

**REGULATORY UPDATE FOR APRIL 26 (WEEK OF APRIL 19)****CALIFORNIA PUBLIC UTILITIES COMMISSION****New Proposed Decisions and Draft Resolutions<sup>1</sup>**

I.19-11-013 (2019 PSPS Investigation). This proposed decision finds that in 2019, when proactively shutting off electric power to mitigate the risk of catastrophic wildfire caused by their infrastructure, California's three largest investor-owned electric utilities, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), failed in certain respects to reasonably comply with the obligation to promote safety in Pub. Util. Code § 451 and with many of the California Public Utilities Commission's (CPUC) guidelines in Decision (D.) 19-05-042, Resolution ESRB-8 (July 12, 2018), and other applicable laws, rules, and regulations. To address the failures of PG&E, SCE, and SDG&E to reasonably protect the public and adhere to state law and the CPUC's rules and regulations pertaining to proactive power shutoffs used as a wildfire mitigation measure, the CPUC directs utilities to, among other things:

(1) forgo collection from customers of the portion of their authorized revenue requirement equal to all future unrealized volumetric sales due to all future proactive power shutoffs;

(2) immediately initiate efforts to engage in the sharing of best practices and lessons learned for initiating, communicating, reporting, and improving all aspects of proactive power shutoffs by regularly holding utility working group meetings;

(3) immediately initiate efforts to assist the CPUC's Safety and Enforcement Division in developing a standardized 10-day post-event reporting template;

(4) file a report on an annual basis in Rulemaking (R.) 18-12-005 or a successor proceeding describing each utility's progress and status on improving compliance with the PSPS Guidelines, especially the progress and status of implementing those guidelines not addressed in 10-day post-event reports;

(5) undertake specific corrective actions, set forth below, to improve the utilities' future compliance with the PSPS Guidelines and Pub. Util. Code § 451;

(6) provide Standard Emergency Management System training for all personnel involved in PSPS planning;

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<sup>1</sup> Per California Public Regulatory Commission (the 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.

(7) immediately initiate efforts to improve, among other things, communications with those customers dependent on electricity for medical reasons, especially life support, before, during, and after a proactive power shutoff; and

(8) improve transparency in all aspects of utility decision-making related to initiating proactive power shutoffs.

In addition, the CPUC's Safety and Enforcement Division will increase the transparency of its review process of the 10-day post-event reports by, as a first step, preparing a standard template for 10-day post-event reports, which will be issued for comments by parties in R.18-12-005; and, as a second step, establishing a single webpage on the CPUC's website to function as a central repository for all the CPUC's undertakings regarding the proactive power shutoffs that stakeholders, including the general public, can use to easily access the different aspects of the CPUC's review process of proactive power shutoffs, such as identifying the division within the CPUC undertaking a particular aspect of the review process and the subject matter of the review; and, as a third step, posting on this webpage the final documents related to the Safety and Enforcement Division's review of the 10-day post-event reports.

R.13-11-005 (Energy Efficiency). This Presiding Officer's Decision finds that Southern California Gas Company spent ratepayer funds on activities that misaligned with the CPUC's intent for energy efficiency codes and standards advocacy. This decision does not order a financial penalty, but directs Southern California Gas Company to refund ratepayer expenditures and associated shareholder incentives, and orders remedies for appreciable harm to the regulatory process caused by Southern California Gas Company's conduct.

Draft Resolution E-5143. This Resolution updates a citation program under the administration of CPUC Staff to enforce compliance with Renewables Portfolio Standards (RPS) reporting and filing requirements. Approval of these updates to the RPS citation program will create penalties for non-compliance with the CPUC's requirements for submission of RPS Procurement Plans, as well as penalties for non-compliance with RPS reporting requirements and non-responsiveness to requests for information by Staff related to the implementation and administration of the RPS program.

### Voting Meetings

The CPUC has a voting meeting scheduled for May 6, 2021. The agenda for that meeting is scheduled to be published April 26, 2021.

### **April 22, 2021 Voting Meeting**

The CPUC scheduled a voting meeting for April 22, 2021. The following item was included in the agenda:

Item 5: A.20-04-023 (PG&E Stress Test). California Public Utilities Code Sections 451.2(c) and 850.1(a) authorize the CPUC to issue a financing order to allow for recovery of costs that exceed the maximum amount a utility can pay without harming

customers, as determined pursuant to Section 451.2(b). The CPUC issued a rulemaking in 2019 to, among other things, guide the evaluation of an electrical corporation's financial status and the determination of the maximum amount the corporation can pay for 2017 catastrophic wildfire costs. D.19-06-027 adopted a methodology for conducting a financial "Stress Test" to implement the directives of Section 451.2. PG&E's application requested that the CPUC apply that methodology because it has incurred costs and expenses from 2017 wildfires that should be disallowed, and it seeks to issue recovery bonds for a portion of those costs and expenses pursuant to Sections 451.2(c) and 850 et seq. This decision determines that PG&E satisfies the Stress Test methodology adopted in D.19-06-027 and that \$7.5 billion of 2017 catastrophic wildfire costs and expenses may be financed through the issuance of recovery bonds pursuant to Public Utilities Code Section 850 et seq. **Signed, D.21-04-030.**

## **CALIFORNIA INDEPENDENT SYSTEM OPERATOR**

### Board of Governors Meeting

A Board of Governors meeting was held April 21, 2021. The Board approved the Market Enhancements for Summer 2021 Readiness initiative which will refine the prioritization of energy imports, exports, and transfers through the California Independent System Operator's (ISO) balancing authority area. The initiative, slated for implementation in July, is intended to enhance the ISO's ability to reliably manage intertie energy transactions during electricity shortages such as those that occurred during the August 2020 heatwave that caused rotating power outages. If approved by the Federal Energy Regulatory Commission (FERC), it will be effective until May 31, 2022. The ISO is scheduled to begin a regional stakeholder process on a long-term solution to wheeling priorities – energy transfers through the ISO's BAA – in the coming months.

### Stakeholder Initiatives: Upcoming Meetings and Deadlines

**BPM Change Management Call.** The California ISO is hosting its monthly Business Practice Manual (BPM) change management web conference on April 27, 2021, to review proposed changes to business practice manuals.

**Draft 2022 Flexible Capacity Needs Assessment.** Written comments on the Draft 2022 Flexible Capacity Needs Assessment are due April 30, 2021.

**Transmission Planning Process BPM: Electromagnetic Transient Model Submission Requirements.** The California ISO will hold a public stakeholder call on April 28, 2021, to discuss requirements, timelines, and processes for participating generators to submit required generator data, as outlined in Section 10 of the Business Practice Manual for Transmission Planning Process, effective August 1, 2018.

## **CALIFORNIA ENERGY COMMISSION**

On April 22, the California Energy Commission circulated public [notices](#) regarding a two-session joint workshop with the CPUC and the California ISO (Workshop) that will focus on electric system reliability for summer 2021. The Workshop will be held on May 4 via remote access only, with Session 1 commencing at 10:00 AM and Session 2 scheduled to begin at 2:00 PM. See the link above for attendance and registration information.

The Workshop will review lessons learned, both from last summer and from the work performed to date, and the status of the activities planned to reduce electric system reliability risks for summer 2021. There will also be panel discussions with other state agencies, utility representatives, and other stakeholders to explore additional opportunities to support summer 2021 energy reliability. A detailed meeting agenda will be posted [here](#) prior to the Workshop.

## **CALIFORNIA AIR RESOURCES BOARD**

The California Air Resources Board is accepting comments on the proposed Clean Miles Standard, which will be considered by the Board at its May 20, 2021 meeting. Comments can be submitted electronically [here](#) on or before May 17, 2021. The Clean Miles Standard would set electrification and greenhouse gas (GHG) emissions targets for the light-duty fleets of transportation network companies like Uber and Lyft. The electrification target, measured by the percentage of electric vehicle miles traveled (eVMT), would commence in 2023 with a target of 2% eVMT and increase to 90% eVMT in 2030. The GHG emissions target would use a metric of grams of CO<sub>2</sub> per passenger-mile-traveled (g CO<sub>2</sub>/PMT), and also encourage a reduction in vehicle miles traveled (VMT) relative to passenger miles traveled. The Standard would require a transportation network company to meet a GHG target of 252 g CO<sub>2</sub>/PMT in 2023, decreasing to 0 g CO<sub>2</sub>/PMT in 2030. Transportation network companies would have various options to reduce company-wide GHG emissions to the annual targets, including improving fleet-wide fuel efficiency, reducing VMT by increasing shared rides, reducing VMT by reducing deadhead miles (i.e., those miles driven without a passenger), and earning CO<sub>2</sub> credits by investing in active transportation infrastructure or by providing integrated fare services to connect riders to mass transit. The Clean Miles Standard will help California meet the statewide mandate to reduce GHG emissions 40% below 1990 levels by 2030. The Clean Miles Standard will be implemented by the California Public Utilities Commission.

## **MINNESOTA PUBLIC UTILITIES COMMISSION**

### **1. Otter Tail Power Company Energy-Intensive, Trade-Exposed Extension**

On Thursday, April 22, 2021, the Minnesota Public Utilities Commission (MPUC) met to consider Otter Tail Power Company's (OTP) petition to extend its existing energy-intensive, trade-exposed (EITE) discount. The EITE discount is approved pursuant to Minn. Stat. Section 216B.1696, which makes it the energy policy of the state to ensure competitive rates for qualifying large industrial customers. Early in 2021, OTP submitted a petition to extend the existing EITE discount, which was set to expire at the end of 2021. OTP's petition was also supplemented by a group of customers currently taking service under the EITE discount. After

comments from stakeholders, the Commission approved OTP's request to extend the EITE discount for another four-year term.

## 2. Minnesota Power Certificate of Need for Duluth Loop Reliability Project

On April 22, 2021, the MPUC approved Minnesota Power's proposed notice plan and various exemption requests related to the Company's Duluth Loop Reliability Project certificate of need proceeding.

### Minnesota Supreme Court

As a follow up to a previous update we provided on the pending Nemadji Trail Energy Center ("NTEC") order, the Minnesota Supreme Court (or the "Court") issued its opinion on April 21, 2021. The Court reversed the Minnesota Court of Appeals and remanded the matter to the same court to address the remaining issues on appeal.

By way of background, NTEC is a natural gas power plant scheduled to be built in Superior, Wisconsin. Minnesota Power previously requested and received the MPUC's approval to acquire 48% of NTEC's capacity through its Wisconsin affiliate, South Shore Energy, LLC, through multiple affiliated-interest agreements. The Clean Energy Organizations (CEOs) raised concerns about the lack of environmental review and requested that the MPUC prepare an Environmental Assessment Worksheet under the Minnesota Environmental Policy Act (MEPA). The MPUC concluded that it did not have jurisdiction to conduct environmental review of power plants outside of Minnesota and the existence of affiliated-interest agreements was not enough to grant it such authority. The MPUC, therefore, denied the CEOs' request for environmental review and approved Minnesota Power's petition. The CEOs appealed.

On appeal, the Minnesota Court of Appeals reversed the MPUC's decision to deny environmental review under MEPA. The Court of Appeals concluded that "MEPA requires all state agencies to consider 'to the fullest extent practicable' the environmental consequences flowing from their actions." (Citations omitted.) On that basis, the Court of Appeals further reasoned that MEPA applies to the MPUC's approval of the NTEC affiliated-interest agreements. Minnesota Power subsequently sought review, and the matter was briefed throughout 2020, with the Minnesota Supreme Court hearing oral argument in October.

The Minnesota Supreme Court reversed, concluding that the MPUC properly concluded that MEPA review was not required. The Court first analyzed environmental review under Minn. Stat. § 216B.48, which governs the approval of affiliated-interest agreements, finding that nothing in the statute requires environmental review, and the legislature did not instruct the MPUC to conduct environmental review as part of its analysis. Additionally, the Court reasoned that the MPUC properly analyzed whether the affiliated-interest agreements satisfied the public interest by considering Minnesota's resource planning and certificate of need statutes.

The Court next analyzed whether the language within MEPA independently requires environmental review of affiliated-interest agreements. Working from the premise that "MEPA is not applicable unless [the] action has the potential for significant environmental effects" the

Court noted that, “[s]imply put, the decision to approve the terms and conditions of Minnesota Power’s affiliated-interest agreements does not grant a permit, does not approve the construction or operation of the NTEC power plant, and does not authorize Minnesota Power to proceed forward in Wisconsin.” Additionally, the Court recognized that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.” (Citations omitted.) On that basis, the Court concluded that MEPA does not independently require the Commission to conduct additional environmental review as part of its approval of Minnesota Power’s affiliated-interest agreements. Because of this conclusion, the Court did not address the remaining dormant Commerce Clause considerations. The Court, therefore, reversed the Minnesota Court of Appeals’ decision and remanded the matter for determination of whether the MPUC otherwise erred in approving the affiliated-interest agreements. Justice Chutich dissented, arguing that MEPA independently requires the MPUC to conduct environmental review in its approval of Minnesota Power’s affiliated-interest agreements, and such review does not raise concerns under the dormant Commerce Clause.

## **OREGON**

### **New Rulemaking with respect to Community Solar Program**

Last Tuesday, the Oregon Public Utility Commission (OPUC) issued an order opening a new rulemaking in Oregon’s Community Solar Program (CSP). The recommended rules will address certification revocation for project managers who fail to comply with CSP guidelines, as well as establish a dispute resolution process for project managers who have complaints with other managers in the program. The order can be located [here](#).

### **Three Solar Projects Granted Pre-Certification in Oregon CSP – UM 1930**

Last Thursday, the OPUC issued an order granting pre-certification to three solar projects under OAR 860-088-0040 in Oregon’s CSP. The projects are Wocus Marsh Solar (1.601 MW), Whiskey Creek Solar (299 kW), and Sunset Ridge Solar (4.001 MW), all of which are located in Klamath County. The order can be located [here](#).

### **HB 2064 Passed in the House, Moves on to Senate**

Last Monday, the Oregon House of Representatives voted to pass HB 2064, which changes the quorum requirement for the Energy Facility Sitting Council (EFSC). Currently, the agency requires five of its seven members to be present in order to conduct official business. HB 2064 would modify this to require a majority of EFSC members to be present in order to promote efficiency in rulemaking and energy project development. The current version of the bill is located [here](#).

## **WASHINGTON**

### **SB 5126 Passed in the House and Senate**

Last week, the Washington state legislature passed SB 5126 which establishes a cap and invest program for greenhouse gas emissions. The program also allocates auction revenues for purposes such as clean energy transition and energy efficiency projects. The final version of the bill can be located [here](#).

### **FEDERAL ENERGY REGULATORY COMMISSION**

1. FERC (or the “Commission”) has extended the timeframe for market-based rate sellers to file their baseline filings in compliance with FERC Order No. 860. Order No. 860 will now go into effect on July 1, 2021, and baseline filings will be due by November 2, 2021. The relational database system is open through June 30, 2021 for testing, and then the system will be open for baseline filings from July through October.

2. FERC has scheduled a [technical conference](#) to discuss electrification and the grid of the future on April 29, 2021.

3. FERC has scheduled a [technical conference](#) to discuss issues surrounding the threat to electric system reliability posed by climate change and extreme weather events on June 1-2, 2021.

4. Multiple parties have intervened and filed comments regarding a [petition for enforcement](#) brought by several owners of small solar qualifying facilities and a nonprofit in Alabama requesting that FERC compel the Alabama Public Service Commission to set non-discriminatory rates for sales to solar qualifying facilities. The petition targets charges for “back-up service” in Alabama Power’s territory. The petition was filed by the Southern Environmental Law Center and Ragsdale LLC and intervenors include the Solar Energy Industries Association and the American Forest & Paper Association, among others. While similar charges exist in other areas of the country, the petition alleges that Alabama’s are the highest and have stymied solar development in Alabama. If successful, the petition may have implications for similar charges assessed by other utilities.

5. Avangrid has come one step closer to completing its purchase of Public Service Company of New Mexico. On April 20, FERC issued its [order](#) under Section 203 of the Federal Power Act, authorizing the transaction.

6. Chairman Glick Denies PJM Transmission Owners’ Interlocutory Appeal Regarding Scope of Issues Set for Hearing in Border Rate Proposal Proceeding.

On April 22, 2021, Chairman Glick, acting in his capacity as Motions Commissioner, denied the PJM Transmission Owners’ (PJM TOs) Interlocutory Appeal of the Presiding Judge’s April 8, 2021 decision to deny the PJM TOs’ motion to permit interlocutory appeal of certain determinations regarding the scope of the evidentiary hearing (“Scope Order”). The proceeding relates to Border Rate service, which is point-to-point transmission service from any point of receipt within PJM to any point of delivery at the border of PJM. Border

Rate service is its own class of transmission service, and is used by public utilities and others that export power out of PJM to serve load in a neighboring system, such as the New York Independent System Operator.

In June 2019, the PJM TOs filed revisions to the PJM Border Rate to convert it from a stated rate to an annually-updated formula rate. In addition, the PJM TOs added provisions to clarify allocation of costs related to transmission upgrades for Border Rate customers. The tariff revisions were protested by certain merchant transmission facility owners (“MTF Parties”) who argued that they should be allowed to continue to pay the PSE&G Zonal Point-to-Point rate for service. On November 5, 2019, the Commission issued an order that disposed of certain limited contested issues, while setting the majority of issues for hearing and settlement judge proceedings. Despite prolonged settlement negotiations, on February 16, 2021, the Chief Judge terminated settlement procedures and set the proceeding for hearing. The Scope Order categorized the hearing into 11 issues. The PJM TOs argued that the Scope Order expanded the set of issues beyond the Commission’s determinations in its November 5, 2019 Order. On April 8, the PJM TOs presented an oral motion to the Presiding Judge requesting permission to proceed with an interlocutory appeal on four of the 11 issues set forth in the Scope Order; however, the Presiding Judge denied the motion.

The instant Motion for Interlocutory Appeal requested prompt Commission review of the four issues that the PJM TOs argued were erroneously set for hearing in the Scope Order. The PJM TOs requested review of (1) whether the Commission contemplated that the PJM TOs would have to demonstrate that Border Rate customers use specific transmission facilities before including them in the numerator of the Border Rate formula; (2) whether the Commission intended to set contentions of rate shock for evidentiary hearing; (3) whether the Commission intended to set for evidentiary hearing the justness and reasonableness of the formula establishing the Non-Zone Network Service Rate in Attachment H-A; and (4) whether the Commission intended to set for hearing “a comprehensive review of the Border Rate,” including whether it is unreasonable or unduly discriminatory or preferential. In their response to this motion, the merchant transmission owners argued that the PJM TOs did not satisfy the requirements for interlocutory appeal because they failed to show that the Scope Order presents extraordinary circumstances that make immediate Commission review necessary to prevent detriment to the public interest or irreparable harm to any person.