

REPORT OF THE STATE COMMISSION PRACTICE COMMITTEE

This report summarizes significant state developments in the utility industry from July 2016 through June 2017.*

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I. ALABAMA

A. Alabama Public Service Commission (PSC) Approves New Rate Contract for

Purchased Energy

In 2017, the Alabama PSC approved the Alabama Power Company (Alabama Power) Rate Contract for Purchased Energy (CPE) at its March meeting.¹ The new rate established, among other things, the avoided costs to be paid to qualified facilities (QF) greater than 100 kilowatts (kW) in accordance with the Public Utility Regulatory Policies Act of 1978 (PURPA).² According to Alabama Power, Alabama has experienced an increase in customer interest in cogeneration, decreasing equipment costs for photovoltaic solar, and Alabama Power had a significant response to its 2016 request for proposals for renewable generation and environmentally specialized resources.³ Considering these developments, Alabama Power requested Rate CPE to “promote . . . orderly and efficient implementation” while complying with PURPA.⁴ Now, under Rate CPE, QFs greater than 100 kW will follow a similar model as Rate Purchase of Alternative Energy (PAE).⁵ Consistent with PURPA, a QF can either sell to Alabama Power at its projected avoided cost or at its actual avoided cost at the time of delivery.⁶

To lessen the administrative burden associated with approving numerous purchased energy contracts, Rate CPE includes two standard contracts that will serve to expedite the evaluation process.⁷ Both form contracts have a term that is “evergreen” in nature.⁸ This means that each QF, at its discretion, has the right to renew its contract for an additional annual term, subject to the updated avoided cost rate, as long as PURPA is not repealed and the QF is not in default.⁹ Additionally, whenever a contract under Rate CPE is executed, the contract is required to be submitted to Alabama PSC staff for review.¹⁰ Unless the staff finds some material difference between the applicable standard contract approved under Rate CPE and the executed contract, no separate Alabama PSC approval is necessary.¹¹

1. Order at 1, *For Approval of Rate CPE – Contract for Purchased Energy*, Docket U-5213 (Ala. Pub. Serv. Comm’n Mar. 7, 2017) [hereinafter *For Approval of Rate CPE*]. Alabama Power is the state’s only electric investor-owned utility, and is therefore the only electric utility in the state of Alabama that falls under the Commission’s jurisdiction. WIKIPEDIA: INVESTOR-OWNED UTILITY, http://en.wikipedia.com/wiki/investor-owned_utility (last visited Oct. 10, 2017).

2. *Id.*

3. *Id.* at 7. Order, *Ala. Power Co.*, Docket No. 32382 (Ala. Pub. Serv. Comm’n Sept. 16, 2015) (Alabama Power had over 200 responses to its RFP, with the vast majority being photovoltaic solar).

4. *For Approval of Rate CPE*, *supra* note 1, at 7. PURPA requires electric utilities, such as Alabama Power, to purchase output from QFs at the utility’s avoided cost. *Id.* at 2 (citing 16 U.S.C. §§ 824a-3(b), (d) (2016)).

5. *Id.* at 4.

6. *Id.* at 5.

7. *Id.* at 4.

8. *For Approval of Rate CPE*, *supra* note 1, at 8 (both standard contracts are for a one-year term which may be indefinite at the customer’s option).

9. *Id.*

10. *Id.* at 10.

11. *Id.*

II. ARIZONA

A. Value of Solar Proceeding/ Export Rate for Distributed Generation

The Arizona Corporation Commission (Arizona CC) approved a new compensation scheme for rooftop solar generated exported energy.¹² This approval came after almost three years of investigation into and multiple evidentiary hearings on (1) the cost to serve residential customers with distributed generation (DG), (2) the value of DG to both customers and the utility, and (3) the appropriate method for determining an export rate for DG.¹³ The Arizona CC set aside net metering for a more market-based export rate, and instituted a gradual transition away from the full retail net metering model towards a compensation method intended to better reflect the actual value of DG, calculated either by a five-year avoided cost methodology or a resource comparison proxy (RCP) methodology.¹⁴ In the spirit of gradualism, until the avoided cost methodology can be implemented, the transition process will use the RCP, a five year rolling weighted average of a utility's solar PPAs and utility-owned solar generating resources.¹⁵ The RCP is intended to include "avoided transmission, distribution capacity, and line loss[]" benefits, however.¹⁶ Finally, in the same Order, the Arizona CC provided for grandfathering for rooftop distributed generation customers who submit a new distributed generation interconnection application before the effective date of the decision that sets a new value for exported DG to be compensated under the existing net metering regime.¹⁷

B. Arizona Corporation Commission Heard Rate Cases for the Three Major IOUs under its Jurisdiction, but Declined to Institute Mandatory Three-Part Demand Rates

In response to requests from UNS Electric, Inc. (UNSE), Tucson Electric Power Company (TEP), and Arizona Public Service Electric Company (APS) to require that all rooftop solar customers be placed on a three-part demand rate, the Arizona CC approved optional three-part demand rates, additional time-of-use rate options, and increases to basic service charges (BSC) that attempt to provide customers with the incentive to choose time-of-use (TOU) rates (with or without a demand component) over traditional two-part volumetric rates.¹⁸

12. Opinion & Order, *In the Matter of the Commission's Investigation of Value and Cost of Distributed Generation*, Docket No. E-00000J-14-0023 (Ariz. Corp. Comm'n Jan. 3, 2017) [hereinafter *Commission's Investigation of Value*].

13. *Id.* at 157-69.

14. *Id.* at 148.

15. *Id.* at 152.

16. *Id.*

17. *Commission's Investigation of Value*, *supra* note 12, at 179.

18. Opinion & Order, *In the Matter of the Application of UNS Electric, Inc. for the Establishment of Just and Reasonable Rates and Charges Designed to Realize a Reasonable Rate of Return on the Fair Value of the Properties of UNS Electric, Inc. Devoted to its Operations Throughout the State of Arizona and for Related Approvals*, Docket No. E-04204A-15-0142 (Ariz. Corp. Comm'n Aug. 18, 2016) [hereinafter *UNS Electric Application*]; Opinion & Order, *In the Matter of the Application of Tucson Electric Power Company for the Establishment of Just and Reasonable Rates and Charges Designed to Realize a Reasonable Rate of Return on the*

1. UNSE Rate Case

UNSE's rate order approved a capital structure, base rate increase, and new rate designs, and delayed consideration of additional items related to rooftop solar customers to a Phase 2, intended to follow a decision in the Value of Solar proceeding, which will be heard in the third quarter of 2017.¹⁹ The Arizona CC required UNSE to institute default TOU rates for all new residential customers, after a two-year transition.²⁰ Current customers will remain on their current rate with the option of moving to a TOU or three-part demand rate.²¹ The current basic service charge of \$10 will be increased to \$15 on standard two-part rates to collect more fixed costs, but it will only be increased to \$12 if customers choose a TOU rate, providing an incentive to move to a TOU rate while still allowing TEP to collect fixed costs.²² While no rate design changes were ordered for rooftop solar customers during this phase of the proceedings, the Arizona CC approved a new \$1.58 meter charge for new rooftop solar customers, to recover the additional meter costs required to serve them.²³

2. TEP Rate Case

TEP's rate order approved a settlement agreement that addressed capital structure, rate increase, and new rate designs for non-rooftop solar customers but did not consider new rate designs for rooftop solar customers and the RCP export rate calculation to a Phase 2, also to be heard in the third quarter of 2017.²⁴ TEP received a base rate increase of \$81.5 million, a capital structure of 49.97% long-term debt and 50.03% common equity, a cost of equity of 9.75%, a weighted average cost of capital of 7.04%, and a fair value rate of return of 5.34% with a fair value increment of 1.0%.²⁵ TEP was granted a modest increase to its BSC with the standard residential BSC increasing from \$10 to \$13 and the TOU BSC set at \$10.²⁶ The Arizona CC also approved an optional three-part demand rate for residential customers.²⁷ TEP's rooftop DG customers will also be assessed an additional meter charge to cover the incremental cost of the bidirectional meters needed to serve these DG customers.²⁸ Additionally, in an attempt to evolve rate

Fair Value of the Properties of Tucson Electric Power Company Devoted to its Operations Throughout the State of Arizona and for Related Approvals, Docket No. E-01933A-15-0322 (Ariz. Corp. Comm'n Feb. 24, 2017) [hereinafter Tucson Application]; Staff's Notice of Filing Settlement Agreement, *In the Matter of the Application of Arizona Public Service Company for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, to Fix Just and Reasonable Rate of Return Thereon, to Approve Rate Schedules Designed to Develop Such Return*, Docket No. E-01345A-16-0036 (Ariz. Corp. Comm'n Mar. 27, 2017) [hereinafter AZPSC Application].

19. UNS Electric Application, *supra* note 18, at 18.

20. *Id.* at 66.

21. *Id.*

22. *Id.*

23. *Id.* at 118.

24. Tucson Application, *supra* note 18, at 192-93.

25. *Id.* at 9-10.

26. *Id.* at 64.

27. *Id.* at 65-66.

28. *Id.* at 155.

design to incorporate and promote additional technological advances, the Arizona CC required TEP's Demand Side Management Plans to increase the focus on energy efficiency, demand response, and load management programs that reduce the customers' energy demand during the period of system peak demand and to develop programs that facilitate residential energy storage technology.²⁹

3. APS Rate Case

The Arizona CC is considering a proposed settlement agreement that provides APS with a net non-fuel, non-depreciation revenue requirement increase of \$87.25 million, with a cost of capital of 44.2% debt and 55.8% equity, a cost of equity of 10% and a fair value increment of 0.8%.³⁰ APS has attempted to modernize its rate design by minimizing its two-part volumetric rate option and expanding on TOU energy rates, TOU demand rates, and three-part demand rate options.³¹ To complement its expanded TOU and demand rate offerings, the settlement agreement has shifted the on-peak hours and added a super off-peak period during winter months for TOU demand rate customers.³² Additionally, APS has agreed to offer a special technology rate for qualifying customers designed to incentivize customers to adopt energy technologies that manage their demand and help reduce APS's system peak.³³ The settlement agreement further proposes to grandfather current DG customers and proposes a RCP export rate of 12.9 cents per kWh.³⁴ The settlement would prevent new DG customers from taking service under a two-part volumetric rate, but will provide the option of any other available rates.³⁵

C. Natural Gas Storage

The Arizona CC has expressed an interest in developing natural gas storage facilities in Arizona for over 15 years.³⁶ The Arizona CC has cited a number of contributing factors supporting the need for liquefied natural gas (LNG) storage in Arizona, including: (1) "a dramatic increase in [the state]'s consumption of natural gas for the generation of electricity," (2) "the [increasing] need for natural gas generation to backstop intermittent renewable energy resources," (3) the perceived "lack of progress at the Federal Energy Regulatory Commission [(FERC)] and the North American Energy Standards Board [(NAESB)] to provide Arizona natural gas customers, [including] generators, greater flexibility in scheduling their natural gas supplies," (4) "the potential implementation of the Clean Power Plan and

29. Tucson Application, *supra* note 18, at 173.

30. AZPSC Application, *supra* note 18, at 8-9.

31. Press Release, Arizona Public Service, What Stakeholders are Saying about APS's Rate Review Agreement (Apr. 24, 2017).

32. Tucson Application, *supra* note 18, at 17-19.

33. *Id.* at 18-19.

34. *Id.* at 19-20.

35. *Id.* at 19-20.

36. Order at 2, *In the Matter of the Application of Southwest Gas Corporation for the Determination of Prudence and Pre-Approval of Ratemaking Treatment Relating to Construction of Liquefied Natural Gas Storage Facility in Southern Arizona*, Docket No. G-01551A-14-0024 (Ariz. Corp. Comm'n Jan. 3, 2017).

resulting likely greater reliance on natural gas generation,” and (5) the prevention of service outages.³⁷

The Arizona CC discussed the state of natural gas storage facilities during its December 2016 Open Meeting.³⁸ During that discussion, information was provided on the status of both Southwest Gas and Kinder Morgan’s projects.³⁹ The Arizona CC reiterated its commitment to developing natural gas storage facilities, whether through LNG or salt cavern storage projects.⁴⁰

III. CALIFORNIA

A. *Integrated Resource Planning*

In 2016, the California Public Utilities Commission (California PUC) initiated Rulemaking 16-02-007 (R. 16-02-007) to address the passage of Senate Bill 350 (SB 350), which committed California to reduce 2030 greenhouse gas emissions by 40% below 1990 levels, increases to 50% the share of electricity to be produced by eligible renewable generation, doubles targets for energy efficiency, and encourages widespread transportation electrification.⁴¹ The objective of R. 16-02-007 is to create an Integrated Resource Plan (IRP) for the State’s investor owned utilities that satisfies the procurement requirements of SB 350 without burdening disadvantaged communities.⁴² The California Energy Commission is conducting a parallel proceeding to establish guidelines for the publicly owned utility district IRPs.⁴³

The California PUC has coordinated with the California Independent System Operator (CAISO) to issue a ruling that adopted “standardized [a]ssumptions and [s]cenario[s]” to be used in the long-term planning for the integration of resources until the California PUC adopts further guidance on IRP policy and procedures.⁴⁴

37. *Id.* at 2-3.

38. 2d Revised Agenda: December Open Meeting, Ariz. Corp. Comm’n (December 15, 2016) (on file with Ariz. Corp. Comm’n).

39. *Id.*

40. *Id.*

41. Order at 2, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, Rulemaking 16-02-007 (Cal. Pub. Util. Comm’n Feb. 19, 2016).

42. IRP is a forward looking plan that evaluates “system needs (reliability needs of the overall electric system), local needs (reliability needs specific to areas with transmission limitations), and flexibility needs (such as the resources needed to integrate renewables)” in order to ensure that load-serving entities meet the requirements of SB 350. CAL. PUB. UTIL. COMM’N: INTEGRATED RESOURCE PLAN & LONG-TERM PROCUREMENT PLAN (IRP-LTPP), <http://www.cpuc.ca.gov/irp/> (last visited Oct. 15, 2017). The Commission placed an emphasis on the impact a rule would have on disadvantaged communities by issuing a ruling for the specific purpose of requesting formal comments from parties on SB 350 and the relation to disadvantaged communities. Ruling of Assigned Commissioner and Administrative Law Judge Requesting Comments on Disadvantaged Communities and Other Aspects of Senate Bill 350, and Modifying Proceeding Schedule at 1, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, Rulemaking 16-02-007 (Cal. Pub. Util. Comm’n Dec. 21, 2016).

43. Cal. Energy Comm’n Docket 17-IEPR-07-Integrated Resource Planning (Sept. 5, 2017).

44. Assigned Commissioner’s Ruling Adopting Assumptions and One Scenario for Use in Long-Term Planning in 2017 at 1, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning*

The California PUC has stated that a proposed decision directing IOUs as to the plan for the integration of resources will be issued before the end of 2017.⁴⁵ The final decision will issue a rule that specifies the process to be used for IRP to ensure that load serving entities meet California's energy policies including carbon reduction targets.⁴⁶

B. Distributed Energy Resources

The California PUC launched the Distributed Energy Resources (DER) Action Plan to align the California PUC's vision and actions in shaping California's distributed energy resources future and serve as a roadmap in coordinating activities across multiple proceedings as California continues its commitment to greenhouse gas emission (GHG) reduction and reform of utility distribution planning, investment, and operations.⁴⁷

The California PUC initiated two rulemaking proceedings to consider ways to ensure the effective integration of DER into utility distribution planning.⁴⁸ The first rulemaking (R. 14-10-003) is considering the development and adoption of a regulatory framework to provide policy consistency for demand-side resource programs that directs regulated electric and gas utilities to achieve demand reduction and load shaping using integrated demand-side management resources.⁴⁹ The second rulemaking (R. 14-08-013) establishes policies, procedures, and rules to guide IOUs in developing distribution resources plan proposals that incorporate DERs in planning and operations.⁵⁰

In Decision 15-09-022, the California PUC recognized the interplay between these two rulemakings and stated that both rulemakings will work together to create an end-to-end framework for the customer side to the utility side of the grid.⁵¹

Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements, Rulemaking 16-02-007 (Cal. Pub. Util. Comm'n Feb. 11, 2017). CAISO has been conducting tests, labeled "2017-18 Transmission Planning Process," to assist in the IRP rulemaking procedure. *Id.*

45. Administrative Law Judge's Ruling Modifying Schedule at 5, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, Rulemaking 16-02-007 (Cal. Pub. Util. Comm'n June 13, 2017).

46. Order, *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, Rulemaking 16-02-007 (Cal. Pub. Util. Comm'n Feb. 11, 2016).

47. CAL. PUB. UTIL. COMM'N: DISTRIBUTED ENERGY RESOURCES (DER) ACTION PLAN SUMMARY AND HIGHLIGHTS, http://www.cpuc.ca.gov/uploaded-Files/CPUC_Public_Website/Content/About_Us/Organization/Commissioners/Michael_J_Picker/DER%20Action%20Plan%20Summary%20and%20Highlights.pdf (last visited Oct. 15, 2017).

48. Decision Adopting an Expanded Scope, a Definition, and a Goal for the Integration of Distributed Energy Resources, *Order Instituting Rulemaking to Create Consistent Regulatory Framework for the Guidance, Planning, and Evaluation of Integrated Demand Side Resource Programs*, Rulemaking 14-10-003 (Cal. Pub. Util. Comm'n Oct. 8, 2014) [hereinafter Decision Adopting an Expanded Scope]; Order, *Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Development of Distributing Resources Plans Pursuant to Public Utilities Code Section 769*, Rulemaking 14-08-013 (Cal. Pub. Util. Comm'n Aug. 14, 2014) [hereinafter Order Instituting Rulemaking]; see also CAL. PUB. UTIL. CODE § 769 (2015).

49. Decision Adopting an Expanded Scope, *supra* note 48, at 2.

50. Order Instituting Rulemaking, *supra* note 48, at 2.

51. Joint Assigned Commissioner and Administrative Law Judge Ruling and Amended Scoping Memo at 4, *Order Instituting Rulemaking to Create Consistent Regulatory Framework for the Guidance, Planning, and*

R. 14-08-013 will develop methodologies to determine how DER can meet system needs as an alternative to traditional investments.⁵² R. 14-10-003 will develop a competitive solicitation framework targeting reliability needs; develop cost-neutral cost effectiveness methods and protocols; leverage the work being performed through demonstration pilots; and address the utility roles, models and financial interests with respect to the deployment of DER.⁵³

C. Physical Security and Data Sharing

In 2015, the California PUC initiated a proceeding to establish policies, procedures, and rules for the regulation of physical security risks to the State's electric supply facilities consistent with California Public Utilities Code section 364 (Phase I) and to establish standards for disaster and emergency preparedness plans for electrical corporations and regulated water companies consistent with Pub. Util. Code section 768.6 (Phase II).⁵⁴ A pre-hearing conference for Phase I was held in February 2017.⁵⁵ On March 10, 2017, a Scoping Memo and Ruling was issued confirming that Phase I of the proceeding will address the physical security risks to the electrical supply facilities of electrical corporations.⁵⁶ The Scoping memo provided that California PUC Staff will issue a Physical Security White Paper on which parties will be invited to comment.⁵⁷ The comment period will be

Evaluation of Integrated Demand Side Resource Programs, Rulemaking 14-10-003 (Cal. Pub. Util. Comm'n Feb. 26, 2016) [hereinafter Joint Ruling].

52. Administrative Law Judge's Ruling Establishing a Working Group to Develop the Competitive Solicitation Framework at 2, *Order Instituting Rulemaking to Create Consistent Regulatory Framework for the Guidance, Planning, and Evaluation of Integrated Demand Side Resource Programs*, Rulemaking 14-10-003 (Cal. Pub. Util. Comm'n Mar. 24, 2016).

53. *Id.*

54. Order Instituting Rulemaking to Fulfill the Requirements of Public Utilities Code Sections 364 & 768.6 at 2, *Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Regulation of Physical Security for the Electric Supply Facilities of Electrical Corporations Consistent with Public Utilities Code Section 364 and to Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies Pursuant to Public Utilities Code Section 768.6*, Rulemaking 15-06-009 (Cal. Pub. Util. Comm'n June 11, 2015). CAL. PUB. UTIL. CODE § 218, with noted exceptions, defines electrical corporation to include "every corporation or person owning, controlling, operating, or managing any electric plant for compensation within" California. Publicly owned electric utilities are not electric corporations. CAL. PUB. UTIL. CODE § 218(a).

55. Administrative Law Judge's Ruling Regarding the Questions Presented at the Prehearing Conference Concerning the Scope of this Proceeding, *Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Regulation of Physical Security for the Electric Supply Facilities of Electrical Corporations Consistent with Public Utilities Code Section 364 and to Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies Pursuant to Public Utilities Code Section 768.6*, Rulemaking 15-06-009 (Cal. Pub. Util. Comm'n Feb. 2, 2017).

56. Assigned Commissioner's Phase I Scoping Memo and Ruling at 3-5, *Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Regulation of Physical Security for the Electric Supply Facilities of Electrical Corporations Consistent with Public Utilities Code Section 364 and to Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies Pursuant to Public Utilities Code Section 768.6*, Rulemaking 15-06-009 (Cal. Pub. Util. Comm'n Mar. 10, 2017).

57. *Id.* at 6.

followed by an Outcome Workshop.⁵⁸ A Proposed Decision is anticipated early 2018.⁵⁹

IV. CONNECTICUT

A. Net Metering

In December 2016, the Connecticut Public Utilities Regulatory Authority (Connecticut PURA) modified the way the electric distribution companies (EDC) and licensed electric suppliers administer net metering.⁶⁰ Connecticut PURA established a working group to address a variety of topics, including electric supplier net metering obligations, discrepancies between the Independent System Operator of New England settlement and utility billing processes, and direct assignment of net energy to load-serving entities.⁶¹

In May 2017, the EDCs issued a working group report and recommendations that largely addressed differences between the EDCs' load settlement and billing processes.⁶² After acknowledging that the Connecticut Light and Power Company d/b/a Eversource Energy (Eversource) used "interval data to assign the supplier load obligation in each hour . . . [that] can magnify the reporting and billing differential," the report recommended that Eversource "proceed to change-over the load determination process for residential net metered accounts to be based on the statistically-derived rate profiles, with the personal usage factor applied."⁶³ The working group further recommended additional studies "to identify differences between current [customer] rate profiles, and those of their net metered counterparts on the same rate."⁶⁴

B. Legislation

In 2016, the Governor signed into law changes to the virtual net metering program that allowed an agricultural customer to lease or enter into a long-term contract for an agricultural net metering facility and authorized additional funding for virtual net metering credits to certain municipal customer hosts.⁶⁵ The Governor also signed legislation requiring analysis of electric vehicle charging station opportunities and rate structures.⁶⁶ In 2017, the Governor signed legislation that

58. *Id.* at 5.

59. *Id.* at 6.

60. Interim Decision, *PURA Investigation into Net Metering kWh Banking*, Docket No. 15-09-03 (Conn. Pub. Util. Reg. Auth. Dec. 28, 2016).

61. *Id.* at 25-26.

62. Joint Report of the Electric Distribution Companies and Recommendations of the Working Group, *PURA Investigation into Net Metering kWh Banking*, Docket No. 15-09-03 (Conn. Pub. Util. Reg. Auth. May 25, 2017).

63. *Id.* at 7, 9.

64. *Id.* at 9.

65. An Act Concerning Agricultural Virtual Net Metering, H.B. 5242, 2017 Gen. Assemb., Reg. Sess. (Conn. 2016).

66. An Act Concerning Electric & Fuel Cell Electric Vehicles, H.B. 5510, 2017 Gen. Assemb., Reg. Sess. (Conn. 2016). For purposes of the act, electric vehicle is defined broadly as: "any battery electric vehicle, fuel cell electric vehicle, plug-in hybrid electric vehicle or range-extended battery electric vehicle." *Id.* § 1(2).

expanded the Connecticut Green Bank's Commercial Property Assessed Clean Energy (C PACE) Program to provide for additional third-party financing mechanisms for energy efficiency and renewable energy property improvements; authorized the EDCs to submit plans to acquire new fuel cell electricity generation that began operation on or after July 1, 2017 to the PURA for approval; and increased the percentage of Class II (or additional Class I) renewables necessary to satisfy the Renewable Portfolio Standards (RPS) beginning in 2018.⁶⁷

C. Energy Project Solicitations

In February 2017, the Connecticut Department of Energy & Environmental Protection (DEEP) approved proposals submitted by the EDCs for demonstration projects to build, own, or operate grid-side system enhancements, such as energy storage.⁶⁸ DEEP approved projects submitted by Eversource and The United Illuminating Company (UI).⁶⁹ Connecticut PURA has now opened proceedings to review these proposals.⁷⁰

In June 2017, DEEP announced the selection of two 20 MW renewable projects, a passive demand response measure capable of reducing electric demand by 1 MW, and energy storage systems.⁷¹ The selected projects total 3.402% of the EDCs' Connecticut load with selected solar projects ranging from 6 to 19.99 MW and selected wind projects ranging from 3.5 MW to 17.5 MW.⁷² The contracts for selected projects have been submitted to the Connecticut PURA for approval.⁷³

V. DISTRICT OF COLUMBIA

A. Utility Mergers

On August 12, 2016, the Office of the People's Counsel of the District of Columbia, the District of Columbia Government, and DC SUN jointly with Public Citizen appealed the Public Service Commission of the District of Columbia's (D.C. PSC) March 2016 approval of the merger and change of control application

67. An Act Concerning The Commercial Property Assessed Clean Energy Program, H.B. 7036 §§ 1, 3, 2017 Gen. Assemb., Reg. Sess. (Conn. 2017); An Act Promoting The Use Of Fuel Cells For Electric Distribution System Benefits And Reliability And Amending Various Energy-Related Programs And Requirements, H.B. 7208 § 1, 2017 Gen. Assemb., Reg. Sess. (Conn. 2017).

68. Demonstration Projects for Grid-Side System Enhancements to Integrate Distributed Energy Resources, Notice of Final Determination (Conn. Dep't of Energy & Env'tl. Prot. Feb. 1, 2017).

69. *Id.* at 4.

70. PURA Review of The Connecticut Light & Power Co.'s (d/b/a Eversource Energy) Distributed Energy Resources Proposals, Docket No. 17-06-02 (Conn. Pub. Util. Reg. Auth. Oct. 4, 2017); Application for Review of The United Illuminating Co.'s Distributed Energy Resource Integration Plan, Docket No. 17-06-03 (Conn. Pub. Util. Reg. Auth. June 1, 2017).

71. Press Release, Conn. Dep't of Energy & Env'tl. Prot., Shared Clean Energy Pilot Projects Selected (June 28, 2017).

72. *Id.*

73. PURA Review of Pub. Act 15-107(b) Small-Scale Energy Resource Agreements, Docket No. 17-01-11 (Conn. Pub. Util. Reg. Auth. Sept. 7, 2017); PURA Review of Pub. Act 15-107(c) Large-Scale Energy Resource Agreements, Docket No. 17-01-10 (Conn. Pub. Util. Reg. Auth. Sept. 13, 2017).

involving the Potomac Electric Power Company (Pepco) and Exelon Corporation.⁷⁴ On July 20, 2017, the court issued a decision affirming the D.C. PSC's March 2016 decision.⁷⁵

On April 24, 2017, AltaGas Ltd., WGL Holdings, Inc., and Washington Gas Light Company filed an application for the merger and change of control of WGL, the District's natural gas distribution utility.⁷⁶ The public interest hearing on the application will be held in the fall of 2017.⁷⁷ A final decision is expected in 2018.⁷⁸

B. Grid Modernization

On January 25, 2017, the D.C. PSC staff issued a Report on Modernizing the Energy Delivery System for Increased Sustainability (MEDSIS) for public comment.⁷⁹ The MEDSIS proceeding was initiated to identify technologies and policies that can modernize the District of Columbia's energy delivery system for increased sustainability.⁸⁰ The report reviews the D.C. PSC's statutory authority over utilities; outlines the need for District specific approaches to grid modernization; identifies legal barriers to distributed energy resource deployment and proposed regulatory changes; analyzes the economic aspects of grid modernization; and lays out a proposal for handling pilot project funds that originated from the Pepco Merger.⁸¹ The comment period on the MEDSIS Report closed on May 10, 2017.⁸²

Additionally, the Office of the People's Counsel of the District of Columbia's Value of Solar Study was filed with the D.C. PSC on May 19, 2017.⁸³

74. Order No. 18148, *Formal Case No. 1119, In the matter of the joint application of Exelon Corp., Pepco Holdings, Inc., Potomac Electric Power Co., Exelon Energy Delivery Co., and New Special Purpose Entity, L.L.C. for authorization and approval of proposed merger transaction* (D.C. Pub. Serv. Comm'n Mar. 23, 2016).

75. Office of the People's Counsel v. Pub. Serv. Comm'n of D.C., 163 A.3d 735 (D.C. 2017).

76. Order No. 18777 at 2, *Formal Case No. 1142, In the Matter of the Merger of AltaGas Ltd. and WGL Holdings, Inc.* (D.C. Pub. Serv. Comm'n May 17, 2017).

77. Order No. 18843 at 6, *Formal Case No. 1142* (D.C. Pub. Serv. Comm'n July 24, 2017).

78. *Id.*

79. Commission Staff's Report on Modernizing the Energy Delivery System for Increased Sustainability, *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery Structure for Increased Sustainability* (D.C. Pub. Serv. Comm'n Jan. 25, 2017) [hereinafter Commission Staff's Report]. The D.C. PSC requested comments on the report in Order No. 18673. Order No. 18673 at 1, *Formal Case No. 1130* (D.C. Pub. Serv. Comm'n Jan. 25, 2017).

80. Commission Staff's Report, *supra* note 79, at 2-3.

81. *Id.* at 2, 4.

82. Order No. 18717, *Formal Case No. 1130* (D.C. Pub. Serv. Comm'n Mar. 9, 2017).

83. Office of the People's Counsel Value of Solar Study: Distributed Solar in the District of Columbia, Policy Options, Potential, Value of Solar and Cost-Shifting, *Formal Case No. 1130* (D.C. Pub. Serv. Comm'n May 19, 2017).

C. Discount for Low-Income Customers

On October 11, 2016, the D.C. PSC revised the District's low-income natural gas discount program.⁸⁴ The changes shifted the program from a discounted volumetric rate, which predated the introduction of competition in natural gas sales in the District, to a bill credit equal to a set percentage of natural gas distribution rates.⁸⁵ This structure mirrors similar D.C. PSC action restructuring the District's low-income electric program.⁸⁶

VI. FLORIDA

A. Rate Cases

In 2016, Florida Power and Light Company (FPL) and Gulf Power Company (Gulf) filed rate cases with the Florida Public Service Commission (Florida PSC).⁸⁷ Both cases ultimately concluded with settlements that resulted in smaller than requested rate increases.⁸⁸

FPL sought an initial \$866 million revenue increase effective January 1, 2017, with a 2018 increase of an additional \$262 million and a further \$209 million increase effective upon the commercial in-service date of the Okeechobee Clean Energy Center, a new combined cycle natural gas power plant previously approved by the FPSC.⁸⁹ On November 29, 2016, the Florida PSC approved a post-hearing settlement, effective through 2020, whereby FPL was authorized to increase its base rates by \$400 million effective January 1, 2017, with a subsequent increase of \$211 million effective January 1, 2018.⁹⁰ FPL was also permitted an increase in base rates of \$200 million, effective upon the commercial operation date for the Okeechobee Clean Energy Center, projected for June 2019.⁹¹ The Florida PSC set FPL's return on equity at 10.55 percent with an authorized range of 9.60 percent to 11.60 percent.⁹² The approved settlement allows FPL to seek

84. Order No. 18565, *Formal Case No. 1127, In the Matter of the Commission's Establishment of a Discount Program for Low-Income Natural Gas Customers in the District of Columbia* (D.C. Pub. Serv. Comm'n Oct. 11, 2016).

85. *Id.*

86. Order No. 18059, *Formal Case No. 1120, In the Matter of the Investigation into the Structure and Application of Low Income Assistance for Electricity Customers in the District of Columbia* (D.C. Pub. Serv. Comm'n Dec. 15, 2015).

87. Fla. Power & Light Co.'s Petition for Base Rate Increase, *In re: Petition for base rate increase by Fla. Power & Light*, Docket No. 160021-EI (Fla. Pub. Serv. Comm'n Mar. 15, 2016) [hereinafter Fla. Power & Light Co.]; Petition for Base Rate Relief and Motion to Consolidate Dockets, *In re: Petition for an increase in rates by Gulf Power Co.*, Docket No. 160186-EI (Fla. Pub. Serv. Comm'n Oct. 12, 2016) [hereinafter Petition for Base Rate Relief].

88. Stipulation Agreement and Settlement Agreement, *In re: Petition for rate increase by Gulf Power Co.*, Docket No. 16-0170-EI (Fla. Pub. Serv. Comm'n Mar. 20, 2017) [hereinafter Stipulation Agreement and Settlement Agreement]; Order Approving Settlement Agreement, *In re: Petition for rate increase by Fla. Power & Light Co.*, Docket 16-0021-EI (Fla. Pub. Serv. Comm'n Dec. 15, 2016) [hereinafter Order Approving Settlement Agreement].

89. Fla. Power & Light Co., *supra* note 87, at 1.

90. Order Approving Settlement Agreement, *supra* note 88, at 10.

91. *Id.* at 2.

92. *Id.*

approval to recover the cost of solar generation projects undertaken during the agreement term subject to a yearly threshold of 300 MW per year.⁹³ FPL plans to implement a 50 MW Battery Storage Project and may pursue cost recovery for the project in its next general base rate case.⁹⁴

On January 20, 2017, Sierra Club appealed the Florida PSC's order approving the settlement, asserting that the Florida PSC should not have approved nearly \$800 million in construction costs to replace peaker power plants without considering potential money-saving alternatives.⁹⁵ The Sierra Club appeal remains pending.⁹⁶

On October 12, 2016, Gulf filed a rate case petition seeking approval for a base rate increase of \$106.8 million to be effective July 1, 2017.⁹⁷ On the eve of the technical hearing, Gulf and the Florida Office of Public Counsel filed a settlement agreement resolving all 107 issues in the case.⁹⁸ On May 16, 2017, the Florida PSC approved the proposed settlement, which authorize Gulf to increase base rates by approximately \$54.3 million, effective July 1, 2017.⁹⁹ Gulf's return on equity was set "within a range of 9.25% to 11.25%, with a mid-point of 10.25%," the same as the company's 2012 rate case settlement.¹⁰⁰ In approving the settlement, Gulf was not prohibited from initiating another general rate base proceeding for any specific period of time.¹⁰¹ However, Gulf did agree to continue a moratorium for natural gas hedging until January 1, 2021.¹⁰²

B. Solar Initiatives

While Florida is third in potential sunlight energy for solar power, the state does not rank in the top 10 in terms of actual solar power generation.¹⁰³ To address the growing public demand for more solar energy production, a number of constitutional amendment proposals and legislative actions have been introduced to spur utility-scale solar projects.¹⁰⁴

Floridians for Solar Choice (Solar Choice) proposed a constitutional amendment to authorize certain limited third-party sales of electricity from non-utility

93. *Id.* at 18.

94. *Id.* at 3.

95. Notice of Administrative Appeal, *Sierra Club v. Brown*, No. SC17-82 (Fla. Jan. 20, 2017).

96. *Sierra Club*, No. SC17-82 (Florida Supreme Court Case Docket 2017).

97. Petition for Base Rate Relief, *supra* note 87, at 1.

98. Stipulation Agreement and Settlement Agreement, *supra* note 88.

99. Final Order Approving Stipulation & Settlement Agreement & Approving Tariffs & Rate Schedules for Gulf Power Company at 3, *In re: Petition for rate increase by Gulf Power Company*, Docket No. 160170-EI (Fla. Pub. Serv. Comm'n May 16, 2017).

100. *Id.*

101. *Id.*

102. *Id.* at 5.

103. SOLAR ENERGY INDUSTRIES ASSOCIATION: SOLAR SPOTLIGHT FLORIDA, https://www.seia.org/sites/default/files/2017-09/Federal_2017Q2_Florida.pdf (last visited Oct. 14, 2017).

104. See, e.g., Joseph Bebon, *Florida Governor Signs Popular Pro-Solar Bill Into Law*, SOLAR INDUSTRY (June 19, 2017), <https://solarindustrymag.com/florida-governor-signs-popular-pro-solar-bill-law>.

supplier solar generation facilities rated up to 2 MW.¹⁰⁵ While the Florida Supreme Court approved the ballot language and ballot title, the amendment has not yet been placed on the ballot due to a lack of signatures.¹⁰⁶ The Consumers for Smart Solar (Smart Solar), a group largely funded by the Florida investor-owned electric utilities, successfully placed its proposed constitutional amendment on the November 8, 2016 ballot to place in the constitution the existing right under Florida law for consumers to own or lease solar equipment installed on their property to generate electricity for their own use.¹⁰⁷ The Solar Choice group and a coalition of other environmental and consumer groups fought the Smart Solar initiative, which was defeated by the voters for failing to make the 60 percent passage threshold.¹⁰⁸

Sensing a growing public demand for solar power, the Florida Legislature approved and placed on the August 30, 2016, ballot a proposed constitutional amendment that would authorize the Legislature to exempt from ad valorem taxation the assessed value of solar or renewable energy source devices subject to tangible personal property tax and also authorize the Legislature to prohibit consideration of such devices in assessing the value of real property for ad valorem taxation purposes.¹⁰⁹ The initiative passed overwhelmingly.¹¹⁰ In the 2017 General Session of the Florida Legislature, the Legislature passed the necessary implementing legislation to provide tax exclusions for homes and businesses with on-site solar generation.¹¹¹

Florida utilities, investor-owned and municipals, have accelerated their construction of utility-scale solar projects. FPL announced plans to construct a total of 600 MW of solar by early 2018.¹¹² The city of Tallahassee, which has a 20 MW solar plant serving its municipal utility customers, approved a new 40 MW facility, making the capital city the largest solar producer among Florida's municipality electric utilities.¹¹³ Other utilities are expanding their solar generation facilities around the state.¹¹⁴

105. FLA. DEP'T OF STATE, DIV. OF ELECTIONS: LIMITS OR PREVENTS BARRIERS TO LOCAL SOLAR ELECTRICITY SUPPLY, NO. 14-02, <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64491&seqnum=1> (last visited Oct. 13, 2017).

106. *Id.*

107. FLA. DEP'T OF STATE, DIV. OF ELECTIONS: RIGHTS OF ELECTRICITY CONSUMERS REGARDING SOLAR ENERGY CHOICE, NO. 15-17, <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64817&seqnum=1> (last visited Oct. 14, 2017).

108. *Id.*

109. FLA. DEP'T OF STATE, DIV. OF ELECTIONS: SOLAR DEVICES OR RENEWABLE ENERGY SOURCE DEVICES; EXEMPTION FROM CERTAIN TAXATION AND ASSESSMENT, <http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=93> (last visited Oct. 14, 2017).

110. *Id.*

111. S.B. 90, 2017 Leg., Reg. Sess. (Fla. June 5, 2017).

112. Press Release, FPA, FPL Accelerates Major Solar Energy Development Projects - Now Plans to Add Eight New Universal Solar Power Plants Cost-Effectively by Early 2018, (Feb. 20, 2017).

113. Kevin Spear, *Orlando's New Solar Plant Takes Shape as Florida's Solar Energy Erupts*, ORLANDO SENTINEL (July 5, 2017), <http://www.orlandosentinel.com/news/os-ous-solar-plant-compared-20170628-story.html>.

114. *Id.*

VII. GEORGIA

A. *Georgia Power Vogtle Nuclear Expansion*

On March 17, 2009, the Georgia Public Service Commission (Georgia PSC) approved the construction of the first new nuclear-powered electric generation units since the 1970s.¹¹⁵ The two nuclear units under construction at the Vogtle Electric Generating Plant, near Waynesboro in eastern Georgia, are scheduled to enter commercial operation in 2019 and 2020, and will join Georgia Power Company's two existing nuclear units at Vogtle that went into service in 1987 and 1989.¹¹⁶ Georgia Power is required to file various semiannual monitoring and monthly construction reports.¹¹⁷ However, the future of the two new nuclear units was called into question when Westinghouse Electric Company filed for bankruptcy on March 29, 2017.¹¹⁸ Georgia Power subsequently entered into various agreements with Westinghouse and Toshiba Corp., Westinghouse's Japan-based parent and \$3.68 billion construction guarantor, which enables construction to continue while Georgia Power and its partners continue to assess the completion schedule and the cost to complete.¹¹⁹

On April 18, 2017, Nuclear Watch South sought a formal Georgia PSC action on the bankruptcy and the future of the Vogtle Units 3 and 4 by filing a request for an emergency public hearing.¹²⁰ On June 29, 2017, the Georgia PSC conducted a hearing on Georgia Power's Sixteenth Annual Construction Monitoring Report, with a decision scheduled for August 15, 2017.¹²¹ In the meantime, on July 27, 2017, the U.S. Department of Energy (DOE) approved a new Services Agreement for the continued construction of the Vogtle Units 3 and 4 by Southern Nuclear, a Southern Company subsidiary that operates the other Vogtle units.¹²² Georgia Power reached a separate loan guarantee with the Department of Energy (DOE)

115. Amended Certification Order, *Georgia Power's Application for the Certification of Units 3 and 4 at Plant Vogtle and Updated Integrated Resource Plan*, Docket No. 27800 (Ga. Pub. Serv. Comm'n, Mar. 26, 2009) [hereinafter *Vogtle Certification Order*].

116. SOUTHERN NUCLEAR: PLANT VOGTLE, <http://www.southerncompany.com/our-companies/southern-nuclear/plant-vogtle.html> (last visited Oct. 13, 2017).

117. *Vogtle Certification Order*, *supra* note 115, at 12, Exhibit A at 1. The construction monitoring reports are filed in the GPSC Docket No. 29849.

118. Press Release, Westinghouse Nuclear, *Westinghouse Announces Strategic Restructuring* (Mar. 29, 2017).

119. Robert Walton, *Southern, Westinghouse strike \$3.7B deal to complete Vogtle nuclear plant*, UTILITY DIVE (June 12, 2017), <http://www.utilitydive.com/news/southern-westinghouse-strike-37b-deal-to-complete-vogtle-nuclear-plant/444737>.

120. Nuclear Watch South Request for Emergency Public Hearing, *In re: Rev. of Georgia Power Company's Certificate of Public Convenience and Necessity for Vogtle Units 3 and 4 (Vogtle Case)*, Docket Nos. 27800, 29849 (Ga. Pub. Serv. Comm'n, Apr. 19, 2017). On June 21, 2017, Nuclear Watch South filed a mandamus motion and complaint that the GPSC failed to respond to its April 19, 2017 Request. Nuclear Watch South Mandamus Motion to Compel Response to Request for Emergency Public Hearing on Vogtle 3 & 4, *Vogtle Case*, Docket Nos. 27800, 29849 (June 21, 2017).

121. Procedural and Scheduling Order at 4, *Vogtle Case*, Docket Nos. 27800, 29849 (Ga. Pub. Serv. Comm'n, Mar. 27, 2017).

122. SOUTHERN CO.: PLANT VOGTLE 3 AND 4, <https://www.southerncompany.com/innovation/nuclear-energy/plant-vogtle-3-and-4.html> (last visited Oct. 15, 2017).

that will require the Southern Company, Georgia Power's corporate parent, to provide a solid cost-to-complete assessment before the end of the year.¹²³

B. Georgia Power's Updated Integrated Resource Plan

Georgia law requires Georgia Power to file an updated Integrated Resource Plan (IRP) every three years which details how it will supply the state's electric generation needs.¹²⁴ On July 28, 2016, the Georgia PSC approved a stipulated agreement that included decertifying uneconomic fossil resources, adding 1200 MW of renewable resources and 100 MW distributed resources, and approving the expenditure of \$99 million to study additional nuclear resources in Stewart County, Georgia.¹²⁵ The approved settlement resolved all IRP issues as well as Georgia Power's Application for Certification of Its Demand Side Management Plan.¹²⁶ The Georgia PSC subsequently approved an amendatory order and granted a motion for clarification while denying a motion for reconsideration.¹²⁷

A key component of the IRP Order was the expansion of renewable energy by Georgia Power.¹²⁸ The IRP Order approved up to 200 MW of renewable self-build capacity, with a minimum of 125 MW of solar projects at military installations.¹²⁹ On May 23, 2017, the Georgia PSC approved Georgia Power's notice of intent to construct a 139 MW solar generation facility at Robins Air Force Base along with 3 MW of community solar projects in Comer and Savannah, Georgia.¹³⁰ The Robins solar facility is in addition to solar installations approved in 2014 for Fort Stewart Army Base, Fort Benning Army Base, and Kings Bay Naval Submarine Base.¹³¹

VIII. INDIANA

A. Transmission, Distribution and Storage System Improvements Charges Statute

In 2013, the Indiana legislature enacted the Transmission, Distribution and Storage System Improvements Charges (TDSIC) statute, which allows a utility to recover costs associated with electric or gas transmission, distribution, or storage

123. SOUTHERN CO.: CURRENT REPORT (Form 8-K) (July 27, 2017).

124. GA. CODE ANN. § 46-3A-2.

125. Order Adopting Stipulations at 12, 15-16, *In re: Georgia Power Company's 2016 Integrated Resource Plan and Application for Decertification of Plant Mitchell Units 3, 4A and 4B, Plant Kraft Unit 1 CT, and Intercession City CT*, Docket No. 40161 and *In re: Georgia Power Company's Application for the Certification, Decertification, and Amended Demand Side Management Plan*, Docket No. 40162 (Ga. Pub. Serv. Comm'n, Aug. 2, 2016) [hereinafter IRP Order].

126. *Id.*

127. Order Nunc Pro Tunc IRP Docket (Ga. Pub. Serv. Comm'n, Aug. 22, 2016); Order on Motions for Reconsideration and Clarification IRP Docket (Ga. Pub. Serv. Comm'n, Sept. 19, 2016).

128. *See generally* IRP Order.

129. *Id.* at 9.

130. Order Regarding Notice of the 139 MW Solar Project at Robins Air Force Base and the 3 MW Community Solar Projects at 4, *In re: Georgia Power Company's 2016 Integrated Resource Plan*, Docket No. 40161 (Ga. Pub. Serv. Comm'n, May 23, 2017).

131. GA. PUB. SERV. COMM'N, 138TH ANN. REP. 12 (2017).

projects via a rate adjustment mechanism, if such projects are approved by the Indiana Utility Regulatory Commission (Indiana URC) as part of a utility's 7-year TDSIC plan.¹³² Under the statute, when a utility submits a 7-year TDSIC plan, the Indiana URC is required to issue an order that includes:

- (1) [a] finding of the best estimate of the cost of the eligible improvements included in the plan; (2) [a] determination whether public convenience and necessity require or will require the eligible improvements included in the plan; and (3) [a] determination whether the estimated costs of the eligible improvements included in the plan are justified by incremental benefits attributable to the plan.¹³³

Once the Indiana URC has approved a utility's 7-year plan, the utility may recover 80% of the TDSIC plan's approved costs, although it must wait to recover the remaining 20% during its next general base rate case.¹³⁴ The Indiana Court of Appeals had held that in a utility's 7-year TDSIC plan, the utility must specifically identify all projects for all 7 years and held that categories of projects without specific identification are not sufficient to meet the TDSIC statute's requirement that the Indiana URC must ascertain the reasonableness of the plan.¹³⁵ The Court also stated that the plan must be "sufficiently definite" in order for the Indiana URC to reasonably identify what projects will be completed and when.¹³⁶

In April 2017, the Indiana Court of Appeals issued another decision concerning interpretation of Indiana's TDSIC statute.¹³⁷ In this case, the Indiana URC addressed the issue of whether a plan update under the TDSIC statute may include new projects.¹³⁸ The Indiana URC had held that an update may include changes to previously approved projects that were part of the plan, but could not include new projects.¹³⁹ The Court of Appeals held that the Indiana URC's interpretation of the update provision of the TDSIC statute was not unreasonable and noted that, although an agency's interpretation of a statute prevents a question of law entitled to *de novo* review, the Indiana URC's interpretation should be given "great weight."¹⁴⁰ "If a court 'determines that an agency's interpretation is reasonable, it should terminate its analysis and not address the reasonableness of the other party's proposed interpretation.'"¹⁴¹

In June 2017, the Indiana Court of Appeals again addressed the interpretation of Indiana's TDSIC Statute.¹⁴² At issue in this case was the utility's inclusion of

132. IND. CODE § 8-1-39-2 (2013).

133. IND. CODE § 8-1-39-10(b) (2013).

134. IND. CODE §§ 8-1-39-9(a), (b) (2013).

135. NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co., 31 N.E.3d 1, 18 (Ind. Ct. App. 2015).

136. *Id.* at 5-6.

137. Ind. Gas Co. v. Ind. Util. Reg. Comm'n, 75 N.E.3d 567, 571 (Ind. Ct. App. 2017).

138. *Id.*

139. *Id.* at 579.

140. *Id.* at 577-78.

141. *Id.* at 578 (quoting Dev. Serv. Alts., Inc. v. Ind. Family & Social Servs. Admin., 915 N.E.2d 169, 181 (Ind. Ct. App. 2009)).

142. NIPSCO Indus. Grp. v. N. Ind. Pub. Serv. Co., 78 N.E.3d 730, 732 (Ind. Ct. App. 2017).

categories of projects in its 7-year TDSIC plan.¹⁴³ The question facing the Court was whether the utility included in its plan project groups that included some identified projects and other yet-to-be identified projects with ascertainable planning criteria for later identifying and selecting the specific improvements that will be undertaken in these project groups.¹⁴⁴ A group of industrial intervenors argued that the Indiana URC had erroneously approved these project groups included in the utility's plan because the improvements were not identified with particularity and the specific improvement in these categories would not be identified until later.¹⁴⁵ The Court disagreed with the intervenors, noting that the challenged multiple-unit projects at issue contained both specified and unspecified projects; the multiple-unit projects are determined by utilizing ascertainable planning criteria that was explained and approved by the Indiana URC.¹⁴⁶ Therefore, any projects utilizing the ascertainable planning criteria are not "new" projects.¹⁴⁷ As long as the future specific projects are determined by utilizing the ascertainable planning criteria previously approved by the Indiana URC, the projects should be considered eligible improvements and may be included in the plan updates.¹⁴⁸

B. Indiana's Energy Efficiency Statute

In 2015, the Indiana Legislature enacted a statute that explicitly provides for recovery by electric utilities of program costs, lost revenues, and financial incentives associated with a utility's approved energy efficiency plan.¹⁴⁹ In a Vectren case, the Indiana URC approved the energy efficiency plan, finding it reasonable overall, and approved the recovery of program costs, lost revenues, and financial incentives.¹⁵⁰ However, in approving the recovery of lost revenues, the Indiana URC determined that Vectren's lost revenue recovery should be limited to 4 years or the life of the measure, whichever is less (or until new base rates are established in a rate case).¹⁵¹ Vectren appealed this 4 year cap on recovery of lost revenues.¹⁵² In March 2017, the Indiana Court of Appeals reversed and remanded the matter to the Indiana URC after finding that the Indiana URC had failed to make specific factual findings that the 4 year cap would allow Vectren to recover reasonable lost revenues.¹⁵³ The Court directed the Indiana URC to either (1) issue specific factual findings to justify its apparent determination that the utility's lost revenue recovery proposals are unreasonable or to determine that the plan is not reasonable in its entirety, or (2) issue specific factual findings to justify a determination that

143. *Id.*

144. *Id.*

145. *Id.* at 735.

146. *Id.* at 739.

147. *NIPSCO Indus. Grp.*, 78 N.E.3d at 739.

148. *Id.*

149. *Vectren v. Ind. Util. Reg. Comm'n*, 2017 WL 899947, at *1 (Ind. Ct. App. Mar. 7, 2017).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* at *7.

the plan is in fact reasonable in its entirety and allow the utility to recover its lost revenues in accordance with the plan.¹⁵⁴

C. Indiana's New Distributed Generation Statute

In its 2017 session, the Indiana General Assembly passed, and Indiana's Governor signed into law, Senate Enrolled Act 309 (codified in pertinent part at Indiana Code ch. 8-1-40), to, among other things,

- increase transparency of Indiana electricity suppliers' rates, by requiring the Indiana URC to make results of its periodic reviews of an electricity supplier's rates available for public inspection via the Indiana URC's website;
- increase transparency of rates by requiring the Indiana URC to review the rates charged by electricity suppliers for backup and supplemental power, to identify the extent to which such rates are cost-based, non-discriminatory, and do not result in cost subsidization within or among customer classes, and require the Indiana URC to report these findings to the General Assembly;
- expand large customers' ability to use private generation to serve some of their electricity needs;
- require additional use of competitive procurement relative to the construction generating facilities greater than 80 MW;
- encourage the development of renewable energy projects (for example, community solar) through competitive bidding processes;
- allow a transition away from net metering pricing for new distributed generation customers by changing the pricing for surplus generation from small distributed generation facilities from a net metered basis to a wholesale (plus a premium) basis;
- increase the utility system cap on net metering from 1% to 1.5% of summer peak load;
- allow existing net metering customers that installed their net metering equipment and are participating in a utility net metering tariff prior to December 31, 2017, to continue to use net metering tariffs for up to 30 years (2047);
- allow net metering customers that install net metering equipment and participate in a utility net metering tariff between December 31, 2017 and July 1, 2022 to continue to use net metering tariffs until July 1, 2032;
- authorize electricity suppliers to recover from distributed generation customers reasonable energy delivery costs attributable to serving such customers, subject to Indiana URC approval; and
- establish a set of customer rights pertaining to the installation and ownership of distributed generation equipment.¹⁵⁵

154. *Vectren*, 2017 WL 899947, at *7.

155. IND. CODE § 8-1-40-1 (2017); S.B. 309, 2017 Gen. Assemb., Reg. Sess. (Ind. 2017).

IX. MARYLAND

A. *Community Solar Pilot Program*

On March 29, 2017, the Maryland Public Service Commission (Maryland PSC) approved tariff proposals from Baltimore Gas and Electric Company, Delmarva Power and Light Company, Potomac Edison, and the Potomac Electric Power Company to participate in the Community Solar Pilot Program.¹⁵⁶ The three-year Community Solar Pilot Program allows two or more electricity customers within a utility service area to buy a share of electrical output of rooftop solar panels without the installation of solar panels on the customers' rooftop.¹⁵⁷ The Program requires operators of community solar generating systems (referred to as subscribers) to apply to the Maryland PSC for approval, obtain utility interconnection agreements, and apply for project capacity before signing up customers.¹⁵⁸ The program purpose is to increase the opportunity for all ratepayers regardless of income to invest or contract in solar generation equipment, encourage private investment in solar generation, and increase the state's diverse energy portfolio.¹⁵⁹ The Maryland PSC enacted the program through regulation effective July 18, 2016.¹⁶⁰ The regulations require the participating utilities to "monitor and review [their] distribution system[s] to determine any adverse or beneficial effects resulting from each installed community solar [energy] generating system" as well as collect data regarding customer classes that participate, annual usage, average bill, and peak demand for utility and Maryland PSC study.¹⁶¹

B. *Transforming Maryland's Electric Distribution Systems*

"On September 26, 2016, the [Maryland PSC] initiated Public Conference 44 [(PC44)] for the purpose of commencing a targeted review to ensure that electric distribution systems in Maryland are customer-centered, affordable, reliable and environmentally sustainable."¹⁶² On January 31, 2017, the Maryland PSC issued a notice to (1) provide guiding principles for the proceeding; (2) describe the intent to direct spending of \$500,000 for the proceeding; (3) revise the scope of proceeding to address topics such as rate design, electric vehicles, competitive markets and customer choice, the interconnection process, energy storage, and distribution

156. Press Release, Md. Pub. Serv. Comm'n, Maryland PSC Launches Application Process for Community Solar Pilot Program Action Brings Program Closer to Operation (Mar. 29, 2017).

157. MD. PUB. SERV. COMM'N: COMMUNITY SOLAR PILOT PROGRAM FREQUENTLY ASKED QUESTIONS, <http://www.psc.state.md.us/electricity/community-solar-pilot-program-frequently-asked-questions> (last visited Oct. 13, 2017).

158. Press Release, *supra* note 156.

159. *Id.*

160. MD. CODE REGS. 20.62.04.9999 (2016).

161. MD. CODE REGS. 20.62.04.02(C), (D) (2016).

162. Notice of Public Conference, *In the Matter of Transforming Maryland's Electric Distribution Systems to Ensure that Electric Service is Customer-Centered, Affordable, Reliable and Environmentally Sustainable in Maryland* (Md. Pub. Serv. Comm'n Nov. 3, 2016).

system planning; and (4) create clear action steps to move forward.¹⁶³ A workgroup was created for each of the topic areas with specific action items and timelines.¹⁶⁴ On June 30, 2017, the Competitive Markets and Customer Choice working group submitted its draft non-consensus proposal.¹⁶⁵

C. Offshore Wind Renewable Energy Credits

On May 11, 2017, pursuant to the Maryland Offshore Wind Energy Act of 2013, the Maryland PSC issued an order awarding offshore wind renewable energy credits (OREC) to U.S. Wind, Inc. (U.S. Wind) and Skipjack Offshore Energy, L.L.C. (Skipjack) to construct 368 MW of capacity.¹⁶⁶ Both companies were awarded ORECs at a level price of \$131.93 per megawatt hour for a term of twenty years starting in January 2021 for U.S. Wind and 2013 for Skipjack.¹⁶⁷ The Maryland PSC approved the ORECs after the Maryland PSC's independent consultants and experts determined that Maryland residential rate payers would only be impacted \$1.40 per month and commercial and industrial customers would be impacted by less than 1.4 percent on their annual bills.¹⁶⁸ The Maryland PSC approved the ORECs based upon thirty conditions related to providing economic savings to rate payers; providing investment and job opportunities to Maryland industries and Maryland minority companies; and making sure that the risks of the aesthetic views of the State are minimalized.¹⁶⁹

X. MICHIGAN

A. Passage of 2016 PA 341 and 2016 PA 342

The Michigan Legislature passed bills that significantly changed Michigan's energy policy with respect to electric generation and reliability.¹⁷⁰ These laws kicked off a series of Michigan Public Service Commission (Michigan PSC) workgroups and dockets addressing the establishment of an Integrated Resource Planning process; increasing and broadening Michigan's Renewable Portfolio Standard; establishing state-level resource adequacy requirements that apply to

163. Notice at 2, *In the Matter of Transforming Maryland's Electric Distribution Systems to Ensure that Electric Service is Customer-Centered, Affordable, Reliable and Environmentally Sustainable in Maryland* (Jan. 31, 2017).

164. *Id.* at 6.

165. Letter from Odogwu Obi Linton, Esq., Chair Consumer Prot. & Customer Choice Workgroup to David Collins, Exec. Dir., Md. Pub. Serv. Comm'n (June 30, 2017) (on file with Md. Pub. Serv. Comm'n).

166. Order No. 88192 at 1, 11, *In the Matter of the Application of U.S. Wind, Inc. and Skipjack Offshore Energy, L.L.C. for Proposed Offshore Wind Project(s) Pursuant to the Maryland Offshore Wind Energy Act of 2013*, Case No. 941 (Md. Pub. Serv. Comm'n May 11, 2017) [hereinafter Order No. 88192]; MD. CODE ANN., PUB. UTIL. §§ 7-704.1, 7-704.2 (2017).

167. Order No. 88192, *supra* note 166, at 77.

168. *Id.* at 2.

169. Press Release, Md. Pub. Serv. Comm'n, Maryland PSC Awards ORECS to Two Offshore Wind Developers Projects to Create Jobs, Economic Development in New Industry (May 11, 2017) (on file with Md. Pub. Serv. Comm'n).

170. See, e.g., S.B. 437, 98th Leg., Reg. Sess. (Mich. 2016); S.B. 438, 98th Leg., Reg. Sess. (Mich. 2016).

competitive electric providers in Michigan's 10% Electric Choice market; and revising Michigan's net metering program.¹⁷¹ The implementation of these policy changes will be taking place largely over the 2017 to 2018 time frame in a series of workgroups and contested cases at the Michigan PSC.

B. Michigan's Implementation of PURPA

Michigan began a review of its PURPA implementation for the first time since the mid-1980's, including a review of Avoided Costs for all regulated utilities.¹⁷² This effort was carried out through a Michigan PSC staff-led technical conference and through individual contested case dockets for each utility.¹⁷³ In May 2017, the Michigan PSC issued an order finding that a hybrid proxy plant model proposed by Michigan PSC Staff, which uses a natural gas combustion turbine unit as a proxy for the capacity price and a natural gas combined cycle unit as the proxy for energy, was the appropriate model on which to base Michigan's avoided cost structure.¹⁷⁴ The Michigan PSC then asked the utilities and other parties to propose inputs for this model for each utility.¹⁷⁵ As of June 2017, these proceedings were still under way.¹⁷⁶

C. Upper Peninsula Settlement

Through Case No. U-18061 and related dockets, the Michigan PSC endorsed a settlement that created a new Michigan-based utility to serve the western portion of the state's Upper Peninsula (UP), and established requirements for new generation to be built to replace retiring coal-fired generation.¹⁷⁷ This settlement is intended to address long-standing concerns about reliability and resource adequacy

171. Order at 6, *In the matter, on the Commission's own motion to implement the provisions of Section 61(1) of 2016 PA 341*, Case No. U-18418 (Mich. Pub. Serv. Comm'n July 31, 2017); Order at 1, 11, *In the matter, on the Commission's own motion to adopt revised renewable energy plan filing requirements*, Case No. U-18409 (Mich. Pub. Serv. Comm'n Aug. 23, 2017); Order at 48, *In the matter of the investigation, on the Commission's own motion, into the electric supply reliability plans of Michigan's electric utilities for the years 2017 through 2021*, Case No. U-18197 (Mich. Pub. Serv. Comm'n Sept. 15, 2017); Order at 2, *In the matter, on the Commission's own motion to implement the provisions of Section 173 and 183(1) of 2016 PA 342*, Case No. U-18383 (Mich. Pub. Serv. Comm'n July 12, 2017).

172. Report on the Continued Appropriateness of the Commission's Implementation of PURPA at 2-3, *In the matter, on the Commission's own motion, commencing an investigation into the continuing appropriateness of the Commission's current regulatory implementation of the Public Utility Regulatory Policies Act of 1978*, Case No. U-17973 (Mich. Pub. Serv. Comm'n Apr. 8, 2016).

173. *Id.* at 2; *see also* Mich. Pub. Serv. Comm'n Case Nos. U-18089 to U-18097.

174. Opinion and Order at 17, 29, *In the matter, on the Commission's own motion, establishing the method and avoided cost calculation for Consumers Energy Company to fully comply with the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601-2645*, Case No. U-18090 (Mich. Pub. Serv. Comm'n May 31, 2017) [hereinafter *Establishing the Method*].

175. *Id.* at 28-29.

176. *Establishing the Method*, *supra* note 174, at 33.

177. Order at 2, 21-22, 31-32, *In the matter of the application of Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Upper Michigan Energy Resources Corporation for approval for the transfer of control of Wisconsin Electric Power Company Michigan electric distribution assets and Wisconsin Public Service Corporation Michigan electric and natural gas distribution assets to Upper Michigan Energy Resources Corporation*, Case No. U-18061 (Mich. Pub. Serv. Comm'n Dec. 9, 2016).

in the UP and to provide new flexibility for meeting the rather unique load characteristics of this region.¹⁷⁸

XI. MISSOURI

A. *Water Rate Request of Hillcrest Utility Operating Company, Inc.*

On July 12, 2016, the Missouri Public Service Commission (Missouri PSC) issued an order approving an increase in annual water and sewer operating revenues of approximately \$442, 990 for Hillcrest Utility Operating Company, Inc. (Hillcrest).¹⁷⁹ This was the first water and sewer rate increase for customers served by Hillcrest since April 1989.¹⁸⁰

The Missouri PSC stated that the revenue increase was “no more than what is sufficient to keep Hillcrest’s utility plants in proper repair for effective public service and provide to Hillcrest’s investors an opportunity to earn a reasonable return upon funds invested.”¹⁸¹

B. *Application of Union Electric Company d/b/a Ameren Missouri for Approval of a Tariff Setting a Rate for Electric Vehicle Charging Stations*

On April 19, 2017, the Missouri PSC issued an order denying Ameren Missouri’s request to offer a pilot program to install and operate electric vehicle (EV) charging stations at locations within Ameren Missouri’s service area along the Interstate 70 corridor between St. Louis and Boonville and in Jefferson City.¹⁸²

The Missouri PSC’s decision was based on a determination that the Missouri PSC lacked authority to regulate utility-owned and operated EV charging stations operated in a utility’s service area, because EV charging stations do not constitute “electric plant” as defined in Missouri statute.¹⁸³ Specifically, the Missouri PSC found that EV stations are not used for providing “electricity for light, heat, or power.”¹⁸⁴ Instead, the Missouri PSC determined that

EV charging stations are facilities that use specialized equipment, such as a specific cord and vehicle connector, to provide the service of charging a battery in an electric vehicle. The battery is the sole source of power to make the vehicle’s wheels turn, the heater and air conditioner operate, and the headlights shine light.¹⁸⁵

178. See generally Letter from Michael C. Rampe to Sally L Wallace, Acting Exec. Sec., Mich. Pub. Serv. Comm’n (June 14, 2016) (on file with Mich. Pub. Serv. Comm’n).

179. Report and Order at 34, *In the Matter of the Water Rate Request of Hillcrest Utility Operating Company, Inc.*, File No. WR-2016-0064 (Mo. Pub. Serv. Comm’n July 12, 2016).

180. *Id.* at 7.

181. *Id.* at 34.

182. Report and Order at 13, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of a Tariff Setting a Rate for Electric Vehicle Charging Stations*, File No. ET-2016-0246 (Mo. Pub. Serv. Comm’n Apr. 19, 2017) [hereinafter Union Elec. Co. Application].

183. *Id.* at 10.

184. *Id.*

185. *Id.*

The Missouri PSC also noted that Ameren failed to show why EV charging stations need to be regulated for the protection of the public.¹⁸⁶

Although the Missouri PSC's decision does not bar Ameren Missouri from owning and operating EV charging stations in Missouri, they may not

include those charging stations in [their] rate base or seek[] recovery from ratepayers for any of the costs associated with the construction or operation of those charging stations. . . . Ameren Missouri may include in rate base any equipment, such as distribution lines, transformers, and meters, necessary to provide electric service to an owner of an EV charging station, whether or not that owner is affiliated with Ameren Missouri.¹⁸⁷

The Missouri PSC's order also directed Ameren to collect data related to the "appropriate electric rate to charge owners of EV charging stations and provide that data during its next general rate case."¹⁸⁸

C. *EC-2017-0107 Midwest Energy Consumers Group v. Great Plains Energy Incorporated*

On February 22, 2017, the Missouri PSC issued a Report and Order directing Great Plains Energy Incorporated (GPE) to file an application seeking Missouri PSC approval of a merger between GPE and Westar Energy, Inc.¹⁸⁹

In 2001, the Missouri PSC approved an agreement regarding the corporate restructuring of Kansas City Power & Light Company and the creation of GPE.¹⁹⁰ The agreement states that

GPE . . . will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility unless GPE has requested prior approval for such transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction.¹⁹¹

However, on May 29, 2016, GPE entered into an agreement and plan of merger to acquire all of the capital stock of Westar without seeking Missouri PSC approval.¹⁹² Midwest Energy Consumers Group then filed a complaint alleging that

186. *Id.* at 12.

187. Union Elec. Co. Application, *supra* note 182, at 12.

188. *Id.* at 13.

189. Report and Order at 22, *Midwest Energy Consumers Grp. v. Great Plains Energy Inc.*, File No. EC-2017-0107 (Mo. Pub. Serv. Comm'n Feb. 22, 2017).

190. Order Approving Stipulation and Agreement and Closing Case at 13, *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure*, Case No. EM-2001-464 (Mo. Pub. Serv. Comm'n July 31, 2001).

191. Report and Order at 7, *Midwest Energy Consumers Grp. v. Great Plains Energy Inc.*, File No. EC-2017-0107 (Mo. Pub. Serv. Comm'n Feb. 22, 2017).

192. *Id.* at 9.

GPE was in violation of the 2001 agreement provision as it related to prospective merger conditions.¹⁹³ The Missouri PSC found that GPE's failure to seek approval in the acquisition of Westar Energy, Inc. was a violation of the 2001 agreement's merger conditions and ordered GPE to file an application with the Missouri PSC.¹⁹⁴

XII. NEVADA

A. *Energy Choice*¹⁹⁵

In November 2016, the people of Nevada voted to adopt the Energy Choice Initiative, which proposes to amend Article 1 of the Nevada Constitution to declare that "electricity markets be open and competitive so that all electricity customers are afforded meaningful choices among different providers, and that economic and regulatory burdens be minimized in order to promote competition and choices in the electric energy market."¹⁹⁶

Under Nevada law, a voter initiative to amend the Nevada Constitution, if passed by a majority of voters, must be resubmitted "to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted."¹⁹⁷ Therefore, the voters of Nevada will see the initiative again in November 2018.¹⁹⁸ If approved the second time, Nevada legislators will have until July 1, 2023 to "establish an open, competitive retail electric energy market."¹⁹⁹

Switch, Inc. reapplied under Nev. Rev. Stat. (NRS) § 704B to leave the bundled electric service of NV Energy in September 2016.²⁰⁰ The PUCN approved

193. *Id.* at 10.

194. *Id.* at 22.

195. In June 2015, the Public Utilities Commission of Nevada ("PUCN") denied the application of Switch, Inc. to leave the bundled electric service of NV Energy pursuant to NEV. REV. STAT. § 704B (2001). Order at 1, *Application of Switch Ltd. to purchase energy, capacity, and/or ancillary services from a provider of new electric resources*, Docket No. 14-11007 (Nev. Pub. Util. Comm'n June 11, 2015). In December 2015, the PUCN granted the applications of Sierra Pacific Power Company (d/b/a NV Energy) and Nevada Power Company (d/b/a NV Energy), establishing separate rate classes for net metering customers and reducing the amount NV Energy would pay to its net metering customers for energy fed back to NV Energy's distribution system. Order at 4, *Application of Nevada Power Company d/b/a NV Energy for approval of a cost-of-service study and net metering tariffs, Application of Sierra Pacific Power Company d/b/a NV Energy for approval of a cost-of-service study and net metering tariffs*, Docket Nos. 15-07041, 15-07042 (Nev. Pub. Utils. Comm'n Dec. 23, 2015). Nevada energy users became enraged.

196. NEV. CONST. amend. § 1.1 (Feb. 3, 2016) [hereinafter Initiative].

197. NEV. CONST. art. 19, § 2.4.

198. NEV. SEC'Y OF STATE: IMPORTANT DATES, <http://www.nvsos.gov/sos/elections/initiatives-referenda/important-dates> (last visited Oct. 13, 2017).

199. Initiative, *supra* note 196, § 1.3(a).

200. Application of Switch, Ltd., *Application of Switch, Ltd. to purchase energy, capacity, and/or ancillary services from a provider of new electric resources*, Docket No. 16-09023 (Nev. Pub. Util. Comm'n Sept. 30, 2016).

the application without the participation of NV Energy or the Bureau of Consumer Protection in the stipulation settling the matter.²⁰¹

In March 2017, the PUCN granted the application of Caesar’s Enterprise Services, L.L.C., to leave the bundled electric service of NV Energy pursuant to NRS 704B.²⁰² In this case, the PUCN approved the application without the participation of NV Energy in the stipulation settling the matter.²⁰³

In April 2017, Google, Inc. filed a petition for declaratory order asking the PUCN for directions on how a new customer to Nevada can use the NRS 704B process to take unbundled electric service from a provider other than NV Energy.²⁰⁴ Staff filed comments supporting the ability for a new customer to use NRS 704B to access electricity markets and providing guidance for avoiding impact fees.²⁰⁵ The PUCN held a hearing on Google’s request on June 20.²⁰⁶

In May, Peppermill Casinos Inc. d/b/a Peppermill Resort Spa Casino filed its application to leave NV Energy’s bundled electric service pursuant to NRS 704B.²⁰⁷ A prehearing conference is scheduled for July 13, 2017.²⁰⁸

During the 2017 legislative session, Nevada passed Assembly Bill (AB) 405, which, inter alia, adopted the Renewable Energy Bill of Rights.²⁰⁹ This bill declares that “each natural person who is a resident of [Nevada] has the right to . . . [g]enerate, consume and export renewable energy and reduce his or her use of electricity that is obtained from the grid.”²¹⁰ It provides that, except for those who opt to take advantage of a time-of-use rate, net metering customers will “remain within the existing broad rate class to which the [customer] would belong in the

201. Order, *Application of Switch, Ltd. to purchase energy, capacity, and/or ancillary services from a provider of new electric resources*, Docket No. 16-09023 (Nev. Pub. Util. Comm’n Dec. 28, 2016).

202. Order, *Application of Caesars Enterprise Services, L.L.C. to purchase energy, capacity, and/or ancillary services for eligible Southern Nevada meters from a provider of new electric resources, Application of Caesars Enterprise Services, L.L.C. to purchase energy, capacity, and/or ancillary services for eligible Northern Nevada meters from a provider of new electric resources*, Docket Nos. 16-11034, 16-11035 (Nev. Pub. Util. Comm’n Mar. 10, 2017).

203. *Id.*

204. Petition for Declaratory Order, *Petition of Google Inc. for a Declaratory Order regarding the impact analysis that will be performed if Google Inc. seeks to obtain service from a provider of new electric resources pursuant to Chapter 704B of the NRS*, Docket No. 17-04019 (Nev. Pub. Util. Comm’n Apr. 25, 2017).

205. Regulatory Operations Staff’s Comments, *Petition of Google Inc. for a Declaratory Order regarding the impact analysis that will be performed if Google Inc. seeks to obtain service from a provider of new electric resources pursuant to Chapter 704B of the NRS*, Docket No. 17-04019 (Nev. Pub. Util. Comm’n May 24, 2017).

206. Transcript of Proceedings, *Petition of Google Inc. for a Declaratory Order regarding the impact analysis that will be performed if Google Inc. seeks to obtain service from a provider of new electric resources pursuant to Chapter 704B of the NRS*, Docket No. 17-04019 (Nev. Pub. Util. Comm’n June 21, 2017).

207. NRS Chapter 704B Application of Peppermill Resort Spa & Request for a Protective Order, *In the Matter of the Application of Peppermill Casinos Inc. d/b/a Peppermill Resort Spa Casino, for Leave to Exit the System of Sierra Pacific Power Company d/b/a NV Energy in Accordance with the provisions of NRS Chapter 704B and NCA Chapter 704B*, Docket No. 17-0514 (Nev. Pub. Util. Comm’n May 15, 2017).

208. Notice of Prehearing Conference, *In the Matter of the Application of Peppermill Casinos Inc. d/b/a Peppermill Resort Spa Casino, for Leave to Exit the System of Sierra Pacific Power Company d/b/a NV Energy in Accordance with the provisions of NRS Chapter 704B and NCA Chapter 704B*, Docket No. 17-0514 (Nev. Pub. Util. Comm’n June 27, 2017).

209. A.B. 405 § 24, 2017 Leg., 79th Sess. (Nev. 2017).

210. *Id.* § 24.1.

absence of a net metering system.”²¹¹ It also provides a guaranteed credit for net metering customers with a capacity of not more than 25 kilowatts.²¹²

One June 16, 2017, the Governor of Nevada vetoed AB 206, which increased the Renewable Portfolio Standard for nearly all providers of electricity in Nevada (cooperatives and municipalities were excluded).²¹³ The Governor noted that the risk to ratepayers was too great to approve this bill at this time due to the uncertainty present with the almost certain passage of the Energy Choice Initiative in 2018.²¹⁴

XIII. OKLAHOMA

A. *Empire District and Liberty Utilities Merger*

On February 9, 2016, Empire District Electric Company and Liberty Utilities Company entered into an Agreement and Plan of Merger (plan of merger).²¹⁵ On March 16, 2016, Empire District Electric Company and Liberty Utilities Company filed a joint application requesting approval from the Oklahoma Corporation Commission (Oklahoma CC) of its plan of merger.²¹⁶ The Oklahoma CC approved the merger stating that the merger “would not substantially lessen competition in the furnishing of electric service in the state . . . [and] the competence, experience and integrity of the persons who would control the operation of Empire would not be detrimental.”²¹⁷

B. *Fortis and ITC Holding Merger*

On February 9, 2016, Fortis, FortisUS, Element, and ITC Holdings entered into an Agreement and Plan of Merger whereby FortisUS would acquire ITC’s Oklahoma transmission-only utility, ITC Great Plains, which owns 18 miles of transmission line in Oklahoma.²¹⁸ On August 16, 2016, the Oklahoma CC approved Fortis US’s acquisition of ITC Great Plains.²¹⁹ The Oklahoma CC was the first state commission to approve the agreement of merger.²²⁰

211. *Id.* § 24.7.

212. *Id.* § 28.3.

213. A.B. 206, <https://www.leg.state.nv.us/Session/79th2017/Reports/history.cfm?DocumentType=1&BillNo=206> (last visited Oct. 12, 2017).

214. Letter from Brian Sandoval, Nev. Governor, to Barbara Cegavske, Nev. Sec’y of State (June 16, 2017) (on file with Nev. Governor’s Office).

215. Application, *Application of the Empire District Electric Company, Liberty Utilities (Central) Co., and Liberty Sub Corp. for Approval of an Agreement and Plan of Merger*, PUD Cause No. 201600098 (Okla. Corp. Comm’n Mar. 16, 2016).

216. *Id.* at p. 1-3.

217. Final Order at 3, *Application of the Empire District Electric Company, Liberty Utilities (Central) Co., and Liberty Sub Corp. for Approval of an Agreement and Plan of Merger*, PUD Cause No. 201600098 (Okla. Corp. Comm’n May 12, 2016).

218. Joint Application for Approval of Merger and Acquisition of Control, *In the Matter of the Application of ITC Great Plains, L.L.C. and Fortisus Inc. for Approval of Merger and Acquisition of Control of Oklahoma Public Utility*, PUD Cause No. 201600180 (Okla. Corp. Comm’n May 13, 2016).

219. *Id.*

220. *Id.*

C. Task Force to Study Oklahoma CC

The Oklahoma State legislature has proposed an executive-level task force to study the operation of the Oklahoma CC and suggest possible changes to the structure and function of the Oklahoma CC.²²¹ House Bill 1377 would create the 21st Century Corporation Commission Review to address concerns regarding regulatory delays at the Oklahoma CC.²²² The bill was passed by both the House and Senate, but the bill was not finalized before the completion of the Oklahoma Legislative Session.²²³ However, the Governor of Oklahoma is currently drafting an executive order that will accomplish the goal of H.B. 1377.²²⁴

D. Wind Energy Tax Credits

On April 17, 2017, the Governor of Oklahoma signed House Bill 2298 bringing an early end to the last major tax incentive for the wind energy.²²⁵ The tax credits are worth .5 cents per kilowatt hour of electricity generated by renewable resources.²²⁶ Under Okla. Stat. tit. 68, § 2357.32A, the zero-emission facility tax credits were set to expire on January 1, 2021.²²⁷ H.B. 2298 amended the statute to stop the tax credits on July 1, 2017.²²⁸

XIV. PENNSYLVANIA

A. Investigation of Alternative Rate Design (Docket No. M-2015-2518883)

In early 2016, the Pennsylvania Public Utility Commission (PA PUC) initiated an investigation into the feasibility and appropriateness of adopting alternative rate methodologies to encourage utilities to better implement energy efficiency and conservation (EE&C) programs such as revenue decoupling and/or “a utility’s performance with respect to [EE&C] as a part of the determination of the overall authorized revenue requirement.”²²⁹ After holding an *en banc* hearing on March 3, 2016, the PA PUC solicited written comments from energy stakeholders by March 16, 2016.²³⁰

On March 2, 2017, the PA PUC issued a Tentative Order that summarized key issues highlighted in the March 16, 2016 comments.²³¹ The PA PUC observed

221. H.B. 1377, 56th Leg., 1st Sess. (Okla. 2017).

222. *Id.*

223. BILL INFORMATION FOR H.B. 1377, <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb1377> (last visited Oct. 13, 2017).

224. Paul Monies, *Legislature Won’t Finalize Oklahoma Corporation Commission Task Force Bill*, THE OKLAHOMAN (May 26, 2017), <http://newsok.com/article/5550600>.

225. BILL INFORMATION FOR H.B. 2298, <http://www.oklegislature.gov/BillInfo.aspx?Bill=hb2298> (last visited Oct. 13, 2017).

226. OKLA. STAT. tit. 68, § 2457.32A(B) (2017).

227. *Id.*

228. H.B. 2298, 56th Leg., Sess. 1 (Okla. 2017).

229. Tentative Order at 1 n.1, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Pa. Pub. Util. Comm’n Mar. 2, 2017) [hereinafter Tentative Order].

230. *Id.* at 4.

231. *Id.* at 1.

that utilities were generally not opposed to alternative ratemaking methodologies.²³² However, several of those utilities and other advocacy groups indicated that Pennsylvania's current EE&C programs are already effective and have achieved energy efficiencies without implementing alternative ratemaking methodologies such as revenue decoupling and performance incentive mechanisms.²³³ Accordingly, commenters expressed concern about the ability to determine the value of any alternative rate methodology.²³⁴ Additionally, some commenters indicated that if an alternative rate methodology were adopted, a one-size-fits-all approach should be avoided, revenue decoupling should be considered on an individual-utility basis, and attention should be paid to the impact of such methodologies on large commercial and industrial customers and low-income households.²³⁵

In response to these initial comments, the PA PUC solicited further comments from stakeholders on the impact of alternative rate methodologies.²³⁶ Specifically, the PA PUC sought input from the public on the reasonableness and efficacy of employing certain rate methodologies tailored to electric, natural gas, and water and wastewater utilities.²³⁷ In addition, PA PUC commissioners issued statements identifying specific alternative ratemaking methodologies and requested public comment on those proposals.²³⁸ Furthermore, the PA PUC asked parties to consider whether the PA PUC should: (i) "proceed with adopting policy statements identifying guidelines for preferred alternative rate methodologies for each utility type, under identifiable conditions, and as permitted by law;" or (ii) "initiate rulemakings to require a specific alternative rate methodology for specific utility types or specific rate classes, and under what conditions should such alternative rate methodologies be used."²³⁹

By May 31, 2017, over twenty stakeholders had provided comments on the PA PUC's March 2, 2017 Tentative Order identifying a diverse array of alternative ratemaking methodologies tailored to electric, natural gas, and water and wastewater utilities.²⁴⁰ Replies to those initial comments were due on July 31,

232. *Id.* at 5.

233. *Id.* at 3, 5.

234. Tentative Order, *supra* note 229, at 5.

235. *Id.*

236. *Id.* at 1.

237. *Id.* at 14.

238. Statement of Comm'r Robert F. Powelson, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Pa. Pub. Util. Comm'n Mar. 2, 2017); Statement of Vice Chairman Andrew G. Place, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Pa. Pub. Util. Comm'n. Mar. 2, 2017); Statement of Commissioner David W. Sweet, *Alternative Ratemaking Methodologies*, Docket No. M-2015-2518883 (Pa. Pub. Util. Comm'n. Mar. 2, 2017).

239. Tentative Order, *supra* note 229, at 18.

240. PA. PUB. UTIL. COMM'N: ALTERNATIVE RATEMAKING METHODOLOGIES, http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/alt_ratemaking_methodologies.asp (last visited Oct. 14, 2017).

2017.²⁴¹ Once the comment period has closed, the PA PUC will review the parties' statements and issue direction on further action.²⁴²

B. Changes to Natural Gas Switching Rules (Docket No. L-2016-2577413)

On December 22, 2016, the PA PUC issued an Advance Notice of Proposed Rulemaking Order (ANOPR).²⁴³ In the ANOPR, the PA PUC sought to amend existing regulations that address the process of transferring customers between natural gas suppliers (NGS) or a supplier of last resort.²⁴⁴ After the initial comment period ended on February 21, 2017, the PA PUC requested stakeholders further address: (1) whether natural gas distribution companies (NGDC) should have the option of backdating customers' switches to the date of the last meter read; (2) whether customers' off-cycle switches should be limited to one per month; (3) whether NGDCs should act as a "clearinghouse" to address capacity assignment; (4) whether regulations and switching timeframes should vary to reflect the diversity of NGDCs' capabilities; and (5) whether NGDCs must rely upon two data elements when confirming customers' switches.²⁴⁵ Comments for this second comment period were submitted on June 5, 2017, and are pending further PA PUC action.²⁴⁶

C. Regulations Related to Alternative Energy Portfolio Standards (Docket No. L-2014-2404361)

On October 27, 2016, the PA PUC issued a second final rulemaking order modifying Pennsylvania's Alternative Energy Portfolio Standards (AEPS) regulations.²⁴⁷ The regulations became effective upon publication in the Pennsylvania Bulletin on November 19, 2016.²⁴⁸ The modifications introduced by the order include:

- adding definitions for aggregator, default service provider, utility, grid emergencies, microgrid, and moving water impoundments;
- adding an "independent load" requirement for all net metering installations and clarifying the requirement that the customer-generator be a "nonutility;"

241. Tentative Order, *supra* note 229, at 20.

242. *See generally* 66 PA. CONS. STAT. § 335 (2016).

243. Order, *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 59 Regulations Regarding Standards for Changing a Customer's Natural Gas Supplier; Request for Additional Comments*, 47 Pa. Bull. 2614 (May 6, 2017).

244. *Id.*

245. *Id.* at 2614-15.

246. *Id.* at 2615.

247. Second Amended Final Rulemaking Order, *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket No. L-2014-2404361 (Pa. Pub. Util. Comm'n Oct. 26, 2016) [hereinafter Second Amended Final Rulemaking Order].

248. *Id.* at 125; *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, 46 Pa. Bull. 7277 (Nov. 19, 2016).

- adding a new process to seek PA PUC approval to net meter alternative energy systems with a nameplate capacity of 500 kW or more;
- clarifying net metering compensation rules for customer-generators receiving generation service from electric distribution companies, default service providers, and electric generation suppliers;
- defining “nameplate capacity” to be the capacity at the inverter (not the panels);
- adding a mechanism for adjusting Tier I compliance obligations on a quarterly basis to comply with Act 129 of the 2008 amendments; and,
- clarifying the authority given to the program administrator to suspend or revoke the qualification of an alternative energy system and to withhold or retire past, current or future alternative energy credits for violations.²⁴⁹

Finally, in the initial Final Rulemaking Order, the PA PUC promulgated a significant limitation to new net metering projects that would have limited the size of an alternative energy system to 200% of the customer-generator’s historic usage.²⁵⁰ The “200% rule” and its associated provisions, however, were stricken by the second final rulemaking order and, thus, are not part of the PA PUC’s new regulations.²⁵¹

XV. TENNESSEE

A. *Tennessee Public Utilities Commission*

The Tennessee General Assembly passed legislation in 2017 changing the state utility regulatory agency name from the Tennessee Regulatory Authority (TRA) to the Tennessee Public Utilities Commission (TPUC).²⁵² The same legislation also changed the title of the TPUC’s five-member leadership board from “Directors” to “Commissioners,” to align Tennessee with industry terminology that is common nationwide.²⁵³ There were no substantive changes to the companies regulated or the forms of regulation by the renamed TPUC, and the TPUC Commissioners continue to be only part time Commissioners.²⁵⁴

B. *Natural Gas Utility Mergers*

Two mergers, each involving a natural gas local distribution company (LDC), occurred in the past year.²⁵⁵ Piedmont Natural Gas (Piedmont) was acquired by

249. Second Amended Final Rulemaking Order, *supra* note 247, at 10-11, 103-04.

250. *Id.* at 50.

251. *Id.* at 53.

252. S.B. 747, 2017 Gen. Assemb., Reg. Sess. (Tenn. 2017).

253. *Id.*

254. *Id.*

255. *Duke Energy completes acquisition of Piedmont Natural Gas*, DUKE ENERGY (Oct. 3, 2016), <https://news.duke-energy.com/releases/duke-energy-completes-acquisition-of-piedmont-natural-gas>;

Duke Energy (Duke), and AGL Resources, Inc. (AGL), the parent of Chattanooga Gas Company (CGC), was acquired by The Southern Company (Southern).²⁵⁶ Neither transaction impacted the LDC entity providing service to customers.²⁵⁷ Piedmont filed an application to approve the merger while asserting that the TRA did not have the authority to approve the merger “because it will not be a merger of the property, rights and franchises of one public utility with the property, rights and franchises of another such public utility.”²⁵⁸ In approving the merger, the TRA found that it had the authority to approve the proposed merger because the regulated utility was the entity merging.²⁵⁹ The Duke-Piedmont merger was finalized on October 3, 2016.²⁶⁰ CGC did not formally petition the TRA for its approval since the regulated utility was itself not an entity being merged; the Southern-AGL merger was completed July 1, 2016.²⁶¹

C. *Alternative Regulation and Reviews*

The Tennessee General Assembly authorized the TPUC “to implement alternative regulatory methods to allow for public utility rate reviews and cost recovery in lieu of a general rate case proceeding.”²⁶² The statute establishes different types of alternative regulatory methods (ARM).²⁶³ First, there are cost and expense categories that track to a specific recovery mechanism.²⁶⁴ A mechanism may be sought for the recovery of operational expenses, capital costs, or both (as may be applicable) related to state or federal safety requirements, plant in service reliability, weather-related natural disasters, expansion of infrastructure for economic development, efforts that promote economic development (expenses only), or any other program that the utility can demonstrate is in the public interest.²⁶⁵ Second, the statutes provide that a utility “may opt to file for an annual review of its rates based upon the methodology adopted in its most recent rate case.”²⁶⁶ Pursuant to this statutory authority, Atmos Energy Corporation (Atmos) and Piedmont Natural

SOUTHERN CO.: SOUTHERN COMPANY AND AGL RESOURCES COMPLETE MERGER, <http://www.southerncompany.com/about-us/our-business/merger.html> (last visited Oct. 14, 2017).

256. Duke, *supra* note 255, at 1; Southern, *supra* note 255, at 1.

257. See generally Duke, *supra* note 255; Southern, *supra* note 255.

258. Application of Duke Energy Corporation and Piedmont Natural Gas Company, Inc. for Approval of a Change in Control Pursuant to T.C.A. § 65-4-113 at 3, *In re: Application of Duke Energy Corporation and Piedmont Natural Gas Company, Inc. for Approval of a Change in Control Pursuant to T.C.A. § 65-4-113*, Docket No. 16-00006 (Tenn. Reg. Auth. Jan. 15, 2016).

259. Order Approving Change in Control at 2, *In re: Application of Duke Energy Corporation and Piedmont Natural Gas Company, Inc. for Approval of a Change in Control Pursuant to T.C.A. § 65-4-113*, Docket No. 16-00006 (Tenn. Reg. Auth. Mar. 28, 2016).

260. Duke, *supra* note 255.

261. SOUTHERN CO.: SOUTHERN COMPANY AND AGL RESOURCES COMBINE TO CREATE A LEADING U.S. ENERGY COMPANY, <http://www.southerncompany.com/about-us/our-business/merger.html> (last visited Oct. 14, 2017).

262. TENN. CODE ANN. § 65-5-103(d)(1)(A) (2017).

263. *Id.*

264. TENN. CODE ANN. § 65-5-103(d)(2)(A) (2017).

265. TENN. CODE ANN. § 65-5-103(d) (2017).

266. TENN. CODE ANN. § 65-5-103(d)(6)(A) (2017).

Gas Company (Piedmont), two of Tennessee's natural gas local distribution companies, have both filed and obtained approval for ARM petitions using different approaches, and have both undergone annual reviews pursuant to their final orders.²⁶⁷

Piedmont received authority for its Integrity Management Rider (IMR) on May 13, 2014.²⁶⁸ The Piedmont IMR is a tracker system implemented by a designated tariff rider and corresponding line item on customer bills.²⁶⁹ As approved, the IMR permits recovery of only capital costs, including depreciation, taxes, and return, associated with Piedmont's compliance with pipeline integrity and safety since such investments are not offset with any incremental revenues.²⁷⁰ Since approval, Piedmont has updated the IMR annually.²⁷¹ In its most recent IMR review, after a contested hearing, the TPUC approved Piedmont's 2016 IMR annual report and tariff as filed on April 10, 2017, resulting in a \$24.5 million recovery in 2017 and an increase in the IMR tariff rate "from \$0.10144 to \$0.13124 per Therm for residential customers."²⁷²

Atmos has taken a different approach under the ARM statute by using the ARR process in Section 65-5-103(d)(6) that each year examines all of the company's revenues and expenses, resets the utility's revenue requirement, and adjusts rates, up or down, accordingly.²⁷³ On August 28, 2014, Atmos initially sought approval for an annual rate review (ARR) by a petition that relied upon the methodology used in its 2012 rate case decision.²⁷⁴ However, the TPUC granted the Tennessee Consumer Advocate's motion to dismiss the case because the 2012 Atmos rate case order explicitly did not adopt a methodology, which is a prerequisite for an ARR authorization under the ARM statute.²⁷⁵ Without an approved methodology from a rate case, Atmos subsequently filed a new petition that included both

267. Petition of Piedmont Natural Gas Company, Inc. for Approval of an Integrity Management Rider to its Approved Rate Schedule and Service Regulations and Order Granting Petition, *In re: Petition of Piedmont Natural Gas Company, Inc. for Approval of an Integrity Management Rider to its Approved Rate Schedule and Service Regulations*, Docket No. 13-00118 (Tenn. Reg. Auth. Aug. 30, 2013; May 13, 2014) [hereinafter Piedmont Petition; Piedmont Order]; Petition to Adopt Statutory Annual Review of Rates and Tariff with Procedures for Statutory Annual Rate Review, *In re: Petition of Atmos Energy Corporation for Annual Review of Rates*, Docket No. 14-00081 (Tenn. Reg. Auth. Aug. 28, 2014).

268. Piedmont Order, *supra* note 267, at 10.

269. Piedmont Petition, *supra* note 267.

270. *Id.* at 5-6.

271. See, e.g., Order Approving 2016 Integrity Management Rider Annual Report & Tariff, *In re: Petition of Piedmont Natural Gas Company, Inc. for Approval of an Integrity Management Rider To Its Approved Rate Schedules and Service Regulations*, Docket No. 16-00140 (Tenn. Reg. Auth. June 20, 2017).

272. *Id.* at 4, 10.

273. Petition, *In re: Atmos Energy Corporation General Rate Case and Petition to Adopt Annual Review Mechanism and ARM Tariff*, Docket No. 14-00146 (Tenn. Reg. Auth. Nov. 25, 2014) [hereinafter Atmos].

274. Petition to Adopt Statutory Annual Review of Rates and Tariff with Procedures for Statutory Annual Rate Review at 1, *In re: Petition of Atmos Energy Corporation for Annual Review of Rates*, Docket No. 14-00081 (Tenn. Reg. Auth. Aug. 28, 2014).

275. Order Granting Consumer Advocate's Motion to Dismiss at 17, *In re: Petition of Atmos Energy Corporation to Establish an Annual Rate Review Mechanism Pursuant to Tenn. Cod Ann. § 65-5-103(d)(6)*, Docket No. 14-00081 (Tenn. Reg. Auth. Dec. 8, 2014).

a general rate case and also a new ARR request.²⁷⁶ However, there are timing differences between the rate case statute and the ARM statute – rate case decisions generally must be rendered in nine months whereas ARM statute decisions must be rendered in 120 days.²⁷⁷ Because of the different case statutory requirements and to ensure that both the rate case and ARR decisions were rendered simultaneously, Atmos on January 7, 2015 temporarily withdrew its ARR request and the associated implementation tariff.²⁷⁸ Thereafter, on February 18, 2015, Atmos reinstated its ARR request.²⁷⁹ Atmos and the Consumer Advocate ultimately reached a settlement of both the rate case and the ARR request that the TPUC subsequently approved.²⁸⁰ The first annual rate review for Atmos pursuant to the ARR settlement was commenced on February 1, 2016, and concluded on May 9, 2016 with an approval of the ARR filing.²⁸¹ Pursuant to the TPUC's order granting its annual request, on September 1, 2016, Atmos filed its ARR reconciliation petition.²⁸² After intervention and discovery by the Consumer Advocate, the parties entered into a Settlement Agreement that the TPUC approved at its January 17, 2017, Conference.²⁸³ The reconciliation approved by this settlement found a revenue deficiency of \$4,612,293, which was less than the Atmos reconciliation request, and was then allocated to the Atmos customer classes pursuant to its ARM tariff.²⁸⁴

276. Atmos, *supra* note 273.

277. TENN. CODE ANN. § 65-5-103(b)(1) (2017). Technically, the TPUC has nine months to decide a rate case. TENN. CODE ANN. § 65-5-103(a) (2017). But as a practical matter, six months may be a more relevant date. This is because six months after filing, if the TPUC has not yet rendered a final decision, the utility may place its proposed rates into effect subject to refund based upon the final order in the case that must be issued within nine months. As the final order in the *Atmos* rate case relates, following the status conference of the parties and the suggestion of the hearing officer, Atmos temporarily withdrew the ARM tariff and later refiled based upon the assumption that the final decision would be rendered in six months. Order Approving Settlement at 3, *In re: Atmos Energy Corporation General Rate Case and Petition to Adopt Annual Review Mechanism and ARM Tariff*, Docket No. 14-00146 (Tenn. Reg. Auth. Nov. 5, 2015) [hereinafter Order Approving Settlement]; TENN. CODE ANN. §§ 65-5-103(d)(1)(B), (d)(6)(C) (2017).

278. Notice of Withdrawal Without Prejudice for Later Reinstatement of Certain Provisions of Petition and ARM Tariff at 3-4, *In re: Atmos Energy Corporation General Rate Case and Petition to Adopt Annual Review Mechanism and ARM Tariff*, Docket No. 14-00146 (Tenn. Reg. Auth. Jan. 13, 2015).

279. Reinstatement of Certain Portions of ARM Tariff Previously Withdrawn Without Prejudice for Later Reinstatement at 1, *In re: Atmos Energy Corporation General Rate Case and Petition to Adopt Annual Review Mechanism and ARM Tariff*, Docket No. 14-00146 (Tenn. Reg. Auth. Feb. 18, 2015).

280. Order Approving Settlement, *supra* note 277, at 10.

281. Order Approving 2016 Annual Rate Review Filing, *In re: Petition of Atmos Energy Corporation for Approval of its 2016 Annual Rate Review Filing Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, Docket No. 16-00013 (Tenn. Reg. Auth. June 13, 2016).

282. Petition of Atmos Energy for Approval of 2016 Annual Reconciliation Filing, *In re: Atmos Energy Corporation Annual Reconciliation of Annual Review Mechanism*, Docket No. 16-00105 (Tenn. Reg. Auth. Sept. 1, 2016).

283. Order Approving Settlement Agreement at 1, 5, *In re: Petition of Atmos Energy for Approval of 2016 Annual Reconciliation Filing*, Docket No. 16-00105 (Tenn. Reg. Auth. Feb. 2, 2017).

284. *Id.*

XVI. UTAH

A. Renewable Energy Tariff

In June 2016, PacifiCorp d/b/a Rocky Mountain Power (RMP) filed a new proposed tariff option to provide qualifying customers an option to contract with RMP to have renewable energy purchased on their behalf.²⁸⁵ As proposed, the tariff would be applicable to customers with a total aggregated load of at least 5 MW.²⁸⁶ RMP proposed that interested customers would “pay a nonrefundable \$5,000 application fee and monthly administrative fees of \$110 per generator and \$150 per delivery point.”²⁸⁷ The parties filed testimony and then proceeded with settlement discussions.²⁸⁸

The tariff, to which the parties stipulated and the Utah Public Service Commission (Utah PSC) approved, provides for administrative fees of \$110 per generation source and \$150 for the first delivery point but only \$50 per any additional delivery point.²⁸⁹ Rates for service are to be based on the customer’s normal tariff rate, plus administrative fees, and “either (1) an incremental charge equal to the difference between the cost to [RMP] to supply renewable generation to the customer and [RMP]’s avoided costs, or (2) an amount based on a different method set forth in the customer contract and approved by the [Utah PSC].”²⁹⁰

B. Residential Net Metering Evaluation

On November 9, 2016, RMP filed an actual cost of service including net metering customers and a counterfactual cost of service assuming no power generation by net metering customers.²⁹¹ RMP claimed that these studies “demonstrate that the current rate structure unfairly shifts a portion of . . . costs to other customers.”²⁹² Based on the studies, RMP asked the Utah PSC to, inter alia, (1) find that the costs of the net metering program under the current rate structure exceed its benefits; (2) find that the unique usage characteristics of net metering customers justify segregating them into a distinct class; (3) find that the current rate structure for net metering customers unfairly shifts costs from net metering customers to

285. Rocky Mountain Power Electric Service Schedule No. 34, *In the Matter of Rocky Mountain Power’s Proposed Electric Service Schedule No. 34, Renewable Energy Tariff*, Docket No. 16-035-T09 (Utah Pub. Serv. Comm’n June 17, 2016).

286. Direct Testimony of Joelle R. Steward at 4-5, *In the Matter of Rocky Mountain Power’s Proposed Electric Service Schedule No. 34, Renewable Energy Tariff*, Docket No. 16-035-T09 (Utah Pub. Serv. Comm’n June 17, 2016).

287. *Id.* at 5.

288. UTAH PUB. SERV. COMM’N: DOCKET NO. 16-035-T09, <https://psc.utah.gov/2016/07/15/docket-no-16-035-t09> (last visited Oct. 15, 2017).

289. Order Memorializing Bench Ruling Approving Settlement Stipulation, *In the Matter of Rocky Mountain Power’s Proposed Electric Service Schedule No. 34, Renewable Energy Tariff*, Docket No. 16-035-T09 (Utah Pub. Serv. Comm’n Aug. 18, 2016).

290. *Id.* ¶ 13.b.

291. Compliance Filing and Request to Complete all Analyses Required under the Net Metering Statute for the Evaluation of the Net Metering Program at 2, *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp’s Net Metering Program*, Docket No. 14-035-114 (Utah Pub. Serv. Comm’n Nov. 9, 2016).

292. *Id.* at 11.

other customers or RMP; and (4) approve a new net metering tariff.²⁹³ The proposed new net metering tariff includes a customer service charge, an on-peak power charge, an energy charge, and a connection charge.²⁹⁴

In response to dispositive motions filed, the Utah PSC ruled that no moving party demonstrated that RMP's requests failed as a matter of law and denied all motions.²⁹⁵ Parties have filed testimony, public comments have been filed, and rebuttal and surrebuttal testimony were filed on July 18 and August 8, respectively.²⁹⁶ A hearing has been scheduled for August 14 through 18, 2017.²⁹⁷

293. *Id.*

294. Tariff Sheet Nos. 5.1, 5.2, *In the Matter of Rocky Mountain Power's Proposed Electric Service Schedule No. 34, Renewable Energy Tariff*, Docket No. 16-035-T09 (Utah Pub. Serv. Comm'n Nov. 9, 2016).

295. Consolidated Order Denying Dispositive Motions at 13, *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114 (Utah Pub. Serv. Comm'n Feb. 23, 2017).

296. See generally UTAH PUB. SERV. COMM'N: DOCKET NO. 14-035-114, <https://psc.utah.gov/2016/06/20/docket-no-14-035-114-2> (last visited Oct. 15, 2017).

297. Scheduling Order and Notices of Hearing and Public Witness Hearing at 3, *In the Matter of the Investigation of the Costs and Benefits of PacifiCorp's Net Metering Program*, Docket No. 14-035-114 (Utah Pub. Serv. Comm'n Nov. 18, 2016).

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