Resolution approves, with modifications, PG&E's, SCE's, and SDG&E's proposed Rules and associated Memo Accounts. Under the proposed Rules, ratepayers cover the costs of service line extensions and electrical distribution infrastructure—or EV Service Extensions—for separately metered EV charging for customers other than those in single-family residences. Per the direction of Public Utilities Code Section 740.19, these costs related to utility-side distribution infrastructure that support EV charging will be recovered through the IOUs' general rate cases (GRC). As a result, IOUs will no longer request approval for utility-side costs associated with separately metered EV charging in an application or AL proposing a new transmission electrification (TE) program. In the past, the IOUs tracked these costs in Balancing Accounts associated with individual TE programs, whereas with the approval of this Resolution the IOUs will, moving forward, track these costs

within a Memo Account and seek approval of those costs within a GRC. **Held to September 23, 2021 voting meeting.**

Item 17. R.14-08-013 (Distribution Resources Plans). This decision closes Rulemaking 14-08-003 in light of the opening of the successor distribution resource plan proceeding, Rulemaking (R.) 21-06-017, and approves, as modified, the IOUs' Applications 15-07-002, 15-07-003, and 15-07-006, as well as the Small and Multi-Jurisdictional Utilities' Applications 15-07-005, 15-07-007, and 15-07-008. This decision determines that the IOUs' distribution resource plan proposals are in a sufficiently developed shape such that they may be approved, as modified by the decisions that the Commission has adopted in this proceeding, and by the guidance rulings the assigned Commissioner and assigned Administrative Law Judge (ALJ) have issued. Any additional work that the IOUs must undertake as required by the decisions and rulings in this proceeding to complete their distribution resource plan proposals will be overseen by the Commission in the successor distribution resource plan proceeding, R.21-06-017 (Order Instituting Rulemaking to Modernize the Electric Grid for a Higher Distributed Energy Resources Future). The Small and Multi-Jurisdictional Utilities (PacifiCorp, Liberty, and BVES, collectively, SMJUs) have also provided the Commission with enough preliminary information to approve their distribution resource plan proposals, as modified by the decisions that the Commission has adopted in this proceeding, and by the guidance rulings the assigned Commissioner and assigned ALJ have issued. Any additional work that the SMJUs must undertake as required by the decisions and rulings in this proceeding to complete their distribution resource plan proposals will be overseen by the Commission in the successor distribution resource plan proceeding, R.21-06-017. **Signed, D.21-09-005.**

Item 28. Draft Resolution WSD-021. This Resolution ratifies the Action Statement (Appendix A of the Resolution) of the Office of Energy Infrastructure Safety approving PG&E's 2021 WMP Update pursuant to Public Utilities Code Section 8386. **Held to September 23, 2021 voting meeting.**

CALIFORNIA ISO

Statewide Flex Alerts

The California ISO issued a statewide flex alert for two days last week—Wednesday, September 8, and Thursday, September 9—from 4 p.m. to 9 p.m. because of hot weather affecting much of California and the West, and tight energy supply margins in the market.

Department of Energy Grants Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act

On September 7, 2021, the California ISO requested that the Secretary of Energy find an electric reliability emergency exists within the State of California, and issue an emergency order pursuant to Section 202(c) of the Federal Power Act. The requested order would allow the California ISO to dispatch certain generators at their maximum generation output levels, notwithstanding air quality or other permit limitations. The California ISO identified six resources that would provide approximately 200 MWs of additional generation. These resources

included new units placed at the Roseville Energy Park and Greenleaf Unit 1 that are being cited pursuant to the Governor's July 30, 2021 Emergency Proclamation. The California ISO asked that the Department of Energy issued the order by September 10, 2021, and that it be in effect for 60 days. On September 10, 2021, the Department of Energy issued the requested order (Order No. 202-21-2), which is effective through November 9, 2021. Both the request and the order may be found [here](#).

Stakeholder Initiatives: Upcoming Meetings and Deadlines

External Load Forward Scheduling Rights Process Issue Paper. Written comments on issue paper for the External Load Forward Scheduling Rights Process initiative are due by end of day September 30, 2021.

CALIFORNIA ENERGY COMMISSION

Energy System Reliability (21-ESR-01). On September 10, 2021, the CEC posted a Notice of Staff Informational Workshop on Midterm Reliability Modeling to the Energy System Reliability [docket](#). The workshop will be held at 9:30 a.m. on September 23, 2021. This workshop follows on the heels of the CEC's August 30, 2021 workshop, which provided an update on actions to support electric grid reliability, including the Midterm Reliability Analysis and incremental efficiency improvement potential for natural gas power plants. Stoel's Renewable + Law Blog provides a summary of the August 30, 2021 workshop [here](#).

On September 8, 2021, CEC staff also issued a revised 2022 Summer Supply Stack Analysis (Analysis) in this same docket. The revised Analysis assesses supply conditions against average and extreme weather conditions for summer 2022. The Analysis projects a need for between 200 to 4,350 MWs of additional resources to ensure reliability during summer 2022 under extreme weather events. The revised Analysis updates the draft 2022 Summer Stack Analysis provided at the CEC's August 11, 2021 Business Meeting. The previous draft Analysis had calculated a higher need of between 600 and 5,200 MWs for 2022 summer reliability under extreme weather events.

CEC Business Meetings. The next CEC Business Meeting is scheduled for October 13, 2021.

CALIFORNIA AIR RESOURCES BOARD (ARB)

On September 21, 2021, ARB will host a virtual public meeting of the AB 617 Consultation Group. Details on the virtual meeting are available [here](#).

On September 23, 2021, ARB will hold a virtual Board meeting to consider approval of two components of the State Implementation Plan (SIP): the [Cosco Junction PM10 Maintenance Plan](#) and the [Sacramento County PM10 Maintenance Plan](#). At the meeting, ARB will also hear an update on the 2018 PM2.5 SIP for the San Joaquin Valley and consider a SIP revision to the 15 µg/m³ annual PM2.5 Standard. Notice of the San Joaquin Valley items is available [here](#). Comments on these plans can be submitted [here](#) on or before September 13, 2021.

ARB held a virtual workshop on the draft [Fourth Investment Plan](#) for cap-and-trade auction proceeds on September 2, 2021. Comments can be submitted on the plan [here](#) until September 17, 2021.

ARB is accepting informal public comments on the proposed [Advanced Clean Fleets](#) regulation, which aims to achieve a zero-emissions truck and bus California fleet by 2045. Comments may be submitted [here](#) on or before December 31, 2021.

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Northern States Power Company Petition for Transmission Cost Recovery, PUC Docket No. EL21-025

On September 1, 2021, Northern States Power dba Xcel Energy (Xcel) filed its 2022 Transmission Cost Recovery Rider (TCR) petition. Xcel seeks a 2022 TCR revenue requirement of \$7.0 million, utilizing a TCR adjustment factor of \$0.003245 per kWh to be implemented on January 1, 2022. The filing indicates that, if approved, the TCR will result in a \$2.43 surcharge per month for average residential customers. This matter remains open before the South Dakota Public Utilities Commission.

OREGON PUBLIC UTILITY COMMISSION (OPUC)

OPUC Grants Certification Extension for Four Community Solar Program (CSP) Facilities

Last Friday, the OPUC issued Order 21-294, which granted four solar projects extensions to meet their certification deadlines under the CSP. The projects are Pilot Rock 1, Pilot Rock 2, and Goodling Annex located in PacifiCorp's service territory and Skyward Solar located in Portland General Electric's service territory. Details on the extension can be located in the full order [here](#).

NEW YORK PUBLIC SERVICE COMMISSION

On September 9, 2021, the New York State Public Service Commission (Commission) issued an order (Order) on the filing made by the state's utilities (Utilities) in late 2020 that proposed criteria for evaluating, funding, and prioritizing the local transmission and distribution investments needed to meet the clean energy and climate goals set by the Climate Leadership and Community Protection Act (CLCPA). [Order on Local Transmission and Distribution Planning Process and Phase 2 Project Proposals](#). The Utilities' 2020 filing related to Phase 2 projects, which are projects made primarily for the purpose of achieving the mandates within the CLCPA. In the Order, the Commission determined that:

(1) Within 90 days of the Order (*i.e.*, by December 8, 2021), the Utilities must submit a filing that refines the evaluation criteria they initially proposed for selecting CLCPA-driven

transmission upgrades and to provide more details on the mechanism for recovery of CLCPA-driven costs. The Commission found that the Utilities' proposal did not accomplish the goal of finding the most cost-effective expenditure of ratepayer dollars to meet the CLCPA mandates. The Commission remained concerned that the criteria did not accurately estimate relevant benefits from transmission investments or adequately consider alternative investments.

(2) Within 90 days of the Order (*i.e.*, by December 8, 2021), the Utilities must file a new coordinated power grid planning process proposal. The Commission found that the Utilities' initially proposed plan was deficient, as it was limited to disseminating utility information as opposed to obtaining true stakeholder input. The Commission held that the Utilities should file a more comprehensive plan that contains revisions to the stakeholder process for bulk transmission, local transmission, and distribution planning. The Commission directed the Utilities to develop the plan in collaboration with Department of Public Service staff, New York State Energy Research and Development Authority, the New York Independent System Operator, and other stakeholders.

(3) The Order also found that the Utilities' initial proposal to bring these CLCPA transmission investments into the traditional cost-of-service ratemaking process was improper. Instead, the Commission directed the Utilities to jointly file a coordinated portfolio of CLCPA projects by January 1, 2023, and on a regular basis thereafter. These filings would be examined by the Commission in a single proceeding and order. The cost of projects approved by the Commission would then be allocated across the Utilities. This deviation from traditional cost-of-service ratemaking may be a model that other states will implement as more transmission investment is needed to meet respective state-driven clean energy mandates.

(4) Within 180 days of the Order (*i.e.*, by March 8, 2022), the four major upstate electric utilities—New York State Electric & Gas, Rochester Gas & Electric, National Grid, and Central Hudson—must file a proposal for cost-effective solutions for three existing generation pockets in the Capital Region, southwest, and northern regions of the state that are expected to see additional renewable generation development in response to the state's renewable energy mandates.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

President Biden announced his intent to nominate Willie L. Phillips, Jr. as a Commissioner of FERC. Phillips is currently Chairman of the Public Service Commission of the District of Columbia (DCPSC). Phillips has been on the DCPSC since 2014 and has been the Chairman since 2018. Prior to his tenure on the DCPSC, Phillips served as Assistant General Counsel for the North American Electric Reliability Corporation. If confirmed, Phillips would replace Republican Neil Chatterjee and give Democrats a 3-2 majority on FERC.

FERC's next monthly meeting is September 23, 2021.

FERC issued a [Staff Report](#) on Energy and Ancillary Services Market Reforms to Address Changing System Needs. The report is intended to frame the discussion at the staff-led

[technical conference](#) on September 14, 2021, addressing energy and ancillary services markets administered by the RTOs/ISOs. The technical conference will discuss potential energy and ancillary services market reforms, such as market reforms to increase operational flexibility, that may be needed as the resource fleet and load profiles change over time. The Staff Report emphasizes the need for increased operational flexibility in RTO/ISO energy and ancillary services markets to address operational challenges due to expected changes in the resource mix, such as more variable energy resources, and changes in loads due to weather-dependent distributed energy resources, electrification, and other factors.

FERC's annual Commissioner-led [reliability technical conference](#) will take place on September 30, 2021.

FERC will hold its [first Federal-State Transmission Task Force Meeting](#) on November 10, 2021, to coincide with the annual meeting of the National Association of Regulatory Utility Commissioners (NARUC) in Louisville, Kentucky. The Task Force, established by the FERC in June, is composed of the FERC Commissioners and 10 state regulators representing the five NARUC regions. It will explore transmission-related issues to identify and realize the benefits of electricity transmission while ensuring that the costs are allocated efficiently and fairly. FERC also announced that the following state commission representatives will serve on the Task Force for a one-year term:

- Chair Gladys Brown Dutrieuille, Pennsylvania Public Utility Commission
- Chair Jason Stanek, Maryland Public Service Commission
- Chair Andrew French, Kansas Corporation Commission
- Chair Dan Scripps, Michigan Public Service Commission
- Commissioner Riley Allen, Vermont Public Utility Commission
- Chair Matthew Nelson, Massachusetts Department of Public Utilities
- Commissioner Kimberly Duffley, North Carolina Utilities Commission
- Chair Ted Thomas, Arkansas Public Service Commission
- Commissioner Kristine Raper, Idaho Public Utilities Commission
- Commissioner Clifford Rechtschaffen, California Public Utilities Commission

Interested persons are invited to file comments on agenda topics for the first public meeting of the Task Force, **due September 10, 2021**. The Commission specifically requested comments on identifying barriers that inhibit planning and development of more efficient and effective transmission necessary to achieve federal and state policy goals, both within FERC rules and regulations regarding planning and cost allocation of transmission projects and at the state level, as well as potential solutions to those barriers.

On September 7, 2021, FERC issued an [Order Establishing Additional Briefing and Instituting Section 206 Proceeding](#) in response to the complaint filed by NECEC Transmission LLC and Avangrid, Inc. (collectively, Avangrid) against NextEra Energy Resources, LLC, NextEra Energy Seabrook, LLC, FPL Energy Wyman LLC, and FPL Wyman IV LLC (collectively, Seabrook) alleging that Seabrook has been delaying and increasing the cost of a circuit breaker replacement at the Seabrook nuclear generating station necessary for the

interconnection of Avangrid's New England Clean Energy Connect (NECEC) transmission project.

The NECEC project will enable the delivery of up to 1,200 MW of hydroelectric energy from Quebec, Canada to New England under FERC-jurisdictional transmission contracts. Based on a system impact study performed by the ISO-NE, a number of system upgrades would be necessary to accommodate the interconnection of the project, including the replacement of a circuit breaker at the Seabrook Station. Seabrook contends that the breaker is not a transmission or interconnection facility, but rather is part of a generator that is not subject to FERC's open-access requirements, and that the breaker does not need to be replaced absent Avangrid's proposed interconnection. Recognizing that Avangrid's complaint presents novel jurisdictional issues, FERC invited interested parties to submit briefs on an array of issues, including what, if any, obligations Seabrook has to replace the breaker. *Id.* at P 18. FERC also instituted a Section 206 "show cause" proceeding, preliminarily finding that the ISO-NE Tariff is unjust and unreasonable to the extent that it allows existing generating facilities and their components to be identified as impacted facilities which must be remedied before a new interconnection customer may interconnect but does not require that the generator take action. FERC therefore directed ISO-NE to, *inter alia*, explain what changes to the Tariff it would make to remedy this situation going forward. *Id.* at PP 20-23.