REGULATORY UPDATE FOR JANUARY 4, 2023
(WEEK OF DECEMBER 19 & 26, 2022)

CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

New Proposed Decisions and Draft Resolutions[1]

R.13-11-005 (Energy Efficiency). This decision would adopt various revisions to the third-party solicitation process, including: (1) removing requirements for performance assurances as a starting point for contract negotiation; (2) requiring cybersecurity insurance only when deemed necessary; (3) removing the requirement for a two-stage solicitation process; (4) updating the definition of diverse business enterprise to include businesses owned by persons with disabilities; (5) updating terms and conditions to reflect the Total System Benefit metric; (6) adopting a confidentiality matrix; (7) clarifying financial conflict of interest rules for procurement review group members; (8) requiring a consistent methodology to account for administrative costs associated with third-party contracts; (9) requiring annual instead of semi-annual workshops for third-party solicitation stakeholders; (10) allowing the use of strategic energy management approaches beyond the industrial sector; (11) improving and clarifying governance and oversight of the CPUC's database tools; (12) addressing ongoing use of the California Analysis Tool for Locational Energy Assessment project; and (13) adopting data sharing requirements for CPUC-authorized energy efficiency programs.

R.19-01-011 (Building Decarbonization). Per Assembly Bill 179, this decision authorizes the transfer of $50 million to the Building Decarbonization Pilot Program Balancing Account (BDPPBA) to fund continued implementation of the Technology and Equipment for Clean Heating (TECH) Initiative. This additional $50 million must be used statewide without geographic limitations. No modifications are made to the budgetary allocations adopted in Decision (D.) 20-03-027. As the TECH Initiative contracting agent, Southern California Edison Company (SCE) is directed to work with the TECH implementer to identify and track within the BDPPBA the source of the funds used for program expenses (i.e., which costs were paid using the original $120 million from Cap-and-Trade allowance proceeds versus the new $50 million from General Fund tax revenue). This decision allocates, at a minimum, 40 percent of the program costs to fund activities that serve equity customers. No additional program changes are adopted in this decision.

Voting Meetings

The CPUC will hold a voting meeting on January 12, 2022. The agenda includes the following energy-related items.

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[1] Per CPUC's Rules of Practice and Procedure Rule 14.3, comments on proposed decisions are due 20 days after issuance of the proposed decision, and reply comments are due five days thereafter. Comments on draft resolutions are due 20 days after the draft resolution appears in CPUC's daily calendar, per Rule 14.5.

Item 12. Resolution E-5240 (SCE AL 4831-E). This Resolution approves SCE's cost-recovery proposal to implement the modified cost-recovery mechanism (MCAM). The MCAM will be used by SCE for procurement conducted on behalf of Load Serving Entities (LSEs) that opted out of procurement required by D.19-11-016 or that fail to meet their procurement requirements under D.19-11-016, D.21-06-035, or future IRP procurement orders.

Item 13. Resolution E-5239 (PG&E AL 6654-E). This Resolution approves, with modifications, Pacific Gas and Electric Company's (PG&E) cost-recovery proposal to implement the MCAM. The MCAM will be used by PG&E for procurement conducted on behalf of LSEs that opted out of procurement required by D.19-11-016 or that fail to meet their procurement requirements under D.19-11-016, D.21-06-035, or future Integrated Resource Planning (IRP) procurement orders.

Item 14. Resolution E-5242 (PG&E AL 6623-E). In Resolution E-5132, effective March 18, 2021, the Commission approved PG&E's Remote Grids Supplemental Provisions Agreement, allowing PG&E to deploy an initial set of Remote Grids up to 2 megawatts (MW) of peak historical customer load. PG&E requests the additional relief to offer Remote Grids as the sole standard service offering to customers when (1) the Remote Grid has a lower risk-informed estimated cost to serve than alternatives; and/or (2) the Remote Grid is the only reasonably feasible way of providing service. This relief would apply only within the limits of the Remote Grid pilot approved in Resolution E-5132. This Resolution approves PG&E's proposal.

Item 15. Resolution E-5250 (SDG&E AL 4096-E). This Resolution approves three San Diego Gas & Electric Company (SDG&E) contracts for 200 MW of incremental capacity procured to address 2023 and 2024 mid-term reliability (MTR). The three contracts are: the Terra-Gen Edwards Sanborn contract (resource adequacy (RA)-only 20 MW hybrid solar and storage project with expected online date of June 1, 2023), and the Ormat Bottleneck and Aypa Cald contracts (tolling agreements for battery storage projects with expected online date of June 1, 2024 for 80 MW and 100 MW of capacity, respectively).

Item 19. Resolution E-5251 (SCE AL 4885-E). This Resolution approves four MTR energy storage contracts for 619 MW of nameplate capacity, expected to provide 565.2 MW of incremental September net qualifying capacity, that SCE procured to satisfy a portion of its 2023 and 2024 MTR requirements. These contracts include two 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. The two RA-only contracts are the Nextera 90 MW Proxima RA Storage and WPower 69 MW Stanton projects, and the two RA with put option contracts are the Calpine 230 MW Nova I and Calpine 230 MW Nova II projects.

Item 20. Resolution E-5241 (SDG&E AL 4043-E). This resolution approves, with modifications, SDG&E's cost-recovery proposal to implement the MCAM. The MCAM will be used by SDG&E for procurement conducted on behalf of customers of LSEs that opted out of procurement required by D.19-11-016 or that fail to meet their procurement requirements under D.19-11-016, D.21-06-035, or future IRP procurement orders.

Item 21. A.21-06-021 (PG&E 2023 GRC). This decision adopts an unopposed settlement by PG&E, the Public Advocates Office at the CPUC, and The Utility Reform Network to resolve the contested issues for the 2023-2026 general rate case (GRC) period regarding the structure and funding of PG&E's wildfire liability insurance coverage. The adopted settlement establishes a revenue requirement of $400 million per year, for 2023 through 2026, for wildfire liability insurance coverage and approves coverage which consists entirely of self-insurance for third-party wildfire claims of less than $1 billion per year.

Item 22. A.22-05-002/003/004 (Demand Response). This decision approves the Demand Response Auction Mechanism Pilot for 2024 deliveries. It also approves and provides funding for continued demand response research supervised by the CPUC's Energy Division. The proceeding remains open to consider utility and intervenor proposals for demand response programs, program modifications, pilots, and budgets for 2024-2027.

Item 29. R.23-01-___ (Diablo Canyon Extension). This order instituting rulemaking would open a new rulemaking to consider the potential extension of Diablo Canyon Nuclear Power Plant operations consistent with Senate Bill 846.

Item 41. A.20-09-019 (Wildfire Mitigation/Catastrophic Event Expenditures). This decision grants 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 and Cal Advocates. The decision approves a total authorized recovery of $1,208,909,522.

Item 41A. A.20-09-019 (Wildfire Mitigation/Catastrophic Event Expenditures). President Reynold's alternate decision approves the proposed settlement agreement filed by PG&E and Cal Advocates, with modifications to make certain disallowances permanent. The alternate decision approves a total revenue requirement of $1,036,961,500.

CALIFORNIA INDEPENDENT SYSTEM OPERATOR (CAISO)

Stakeholder Initiatives: Upcoming Meetings and Deadlines

Generator Deliverability Challenges. The CAISO has posted an update on Generator Deliverability Challenges in response to industry concerns with access to deliverability for resources seeking to compete in load serving entity procurement processes. This topic is being considered for a potential stakeholder initiative in 2023. The update may be found here.

WEIM Resource Sufficiency Evaluation Enhancements Phase 2. The CAISO has scheduled a stakeholder call on January 11, 2023 to discuss the Western Energy Imbalance Market (WEIM) Resource Sufficiency Evaluation Enhancements Phase 2 revised draft tariff language. Comment deadline has been extended to January 6, 2023.

WEIM Governance Review Phase 3. The CAISO has posted the Extended Day-Ahead Market (EDAM) draft final proposal for the WEIM Governance Review Phase 3 initiative. The draft final proposal may be found here.

2021-2022 Transmission Planning Process. The CAISO has posted a list of project sponsors whose applications the CAISO has deemed qualified for the Newark-NRS and Metalf-San Jose B HVDC projects. The CAISO will now initiate the selection process to determine which qualified project sponsor should finance, construct, own, operate, and maintain each transmission solution.

Extended Day-Ahead Market. The CAISO has published the EDAM Final Proposal. The EDAM Final Proposal may be found here. The EDAM design will go before the CAISO Board of Governors and WEIM Governing Body for decision in February 2023.

CALIFORNIA ENERGY COMMISSION (CEC)

Offshore Wind – AB 525

The CEC held a remote access workshop on December 19, 2022 to present the Draft Preliminary Assessment of the Economic Benefits of Offshore Wind Related to Seaport Investments and Workforce Needs and Standards (Draft Report). On December 29, 2022, the CEC extended the comment period on the Draft Report from January 9, 2023 to February 8, 2023.

On December 15, 2022, the CEC also released the draft Conceptual Permitting Roadmap for offshore wind.

Supply-Side Demand Response

On December 5, 2022, the CEC published the *Commission Report: Qualifying Capacity of Supply-Side Demand Response Working Group Final Report*, CEC 200-2022-001-F (Report). According to the Report Abstract, "the report provides the [CEC's] final findings and recommendations from the CEC's working group on supply-side demand response to the CPUC. The CPUC requested these findings and recommendations last year in D.21-06-029 and earlier this year in D.22-06-050."

CEC Business Meetings

The next CEC Business Meeting is scheduled for January 25, 2023.

CALIFORNIA AIR RESOURCES BOARD (CARB)

Meetings and Workshops

CARB will hold its next board meeting on January 25-26, 2023. The agenda for the board meeting will be made available here 10 days prior to the meeting date.

On January 19, 2023, CARB will hold a session on compliance and reporting to meet regulatory requirements for heavy-duty diesel vehicles operating in California. Information on the session and registration is available here.

Opportunities for Public Comment

On December 6, 2022, CARB hosted a workshop on revisions to the Community Air Protection Program Blueprint and the fifth annual community recommendations and selection process for the AB 617 Community Air Protection Program. Comments related to the workshop and the Community Air Protection Program Blueprint 2.0 Draft Expanded Concepts Outline may be submitted to CARB here on or before January 19, 2023.

MINNESOTA PUBLIC UTILITIES COMMISSION (MPUC)

MPUC Agenda Meeting January 5, 2023

The MPUC will hold its weekly agenda meeting at 8:00 a.m. PT, January 5, 2023. During the meeting, the MPUC will address the following matters: (1) City of Barnesville's update to its service territory map; (2) Worthington Public Utilities and Nobles Cooperative service area transfer; (3) PKM Electric Cooperative, Inc's and East Grand Forks Water and Light service area transfer; (4) City of Waseca and Xcel Energy service area transfer; (5) Summit Carbon Solutions, Inc's route permit; and (6) Xcel Energy's petition to implement a general service time-of-use tariff.

OREGON ENERGY FACILITIES SITING COUNCIL (EFSC)

At its meeting on December 16, EFSC adopted amendments to the Protected Areas, Scenic Resources, and Recreation Standards for the siting of large energy facilities in Oregon, effective December 19. The permanent rule changes alter the siting standards in several ways, although the new standards will only apply to the review of applications or requests for amendments filed on or after the effective date. Most significantly, the new standards (1) require the applicant to identify the managing agency of any protected areas in the study area, (2) require EFSC to assess the visual impact to State Scenic Resources, and (3) allow EFSC to consider evidence related to impacts to scenic areas and recreational opportunities outside the analysis area. The changes create additional siting considerations and risks for developers, and the Fiscal Impacts Advisory Council found that the rule changes are likely to have a significant impact on small businesses. The final staff report and permanent rule are available.

OREGON PUBLIC UTILITIES COMMISSION (OPUC)

On Tuesday, January 10 at 1:30 p.m. PST, the OPUC will hold a special public meeting in the docket UM 2143 (re Investigation into Resource Adequacy [RA] in Oregon update and Technical Conference on the State of RA). The Agenda and access information can be found here.

On Thursday, January 12 at 9:30 a.m. PST, the OPUC will hold a public meeting in the docket AR 631 (re Procedures, Terms, & Conditions Associated with Qualified Facility Standard Contracts). The proposed changes, including to the cost allocation of new infrastructure, the procurement of power purchase agreements, and other requirements, can be found here. The access information for the meeting can be found here.

On December 28, the OPUC issued order 22-494 in the matter of AR 638 (re Risk-based Wildfire Protection Plans and Planned Activities Consistent with Executive Order 20-04) which created a new complaint system process by which utilities and the owners of third-party facilities on utility systems can bring disputes regarding ignition risks created by a third-party. This is the same rule that was approved by the OPUC on September 8, 2022, but, because of a potential procedural defect, the rule was re-noticed and re-approved. No adverse comments were raised during the rulemaking hearing or workshop, and the rules were re-passed without change.

On December 13, the OPUC held a public meeting to discuss a variety of issues, including in the docket UM 2225 (re Request to issue notice of proposed rulemaking for Clean Energy Plan (CEP) procedural rules). At that meeting, the OPUC voted to adopt the staff's proposed changes to the CEP procedural rules found in Division 27 and initiate the formal rulemaking process. House Bill 2021, codified as ORS 469A.415, requires each of Oregon's large investor-owned utilities to develop a CEP for meeting clean energy targets concurrent with the development of each IRP. Because the IRP rules apply to both gas and electric utilities, while the CEP requirements apply only to electric utilities, the proposed rules avoid altering the IRP rules, but they do generally align the CEP and IRP timelines and procedures by requiring concurrent filing of the CEP and IRP. The order and proposed rule changes can be found here.

On December 1, the OPUC issued order number 22-468 in the matter of UM 2011 (re General Capacity Investigation). The order adopts the staff's recommendation to adopt the Capacity Contribution Best Practices (Best Practices) and close matter UM 2011. This order closes an investigation that began in April of 2019. The Best Practices are derived from the Principles of Capacity Valuation report produced by Energy and Environmental Economics, summarized by the OPUC here. The order and adopted Best Practices can be found here.

ILLINOIS COMMERCE COMMISSION (ICC)

On December 7, 2022, ICC held evidentiary hearings in the consolidated docket (Nos. 22-0432 and 22-0442) considering the application of Commonwealth Edison Company (ComEd) for approval of its Beneficial Electrification Plan (BE Plan). On December 9, 2022, the Office of the Illinois Attorney General (AG) filed an Application for Rehearing of the Commission's Interim Order, entered on November 10, regarding ICC staff's motion to strike certain aspects of ComEd's BE Plan. Specifically, the AG's Office sought rehearing regarding the portions of the Interim order denying staff's motions requesting that the ICC (1) dismiss the non-transportation components of the BE Plan and (2) issue an interim order finding that the entire BE Plan is subject to the statutory cap on the retail rate impact. The ICC voted to deny the Application for Rehearing during its December 15, 2022 voting meeting. Initial briefs on ComEd's BE Plan are due January 4, 2023.

On December 1, 2022, ICC held evidentiary hearings in the consolidated docket (Nos. 22-0431 and 22-0443) considering whether to approve Ameren Illinois Company's BE Plan. Parties filed initial briefs on December 22, 2022. Reply briefs are due January 11, 2023.

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

President Biden has selected Commissioner Willie Phillips as FERC's Acting Chairman. And with Rich Glick's departure from FERC earlier this week, FERC is at a 2-2 Democrat/Republican split until such time that a new commissioner is nominated and confirmed.

On November 29, 2022, FERC approved PJM Interconnection, L.L.C.'s (PJM) comprehensive interconnection queue reform proposal, significantly altering how interconnection requests will be processed in the region. Our full client alert is available here.

Two other decisions from FERC last month have the industry focused on investor rights that allow an entity to appoint its own officer or directors to the board of a public utility or a holding company. In *TransAlta Energy Marketing (U.S.), Inc.*, 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 the investor's own officers and directors to the target company's board of directors.

On November 30, 2022, the Midcontinent Independent System Operator (MISO), acting on behalf of the MISO Transmission Owners (MISO TOs), filed (here) to revise Schedule 2 of the MISO tariff to eliminate all charges for the provision of reactive power from the MISO TOs' own and affiliated generation resources. Based on FERC's "comparability principle," the MISO TOs submit that their proposal also would terminate the obligation under the MISO tariff to compensate unaffiliated generators interconnected to the MISO Transmission System for Reactive Supply within the standard power factor range of 0.95 leading and 0.95 lagging. Generation resources that provide reactive power support outside the standard power factor range at the direction of MISO would continue to be afforded compensation under certain "make-whole" payment mechanisms in the tariff. The MISO TOs argue that their proposal to eliminate all capability-based compensation for reactive service is consistent with FERC policy, citing to two recent FERC decisions, *Public Service Co. of New Mexico*, 178 FERC ¶ 61,088 at P 29 (2022), and *Nevada Power Co.* , 179 FERC ¶ 61,103 at PP 20-21 (2022). In both of those cases, FERC found that the transmission provider had no obligation to compensate independent generators for reactive power within the standard power factor range when its own or affiliated generators were no longer being compensated for that service. The MISO TOs also noted that the CAISO does not provide compensation for reactive power within the standard power factor range. The MISO TOs propose to terminate compensation for reactive power service effective December 1, 2022, and existing generators that currently receive compensation for reactive power service would not be grandfathered.

MISO is one of the few ISOs/Regional Transmission Organizations (RTOs) (together with PJM) that compensates independent generators for reactive power capability. Assuming that FERC accepts the MISO TOs' proposal to revise Schedule 2, many dozens of approved reactive power compensation tariffs currently held by independent generators in MISO will be eliminated. Most (if not all) of these tariffs were the product of negotiated multi-party settlements approved by FERC and, if summarily terminated, will likely be subject to litigation. And with regard to the MISO reactive power cases that have been set for hearing but have not yet been settled by the parties or approved by the FERC, independent generators may be faced with sunk costs for proceedings rendered moot.

On December 2, 2022, FERC issued an Order Approving Settlement (Settlement) regarding the rates for point-to-point transmission service at the border of PJM for delivery to neighboring regions (Border Rate) over the objections of the New Jersey Board of Public Utilities (NJBPU). The Settlement modifies the formula rate for calculating the Border Rate and provides two sets of discounts to the Border Rate for customers reserving firm service on three specified transmission paths (MTF Paths). From 2021 to 2027, PJM will provide the MTF Discount Rate, a specified discount rate to any new or existing firm transmission customer taking Border Rate service using any of the MTF Paths. From January 1, 2028 through December 31, 2039, PJM will offer the MTF Discount Percentage, a percentage reduction based upon the total amounts owed for transmission enhancement charges assigned to a merchant transmission facility or its transmission customers. The Long Island Power Authority, Neptune Regional Transmission System, LLC, the New York Power Authority, Hudson Transmission Partners, LLC, and Linden VFT, LLC (collectively, MTF Parties) reserved the right to challenge, object to, or protest such formula method and any rates, terms and conditions for Border Rate service, as applied to reservations after December 31, 2039.

For non-firm Border Rate service using an MTF Path, the Settlement establishes a rate freeze at the current discounted rate of $.067/MWh through December 31, 2027. Until January 1, 2028, PJM agrees not to oppose an effort by the MTF Parties to change certain loading rules so that they apply to a merchant transmission facility customer taking service over a merchant transmission facility with firm transmission withdrawal rights. The MTF Parties also reserved the right to challenge inclusion in the border yearly charge formula, the revenue requirement of a transmission enhancement project subject to a funding agreement. Finally, revisions to the Settlement are subject to the *Mobile-Sierra* "public interest" standard of review.

FERC approved the contested Settlement as a package, finding that the overall effect is just and reasonable, and that the NJBPU is in "no worse position" under the Settlement than if the case were litigated. FERC found that the benefits of the Settlement outweigh the expense and uncertainties of further litigation, and provides a clear framework for Border Rate service on the MTF Paths until 2039. Regarding the discounts offered for the MTF Paths, FERC found those discounts comply with FERC regulations, Order No. 888-A, and PJM OATT Schedule 7, Section (3).

Also on December 2, 2022, FERC accepted PJM's tariff revisions, made on behalf of the PJM Transmission Owners, to establish a new Schedule 12 – Appendix C. *PPL Elec. Utils.*

Corp., 181 FERC ¶ 61,178 (2022). The revisions were made to reflect the State Agreement Approach, which is a supplementary transmission planning and cost allocation mechanism in PJM's Amended and Restated Operating Agreement through which one or more state governmental entities authorized by their respective states, individually or jointly, may agree to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state public policy requirements identified by the state.

In January 2020, New Jersey formally set forth a policy goal to expand the transmission system to accommodate 7,500 MW of offshore wind generation by 2035. On November 18, 2020, NJBPU issued an order requesting that PJM, pursuant to the State Agreement Approach, open a competitive proposal window to solicit transmission proposals to interconnect and ensure deliverability of 7,500 MW of offshore wind generation by 2035. FERC accepted the proposed tariff revisions meant to accommodate this buildout by assigning cost responsibility for the transmission projects that NJBPU determines are necessary to support New Jersey law, on a load-ratio share basis to network customers in New Jersey and to point-to-point customers with a point of delivery within New Jersey.

On December 15, 2022, FERC issued an Order on the complaint filed by the Ohio Consumers' Counsel seeking to disallow several Ohio Transmission Owners from receiving a 50 basis point adder to their authorized rate of return on equity for participation in an RTO. Consistent with its rulings in *Dayton Power & Light Co*., 172 FERC ¶ 61,025 (2021), and *Pacific Gas & Electric Co.*, 168 FERC ¶ 61,038 (2019), FERC granted the complaint finding that the Ohio Transmission Owners do not qualify for the RTO Adder because their membership in PJM was not voluntary but rather mandatory under Ohio state law.