

## REPORT OF THE STATE COMMISSION PRACTICE COMMITTEE

This report summarizes significant state developments in the utility industry from July 2018 through June 2019.\*

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## I. CALIFORNIA

### A. *The 100 Percent Clean Energy Act of 2018*

On September 10, 2018, California Governor, Jerry Brown, signed into law The 100 Percent Clean Energy Act of 2018, which “declares that the Public Utilities Commission, State Energy Resources Conservation and Development Commission, and State Air Resources Board should plan for 100 percent of total retail sales of electricity in California to come from eligible renewable energy resources and zero-carbon resources by December 31, 2045.”<sup>1</sup> In addition to adopting a statewide policy of planning for 100% of California’s retail sales “to come from eligible renewable energy resources and zero-carbon resources by December 31, 2045,” the 100 Percent Clean Energy Act also amends the state’s prior Renewables Energy Standard (RPS).<sup>2</sup>

California’s prior RPS set a target of 50% renewable electricity by 2030.<sup>3</sup> As amended by The 100 Percent Clean Energy Act, the state’s RPS sets more aggressive targets that must be achieved on a shorter timeline.<sup>4</sup> Specifically, The 100 Percent Clean Energy Plan accelerates the previously applicable 50% renewable electricity target from 2030 to December 31, 2026, and also sets an additional interim target of 60% renewable electricity by December 31, 2030.<sup>5</sup>

Unlike the RPS targets that must be reached using “eligible renewable resources” (*i.e.*, power derived from wind, solar, small hydroelectric, and geothermal resources), California drafted the 100% by 2045 portion of its new legislation to be “technology neutral—if an energy generation resource does not produce greenhouse gas emissions, it would be eligible to meet the 100% renewable and zero-carbon target.”<sup>6</sup>

## II. CONNECTICUT

### A. *Zero Carbon Resources*

On December 5, 2018, the Connecticut Public Utilities Regulatory Authority (PURA) issued an Interim Decision that found Dominion Energy Nuclear Connecticut, Inc.’s (Dominion), Millstone Nuclear Power Station (Millstone) is “at risk of retirement” as early as 2023.<sup>7</sup> To avoid a premature retirement of Millstone, the Interim Decision authorized the facility to compete in Connecticut’s “zero emission” state energy auctions for long-term power purchase agreements that are otherwise reserved for renewable energy sources like wind and so-

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1. S. 100, 2017-18 Reg. Sess. (Cal. 2018).

2. *Id.*

3. *Renewables Portfolio Standard (RPS) Program*, CAL. PUB. UTIL. COMM’N, <https://www.cpuc.ca.gov/rps/> (last updated Oct. 18, 2019, 1:24 AM).

4. *Id.*

5. *Id.*

6. S. JOURNAL, 244th Cong., Reg. Sess. (Cal. 2018).

7. Interim Decision, *Pura Implementation of June Special Session Public Act 17-3*, Pub. Util. Reg. Auth. Docket No. 18-05-04 (Dec. 5, 2018) [hereinafter Interim Decision].

lar.<sup>8</sup> Subsequently, the Connecticut Department of Energy and Environmental Protection (DEEP) selected the bid submitted by Millstone to supply a portion of the state's capacity requirements under the terms of a ten-year power purchase agreement.<sup>9</sup> The long-term power purchase agreement for Millstone should provide sufficient revenue to avoid premature shutdown of the nuclear facility at least through 2023.<sup>10</sup> The Millstone power purchase contract remains subject to review and approval by PURA.<sup>11</sup>

### B. *Effects of the 2017 Tax Cuts and Jobs Act*

On January 23, 2019, PURA issued a Decision determining “the appropriate accounting and rate treatments for” the reductions in “federal corporate income tax” expense of regulated utilities resulting from the Tax Cuts and Jobs Act of 2017 (Tax Act).<sup>12</sup> Specifically, PURA concluded that Connecticut's regulated utilities—electric distribution companies, local gas distribution companies, and regulated water companies—would “address the effects of the Tax Act in their rates effective [ ] January 1, 2018.”<sup>13</sup> PURA tailored the specific method of “addressing the Tax Act to each” regulated utility based on factors particular to each utility.<sup>14</sup> For example, utilities operating under formula rates are generally not required to file adjustments to their cost of service as a result of changes in tax rates, because the formula that produces their rates automatically adjusts to incorporate the applicable tax rate at any given date.<sup>15</sup>

### C. *Offshore Wind Procurement*

On June 7, 2019, the Governor of Connecticut approved Public Act No. 19-71, “An Act Concerning the Procurement of Energy Derived from Offshore Wind.”<sup>16</sup> The act authorized the Commissioner of DEEP to solicit proposals for energy from offshore wind projects having an aggregate nameplate capacity “of up to two thousand megawatts.”<sup>17</sup> On the same day the Act was approved,

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8. *Id.*

9. CONN. DEP'T OF ENERGY & ENVTL. PROT. BUREAU OF ENERGY AND TECH., DEEP ENERGY FILING (Jun. 11, 2019, 2:51 PM), <http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/a928bd493eb81f668525841600679687?OpenDocument>.

10. Interim Decision, *supra* note 7, at 8, 29.

11. Application of the Connecticut Light & Power Company, *PURA Review of Zero Carbon Generation Unit Agreements Pursuant to Section 1 of Public Act 17-3*, Pub. Util. Reg. Auth. Docket No. 18-05-04 (Mar. 29, 2019).

12. Decision, *PURA Review of Rate Adjustments Related to the Federal Tax Cuts and Jobs Act, et al.*, Pub. Util. Reg. Auth. Docket No. 18-01-15 (Jan. 23, 2019).

13. *Id.* at 14.

14. *Id.*

15. *Id.*

16. H.R. 7156, Pub. Act 19-71 (Conn. 2019).

17. *Id.* at 1.

DEEP opened a proceeding to solicit such proposals<sup>18</sup> and indicated that it would announce a decision on the proposals in November 2019.<sup>19</sup>

### III. DISTRICT OF COLUMBIA

#### A. *DC PLUG Initiative*

On March 7, 2019, the D.C. District Court of Appeals upheld the D.C. Public Service Commission's (DC PSC) orders that approved a Joint Application submitted by District Department of Transportation (DDOT) and the Potomac Electric Power Company (PEPCO) requesting the DC PSC's authorization to move forward with a program to move up to 30 of PEPCO's electric power lines underground.<sup>20</sup> As a result of the court's decision, the program—referred to as District of Columbia Power Line Undergrounding (DC PLUG)—will proceed over the next six to eight years as a joint effort between the DC PSC, the Office of the Mayor, the City Council, PEPCO, DDOT and other government agencies to decrease the frequency of power outages by moving overhead power lines underground.<sup>21</sup>

The DC PLUG initiative, estimated to cost \$500 million, is a response to increasingly severe storms that have historically caused “significant damage to the electrical distribution system and [left] many customers without power for long periods of time.”<sup>22</sup> Moving overhead power lines underground is expected to improve the electrical distribution system's resiliency and improve reliability.<sup>23</sup> The DC PLUG initiative officially broke ground on June 14, 2019.<sup>24</sup>

### IV. FLORIDA

#### A. *Tax Savings and Hurricane Recovery*

Recent Florida Public Service Commission (Florida PSC) proceedings with the biggest financial impacts on customers have been (1) the various tax docket cases addressing the impacts of the Tax Cuts and Jobs Act of 2017 (TCJA) on the individual electric utilities subject to rate regulation by the Florida PSC; and (2) the extensive electric infrastructure damage inflicted by the hurricanes of 2016, 2017, and 2018.<sup>25</sup> The Florida PSC has allowed the rate regulated electric

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18. CONN. DEP'T OF ENERGY & ENVTL. PROT. BUREAU OF ENERGY AND TECH., NOTICE OF SCOPE OF PROCEEDING AND REQUEST FOR WRITTEN COMMENT 1 (June 7, 2019), [http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/44bfbb26ef1214468525841e004d0c19/\\$FILE/2019.06.07\\_draft\\_osw\\_notice\\_of\\_scope\\_of\\_proceeding.pdf](http://www.dpuc.state.ct.us/DEEPEnergy.nsf/c6c6d525f7cdd1168525797d0047c5bf/44bfbb26ef1214468525841e004d0c19/$FILE/2019.06.07_draft_osw_notice_of_scope_of_proceeding.pdf).

19. *Id.*

20. *Apartment & Off. Bldg. Ass'n v. Pub. Serv. Comm'n*, 203 A.3d 772 (D.C. 2019).

21. *Id.*

22. *Id.* at 775.

23. DC PLUG, FAQs (2019), <https://dcpluginfo.com/resources/>.

24. *Id.*

25. Joint Petition for Rate Reductions or Alternative Reverse Make-Whole Rate Case Against Florida Power & Light Company, Fl. Pub. Serv. Comm'n Docket No. 20180224-EI (Dec. 12, 2018).

utilities to retain the difference between the former 35 percent tax rate and the new 21 percent tax rate, with those revenues being applied in various ways to offset storm damage costs or other customer charges in order to minimize customer rate impacts.<sup>26</sup>

Florida Power and Light Company (FPL), Florida's largest electric utility, is subject to a settlement agreement that resolved the company's 2016 rate case.<sup>27</sup> As a part of that settlement, a "Reserve Amount" was established that enabled the company to debit and credit the reserve in order to allow FPL to maintain earnings within its agreed upon 9.6% to 11.6% return on equity.<sup>28</sup> After an evidentiary hearing, the Florida PSC allowed FPL to pay its Hurricane Irma costs by debiting the amount and "crediting the Reserve Amount with [the] tax savings" of \$649.6 million "realized from the passage of the TCJA."<sup>29</sup>

For the other two electric utilities that experienced hurricane damage in 2016 and 2017, the TCJA tax savings were used in part to help pay for storm recovery costs.<sup>30</sup> For Duke Energy Florida, \$150.9 million were used to recover storm recovery costs.<sup>31</sup> Tampa Electric Company (TECO) entered into a Stipulation that applied its "\$102.7 million revenue requirement impact" from the TCJA to offset storm recovery costs identified in Docket No. 20170271-EI.<sup>32</sup>

The remaining two Florida PSC rate regulated electric utilities were not materially impacted by 2016 or 2017 hurricanes.<sup>33</sup> In these cases, the resultant tax savings were returned to ratepayers in more traditional ways.<sup>34</sup> Florida Public Utilities Company's \$638,158 annual savings were "flowed through to recover incremental fuel costs" in 2018, and to provide a base rate reduction in 2019.<sup>35</sup> Gulf Power Company (Gulf) entered into a settlement agreement with the Florida PSC and various stakeholders that requires Gulf to utilize tax savings to reduce base rates, the Fuel Clause, and the Environmental Cost Recovery Clause.<sup>36</sup> Gulf, however, later experienced significant system damage recovery costs from

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26. *Id.*

27. Order Approving Settlement Agreement, Fl. Pub. Serv. Comm'n Docket No. 20180224-EI (Dec. 15, 2016).

28. *Id.* at 24-26.

29. Final Order Approving Florida Power & Light Company's Treatment of Tax Impacts of Tax Cuts and Jobs Act of 2017, Fl. Pub. Serv. Comm'n Docket No. 20180046-EI (June 10, 2019).

30. *Id.*

31. Final Order Approving Stipulated Positions of Duke Energy Florida, LLC and the Office of the Public Counsel, Fl. Pub. Serv. Comm'n Docket No. 20180047-EI (Feb. 1, 2019); Order Approving Settlement Agreement, Fl. Pub. Serv. Comm'n Docket No. 20170272-EI (June 13, 2019).

32. Final Order Approving Stipulations, Fl. Pub. Serv. Comm'n Docket No. 20180045-EI (Sept. 10, 2018); see also Order Approving Interim Storm Recovery Charge, Fl. Pub. Serv. Comm'n Docket No. 20170271-EI (Mar. 7, 2018); and see Order Approving Settlement Agreement, Fl. Pub. Serv. Comm'n Docket No. 20170271-EI (June 14, 2019).

33. *Id.*

34. *Id.*

35. Order Approving Settlement Agreement, Fl. Pub. Serv. Comm'n Docket No. 20180048-EI (Jan. 2, 2019).

36. Final Order Approving Joint Motion to Approve Stipulation and Settlement Agreement, Fl. Pub. Serv. Comm'n Docket No. 20180039-EI (Apr. 12, 2018).

Hurricane Michael that required a limited proceeding to address these costs.<sup>37</sup> In this proceeding, Gulf was authorized to impose an interim storm restoration recovery charge totaling \$342 million.<sup>38</sup>

### *B. Further Storm Hardening Efforts*

Historically in Florida, electric utility storm recovery costs have been addressed in general rate cases, given the occasional and random frequency of hurricanes making landfall in the state. During 2004 and 2005, after several years without any hurricanes, eight hurricanes made landfall in Florida leading to unprecedented individual and cumulative effects on utilities and their ability to provide service to retail customers.<sup>39</sup> Five of the storms each caused more than one million customers to be left without power, some for up to eighteen days.<sup>40</sup> In addition to the overall damage to property, the eight hurricanes of 2004 and 2005 cumulatively caused in excess of \$2 billion of utility infrastructure damage for Florida's five investor owned electric utilities (IOUs), and the eight storms required the assistance of an additional 114,000 utility restoration personnel.<sup>41</sup> The lengthy power outages and the high costs of distribution and transmission recovery required significant regulatory changes for electric utilities.<sup>42</sup>

The Florida PSC took the lead in creating new policies that would allow for pre-storm investments designed to harden and protect the electric grid and more direct after-the-fact repair costs recovery.<sup>43</sup> In a series of orders and rule-making proceedings, for example, the Florida PSC mandated grid protection measures such as a requirement that utilities inspect and replace their wooden distribution poles, implement new vegetation management programs, inspect transmission structures, harden or reinforce critical assets, improve efforts to coordinate with local governments and emergency service providers.<sup>44</sup> Utilities must demonstrate their compliance with these obligations through annual reports filed with the Florida PSC.<sup>45</sup> In addition, the Florida Legislature created Section 366.8260,

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37. Order Approving Interim Storm Restoration Recovery Surcharge, Fl. Pub. Serv. Comm'n Docket No. 20190038-EI (June 3, 2019).

38. *Id.*

39. Notice of Proposed Agency Action, Fl. Pub. Serv. Comm'n Docket No. 060078-EI (Feb. 27, 2006).

40. FL. PUB. SERV. COMM'N, REPORT TO THE LEGISLATURE ON ENHANCING THE RELIABILITY OF FLORIDA'S DISTRIBUTION AND TRANSMISSION GRIDS DURING EXTREME WEATHER 9, 12 (July 2007), <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/EnergyInfrastructure/UtilityFilings/docs/AddendumSHLegislature.pdf>. The biggest customer outages in Florida in 2004 were from Hurricane Frances (4.5 million), Hurricane Jeanne (3.5 million), and Hurricane Charley (1.8 million); in 2005, Hurricane Wilma (3.5 million), and Hurricane Katrina (1.2 million). *Id.*

41. Notice of Proposed Agency Action, *supra* note 39.

42. FL. PUB. SERV. COMM'N, *supra* note 40.

43. *Id.* at 19.

44. Notice of Proposed Agency Action, *supra* note 39; Notice of Proposed Agency Action, Fl. Pub. Serv. Comm'n Docket No. 060198-EI (Apr. 25, 2006); Notice of Proposed Agency Action, Fl. Pub. Serv. Comm'n Docket No. 060198-EI (Sept. 19, 2006).

45. Notice of Adoption of Rules, Fl. Pub. Serv. Comm'n Docket No. 060243-EI (July 31, 2006).

Florida Statutes,<sup>46</sup> that allows the IOUs to petition the Florida PSC for a financing order to obtain funding for storm recovery costs.

After nearly a decade without any major hurricanes making landfall in Florida, the Florida PSC's new regime was put to the test during the 2016, 2017, and 2018 hurricane seasons.<sup>47</sup> In a July 2018 report reviewing the impacts of the 2016 and 2017 hurricanes, the Florida PSC concluded that "Florida's aggressive storm hardening programs are working."<sup>48</sup> Despite storm hardening efforts making the overall system more resilient and speeding recovery, millions of customers still lost power in some of these storms.<sup>49</sup> Electric customer expectations were also changing. As the PSC's report noted, "[d]espite substantial, documented improvement, some customers were dissatisfied with the extent of Hurricane Irma outages and restoration times . . . [r]ising customer expectations are that resilience and restoration will have to continually improve."<sup>50</sup>

Improved electric system resiliency became a major priority for the 2019 Florida Legislature.<sup>51</sup> Even with stronger, better poles holding up power lines, trees still inflicted significant damage to aerial power lines, especially when utilities were limited to pruning only in utility easements and rights of way.<sup>52</sup> While state policies encouraged storm hardened facilities for critical locations like hospitals and first responders, and new developments often had buried power lines, retrofitting aerial lines was usually cost prohibitive.<sup>53</sup> To retrofit lines, customers requesting underground service pay the difference between the cost of overhead and the cost of underground facilities.<sup>54</sup> As these more recent hurricanes demonstrated, further resiliency and recovery actions were necessary.

To address these concerns, the Legislature created a new storm hardening process and cost recovery for Florida's IOUs to ideally make improved vegetation management and burying of electric lines more feasible by spreading out the costs of such projects to all of a utility's ratepayers through a new separate

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46. FLA. STAT. § 366.8260 (2005).

47. FL. PUB. SERV. COMM'N, REVIEW OF FLORIDA'S ELECTRIC UTILITY HURRICANE PREPAREDNESS AND RESTORATION ACTIONS 2018 (July 2018), <http://www.floridapsc.com/Files/PDF/Publications/Reports/Electricgas/UtilityHurricanePreparednessRestorationActions2018.pdf>.

48. *Id.*

49. *Id.*

50. *Id.* at 2. Hurricane Irma's impacts were far reaching – the storm essentially ran the entire length of the state from the Florida Keys to Jacksonville, impacting dozens of municipal, cooperative, and investor owned electric utilities. Most affected was the service area of Florida Power and Light Company ("FPL"), Florida's largest electric utility, which saw approximately 4.4 million of its 5 million customers losing power. *See* FL. POWER & LIGHT CO., FPL'S MASSIVE HURRICANE IRMA RESTORATION EFFORT IS UNDERWAY WITH A RECORD WORKFORCE OF NEARLY 19,500 RESPONDING TO THE LARGEST NUMBER OF OUTAGES IN COMPANY HISTORY (Sept. 11, 2017), <http://newsroom.fpl.com/2017-09-11-FPLs-massive-Hurricane-Irma-restoration-effort-is-underway-with-a-record-workforce-of-nearly-19-500-responding-to-the-largest-number-of-outages-in-company-history>.

51. Florida Power & Light Company's 2019 Status/Update Report on Storm Hardening/Preparedness and Distribution Reliability, Fl. Power & Light Co. Docket No. 20190000 (Mar. 1, 2019).

52. *Id.*

53. *Id.*

54. FLA. ADMIN. CODE. r. 25-6.115 (2019).



clause or surcharge.<sup>55</sup> Senate Bill 796, which is codified as Section 366.96, Florida Statutes,<sup>56</sup> requires Florida's IOUs to establish new storm protection plans. These plans are to identify and prioritize specific storm protection projects that are to be approved by the Florida PSC with the costs of such projects to be spread among all ratepayers.<sup>57</sup>

The legislation requires the PSC to promulgate new rules by October 31, 2019, specifying the elements to be included in an IOU's filing for review of a transmission and distribution storm protection plan.<sup>58</sup> Each IOU must file a ten-year "transmission and distribution storm protection plan."<sup>59</sup> The statute defines this storm protection "plan" as "a plan for the overhead hardening and increased resilience of electric transmission and distribution facilities, undergrounding of electric distribution facilities, and vegetation management."<sup>60</sup> The PSC must approve or modify the plan within six months of submission,<sup>61</sup> and the utilities must update the plan at least once every three years.<sup>62</sup>

Once the plan is approved, the PSC shall conduct an annual proceeding "to determine the utility's prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause."<sup>63</sup> In reviewing whether the cost recovery should be allowed, the Commission is to consider whether "the plan is expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the plan prioritizes areas of lower reliability performance."<sup>64</sup> Additionally, "[i]f the Commission determines that [the] costs were prudently incurred, those costs" are then included in the separate storm protection plan cost recovery charge and such charges are not to be recovered in general rates or subject to any further review.<sup>65</sup>

Even before the Governor signed the bill into law, the Florida PSC commenced a workshop to solicit comments from any interested party on draft rules to implement the new law.<sup>66</sup> The draft rules largely track the statutory language, but the June 25, 2019 workshop drew participation by IOUs, municipal and cooperative electric utilities, customer groups, and the Office of the Public Counsel.<sup>67</sup> Parties submitted post-workshop comments that largely sought clarification of how the new statute would be implemented regarding the timing of

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55. H.R. 797 (Fl. 2019).

56. FLA. STAT. § 366.96 (2019).

57. H.R. 797, *supra* note 55.

58. FLA. STAT. § 366.96(11).

59. *Id.* § 3.66.96(3).

60. *Id.* § 3.66.96(2)(b).

61. *Id.* § 3.66.96(5).

62. *Id.* § 3.66.96(6).

63. FLA. STAT. § 366.96(7).

64. *Id.* § 3.66.96(4)(a).

65. *Id.* § 3.66.96(7).

66. Proposed Adoption of Rules, Fl. Pub. Serv. Comm'n Docket No. 20190131-EU (Sept. 20, 2019).

67. *Id.*

filings, the level of detail required, and assurances that costs recovered through the storm recovery clause would be prudent and not double recovered.<sup>68</sup> The Florida PSC conducted a subsequent workshop on August 20, 2019 and is on track to adopt final rules by the October 31, 2019, deadline in the legislation.<sup>69</sup>

Because the 2019 legislation only authorizes Florida's IOU electric utilities to develop these new plans, Florida's municipal and cooperative electric utilities must find their own solutions to these storm protection issues. In their comments to the Florida PSC on the draft rules, however, the Florida Electric Cooperatives Association, Inc., and the Florida Municipal Electric Association, Inc., requested that the Florida PSC rules that govern the limited jurisdictional reporting by cooperatives and municipalities of their storm hardening reporting should be modified to be consistent with the new IOU rules for a three-year reporting cycle as mandated by Section 366.96, Florida Statutes.<sup>70</sup>

## V. KENTUCKY

### A. Streamlined Rate Adjustment Process

In December 2018, the Kentucky Public Service Commission (PSC) opened a proceeding to develop a pilot program to simplify the ratemaking process used by rural electric distribution cooperatives.<sup>71</sup> The majority of the expenses used to determine the rates of distribution cooperatives are “the pass-through of generation” and transmission (G&T) costs, which have already been approved by the PSC in separate proceedings setting the rates of G&T cooperatives.<sup>72</sup> Therefore, “the issues presented in rate cases filed by Distribution Cooperatives are not as complicated, nor do they have the same ratepayer impacts as those presented in rate cases filed by vertically integrated, investor-owned utilities.”<sup>73</sup> The criteria to qualify for the revised ratemaking process includes limiting the requested increase to no more than four percent.<sup>74</sup> Pilot program cases will be processed within seventy-five days, as opposed to the current statutory process, which can take up to ten months.<sup>75</sup>

The PSC will internally review the effectiveness of the procedures outlined in the pilot program periodically.<sup>76</sup> If the pilot program is successful, the PSC will move toward making the regulatory changes needed to implement the new process on a permanent basis.<sup>77</sup>

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68. *Id.*

69. FL. PUB. SERV. COMM'N, FLORIDA PSC PROPOSES STORM PROTECTION RULES TO BENEFIT CUSTOMERS (Oct. 3, 2019), [www.psc.state.fl.us/Home/NewsLink?id=11784](http://www.psc.state.fl.us/Home/NewsLink?id=11784).

70. *Id.*

71. Order, Ky. Pub. Serv. Comm'n Case No. 2018-00407 (Dec. 11, 2018).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Order, *supra* note 71.

77. *Id.*

### B. *Electric Vehicle Charging Stations*

The PSC initiated a proceeding to determine whether electric vehicle (EV) charging stations are subject to the PSC's jurisdiction in order to remove ambiguity over the legal status of EV charging stations and encourage the deployment of public EV charging stations.<sup>78</sup> The PSC sought comments from interested parties, including the Kentucky Office of the Attorney General, Kentucky Office of Energy Policy, jurisdictional electric utilities, ChargePoint, and Greenlots.<sup>79</sup> The PSC found that EV charging stations that purchase power from a regulated electric utility or generate their own power solely for the purpose of charging EVs are not subject to PSC jurisdiction.<sup>80</sup>

The ruling hinged on whether EV charging stations are providing electric service to the public, which would make them fall under PSC jurisdiction.<sup>81</sup> Pursuant to PSC precedent and principles of utility law, utility service that is limited to a specific class of persons is not deemed service to the public.<sup>82</sup> The PSC determined that EV charging stations are not utilities subject to the PSC's jurisdiction because the charging stations do not provide service to the public.<sup>83</sup>

Rather, EV charging stations provide a limited service—battery charging—to a specific class, which are those driving EVs.<sup>84</sup>

### C. *Net Metering*

On March 26, 2019, the Governor of Kentucky signed into law Senate Bill 100 (Net Metering Act), which significantly changes the way eligible customer-generators will be compensated for net-metered electricity generation.<sup>85</sup> Under the new law, net-metered customers will receive dollar credits at a compensation rate set by the PSC in rate proceedings for each electric utility, with the compensation amount for each billing period subtracted from the total bill for that period.<sup>86</sup> The Net Metering Act states that each electric utility is “entitled to implement rates to recover from its [net-metered customers] all costs necessary to serve” those customers, independent of the rate structure for all other customers.<sup>87</sup>

The original net metering statute provided credits at the full retail rate set forth in a utility's tariff, using a bi-directional meter that reflected whether a customer was producing more or less electricity than was being used.<sup>88</sup> The cus-

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78. Order, Ky. Pub. Serv. Comm'n Case No. 2018-00372 (June 14, 2019).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *See* Order, *supra* note 78.

84. *Id.*

85. S. 100, Gen. Assemb., Reg. Sess. (Ky. 2019).

86. *Id.* at 2.

87. *Id.* at 3.

88. KY. REV. STAT. ANN. § 278.466 (West 2013).

tomers bill then reflected the net usage.<sup>89</sup> Under the Net Metering Act, homes and businesses that began receiving net metered service under the rate structure of the previous statute will continue to do so for twenty-five years from the date that the eligible customer-generator began taking net metering service.<sup>90</sup> The twenty-five-year period will not be affected if the property is sold or conveyed.<sup>91</sup>

The Net Metering Act takes effect on January 1, 2020. On July 30, 2019, the PSC opened a docket to receive comments on the implementation of the Net Metering Act to gather information that would be useful in future rate cases that will determine net metering rates for electric utilities.<sup>92</sup>

## VI. LOUISIANA

### A. *Rulemaking on Electric Utility Tariff Filings, Including Site-Specific Rate Filings*

In 2018, the Louisiana Public Service Commission (LPSC) initiated Rulemaking Docket No. R-34738 to establish rules regarding utility tariff filings, site-specific rate filings, and the related reviews thereof.<sup>93</sup> The LPSC opened the docket for the stated purpose of establishing formal procedures “to ensure electric[al] utilities [are] apply[ing] non-discriminatory practices” across all classes of customers.<sup>94</sup> In furtherance thereof, the Proposed Rules issued on July 13, 2018 established requirements for the use of “formal definitions of common [e]lectric [u]tility terms,” and “require[d] electric utilities to develop and provide” to the LPSC “a collection of the [subject] utility’s rules defining the relationship between” each respective utility and its customers.<sup>95</sup> The Proposed Rules detailed required record-keeping procedures, required content and form of tariffs, and the process for filing tariffs, rate schedules, and rate riders.<sup>96</sup> Comments to the Proposed Rules were due on August 13, 2018, and at a Technical Conference held on August 20, 2018, utilities and intervening parties discussed the issues raised in the docket.<sup>97</sup>

The LPSC issued its General Order (Order) in the docket on July 1, 2019, which adopted and implemented the LPSC staff’s recommended rules.<sup>98</sup> The Order began by memorializing the LPSC’s “practice of abiding by the Filed Rate Doctrine, which prohibits [e]lectric [u]tilities from offering any rate for service unless such rate has been filed with the [LPSC] in accordance with [its] rules.”<sup>99</sup>

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89. *Id.*

90. S. 100, *supra* note 85, at 3.

91. *Id.*

92. Order, Ky. Pub. Serv. Comm’n Case No. 2019-00256 (July 30, 2019).

93. General Order, La. Pub. Serv. Comm’n Docket No. R-34738 (July 1, 2017).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. General Order, *supra* note 93.

99. *Id.*

The LPSC also produced “format and content requirements” for all electric utility’s tariffs to “allow for ease of review and comparison.”<sup>100</sup> One of the more substantive components of the final rule was the establishment of processes for filings made under the tariffs, including whether or not filings should require customer notification, and if the filing would need LPSC approval based on the type of tariff filing.<sup>101</sup> The Order also established “the format and content requirements” for site-specific contract applications, and “provide[d] the minimum requirements to be considered and the process [for how] such review and approval will be handled by the Commission.”<sup>102</sup> Importantly, the Commission determined that any filing requesting a site-specific contract must provide a valid public interest basis; a comparative rate analysis between the proposed site-specific rates and the alternative available rate scheduled already provided by the utility; a ratepayer impact measure test illustrating “that the proposed incremental revenues from the [ ] site-specific contract rate will be greater than the projected incremental cost to the electric utility for serving that customer”; supporting data showing that the public interest will be served by the site-specific contract; and an affidavit in support from the potential customer.<sup>103</sup>

#### *B. Tax Reductions to Benefit Ratepayers*

Pursuant to the Tax Cuts and Jobs Act effective January 2, 2018, the maximum federal corporate income tax rate was reduced from 35% to 21%.<sup>104</sup> This impacted LPSC regulated utilities in several ways. First, all utility rates regulated by the LPSC were calculated using the higher tax rate, and, consequently, the utilities were collecting taxes on their rates at the 35% level.<sup>105</sup> However, pursuant to the Tax Cuts and Jobs Act, the utilities now owe taxes at the 21% rate.<sup>106</sup> Second, utilities “collected taxes in the past at the higher tax rate [and] deferred” such taxes, portions of which will not be paid until after the new lower rate was put into effect.<sup>107</sup> These deferred taxes will now be paid at the lower 21% rate instead of at the rates at which they were collected, creating excess deferred taxes. Absent LPSC action, “tax-paying utilities [will be] collecting and holding these excess [revenues] collected from ratepayers that are no longer needed to satisfy the new tax [rate].”<sup>108</sup>

LPSC Special Order No. 13-2018 required the utilities to record the savings caused by the tax reduction “as a regulatory liability (deferred liability)” until the Commission adjusted their rates to incorporate the new lower rate.<sup>109</sup> Subse-

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100. *Id.*

101. *Id.*

102. *Id.*

103. General Order, *supra* note 93.

104. General Order, La. Pub. Serv. Comm’n Docket No. R-34754 (Nov. 30, 2018).

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. General Order, *supra* note 104.

quently, LPSC General Order in Docket No. R-34754 (issued May 30, 2018) addressed Contributions in Aid of Construction and System Development Charges, which were previously exempt but now taxable under the Tax Cuts and Jobs Act.<sup>110</sup> This Order required such amounts already collected to “be refunded and recorded as a regulatory asset.”<sup>111</sup>

Most notably, staff’s Initial Report and Recommended General Order (July 5, 2018), required all non-exempted, tax-paying utilities regulated by the LPSC on a cost-of-service basis to: (i) prospectively adjust its rates to reflect the 21% corporate tax rate, and (ii) refund 100% of the federal corporate taxes collected between the date the act was introduced and the date the utility adjusts its rate to reflect the lower rate.<sup>112</sup>

The LPSC initially issued its General Order on November 30, 2018, and subsequently re-issued the order on February 7, 2019, to correct a minor inconsistency in the language of two sections.<sup>113</sup> The General Order requires “every tax-paying utility regulated on a cost-of-service basis by the [LPSC]” to adjust “its rates prospectively to reflect the new 21% federal corporate income tax rate or the applicable new tax rate.”<sup>114</sup> The General Order also requires that utilities “[r]efund to ratepayers 100% of the federal corporate income taxes collected that are in excess of the new lower applicable tax rate beginning from the date that the lower tax rate was applicable until the new lower income tax rate is reflected in retail rates.”<sup>115</sup> Utilities must also refund interest to ratepayers on the excess income tax collected at the utility’s weighted average cost of capital (WACC) “until the regulatory liability is fully amortized.”<sup>116</sup>

### C. *Non-Franchised Load Service Rulemaking*

In 2018, the LPSC initiated Rulemaking Docket No. R-34860 to determine whether or not existing LPSC and federal rules and regulations allowed “electric service provider[s] to serve load outside of [their] historical footprint[s]”, and, if not, to provide for such rules.<sup>117</sup> In furtherance thereof, the LPSC issued an initial request for comments proposing a series of questions centered on the concept of determining which local, federal, and LPSC rules are applicable to determining the extent of an individual utility’s footprint.<sup>118</sup> The LPSC then submitted a second Request for Comments asking a series of questions to determine what a utility considers its “historical footprint,” whether or not the utility has in the past or intends to provide service more than 300 feet from its existing lines, and

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110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. General Order, *supra* note 104.

115. *Id.*

116. *Id.*

117. General Order, La. Pub. Serv. Comm’n Docket No. R-34860 (July 29, 2019).

118. *Id.*

whether the utility has in the past or intends to provide service within 300 feet of another utility's lines.<sup>119</sup>

On July 29, 2019, the LPSC issued its General Order (the Order) addressing these issues.<sup>120</sup> The Order made clear that it would only impact situations where “no utility [had an] exclusive right to serve the customer pursuant to the prohibition provisions provided by [what is commonly known as] the 300 Foot Rule.”<sup>121</sup> “In [such an] instance, the only electric utility provider(s) eligible to serve such [a] customer” will be those utilities that “have a point of connection<sup>122</sup> located within 10 miles of the proposed point of connection for the prospective customer.”<sup>123</sup> If there is no electric utility “within 10 miles of the prospective customer's [proposed] point of connection, then the electric utility with the closest point of connection” will be granted “the exclusive right[s] to serve the” prospective customer.<sup>124</sup> Parties are allowed, however, to “petition the [LPSC] for relief from [these] limitation[s] upon a showing of good cause and that such relief is in the public interest.”<sup>125</sup>

#### *D. Pre-Approval of Certain Utility Contracts*

In 2016, the LPSC initiated Rulemaking Docket No. R-34246 to determine the scope of review of utility contracts involving the construction or acquisition of significant generation and transmission assets.<sup>126</sup> LPSC “Staff was further directed to review the current procedures [for such contracts], determine which contracts [require] review[], and consider adopting new procedures,” allowing the LPSC “to hire outside consultants . . . to review [such] contracts prior to execution.”<sup>127</sup> Staff released its Proposed Recommendation on July 16, 2018, which recommend maintaining the current practice of reviewing such contracts “on an after-the-fact basis.”<sup>128</sup>

The LPSC issued its General Order (Order) addressing these issues on June 7, 2019.<sup>129</sup> The Order requires that a utility “notify [the LPSC] in writing . . . [of any] major capital outlay . . . being contemplated prior to” entering into any contracts or expending any funds, “other than for feasibility studies.”<sup>130</sup> The Order defines major capital outlay projects as any project reasonably anticipated to in-

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119. *Id.*

120. *Id.*

121. *Id.*

122. A “point of connection is defined as the meter location or point where electric utility facilities meet the facilities owned by a customer . . . Facilities are defined as all poles, wiring, devices, metering equipment, or apparatus of any kind utilized in the provision of electric service.” General Order, *supra* note 117.

123. *Id.*

124. *Id.*

125. *Id.*

126. General Order, La. Pub. Serv. Comm'n Docket No. R-34246 (June 7, 2019).

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

crease the utility's rate base by a factor of more than 3%.<sup>131</sup> This change represented a decrease from the previous threshold of 10%.<sup>132</sup> However, "[p]rior notice is not required when an electric utility must enter into a contract for storm recovery or emergency repairs," so long as notice is "provided to the Commission as soon as possible after the electric utility has entered into such a contract."<sup>133</sup>

*E. LPSC Authority over Future Utility Deactivation and Retirement Decisions*

"Historically, the [LPSC] has not . . . require[d] pre-approval" for decisions by electric utilities "to retire or deactivate generating units."<sup>134</sup> In 2018, however, the LPSC initiated Rulemaking Docket No. R-34407 to determine whether it should exercise such authority and to what extent such authority over future utility decisions exist.<sup>135</sup> Upon researching the matter, LPSC Staff determined that recent studies and events have proven "that utility decisions to retire or deactivate generating units [likely] have important and significant cost and reliability consequences" to ratepayers and utility infrastructure.<sup>136</sup> Pursuant to these findings, LPSC Staff recommended implementing a rule requiring public utilities to file a report with the LPSC explaining any decision to retire or deactivate a generating unit, ninety days prior to such retirement or deactivation.<sup>137</sup>

The LPSC's Order on the Staff recommendation was issued on October 19, 2018.<sup>138</sup> The LPSC ordered that after an electric utility makes a decision "to retire or deactivate a generating unit owned in whole or in part by" the utility, and "at least 120 days before [the] decision is implemented, the utility" must file a report with the LPSC "documenting the support and rationale for [the] decision."<sup>139</sup> All such reports filed with the LPSC must contain the following information:

A description of the unit . . . and a history of its operating characteristics. A clear statement as to whether the unit [will] be deactivated or . . . retired. The planned retirement or deactivation date. Detailed information regarding the current condition of the unit. An economic analysis supporting the decision. An analysis examining the decision to deactivate versus retire the unit or vice-versa. The net book value included in rate base for the retired or deactivated unit and any accounting changes that will occur upon deactivation or retirement.<sup>140</sup>

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131. General Order, *supra* note 126.

132. *Id.*

133. *Id.*

134. General Order, La. Pub. Serv. Comm'n Docket No. R-34407 (Oct. 19, 2018).

135. *Id.*

136. *Id.*

137. Notice of Staff Revised Report and Recommendation, La. Pub. Serv. Comm'n Docket No. R-34407 (July 12, 2018).

138. General Order, *supra* note 134.

139. *Id.*

140. *Id.*



Once the report is filed with the LPSC, a docket will be created to consider the utility's request, and "[n]o interventions will be permitted."<sup>141</sup>

## VII. MAINE

### A. *Transmission Infrastructure*

On May 3, 2019, the Maine Public Utilities (ME PUC) issued an Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation in which it found that the construction and operation of transmission facilities, including a new, 145 mile, 320 kV transmission line, was in the public interest.<sup>142</sup> The transmission line would "allow for up to 1,200 MW of hydropower to be delivered to New England from Québec, Canada."<sup>143</sup> Nextera Energy Resources filed an appeal of the ME PUC's decision, arguing that the ME PUC failed to adequately consider alternatives to the 145 mile power corridor, and that the ME PUC failed to support the finding of expected benefits to Maine with substantial evidence.<sup>144</sup>

### B. *Renewable Portfolio Requirements*

On June 26, 2019, the Maine Governor signed legislative document 1494, An Act To Reform Maine's Renewable Portfolio Standard (ME Act).<sup>145</sup> The ME Act, effective September 19, 2019, makes several changes to Maine's renewable portfolio requirements.<sup>146</sup> In particular, it makes changes to resource eligibility, removes the provision that the 10% requirement for new renewable capacity resources (Class I) end in 2022, creates a new Class IA renewable resource portfolio requirement, and a new thermal renewable energy resource requirement.<sup>147</sup> A Class IA resource is a resource "other than a Class I resource that for at least two years was not operated or was not recognized by the [NE-ISO] as a capacity resource and, after September 1, 2005, resumed operation or was recognized by the [NE-ISO] operator as a capacity resource."<sup>148</sup> The ME Act also applies a 300% multiplier for "the output of a generator fueled by municipal solid waste in conjunction with recycling" in Class II.<sup>149</sup>

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141. *Id.*

142. Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation, Me. Pub. Util. Comm'n Docket No. 2017-00232 (May 3, 2019).

143. *Id.* at 6.

144. Notice of Appeal and Statement of the Issues on Appeal, Me. Pub. Util. Comm'n Docket No. 2017-00232 (May 7, 2019).

145. 2019 Me. Laws 477.

146. *Id.* § 3.

147. *Id.* § 1(2)(A)(1)(a).

148. *Id.* § 1(A-3).

149. *Id.* § 1(D)(3)(A).

## VIII. MASSACHUSETTS

A. *Clean Peak Standard*

On August 9, 2018, the Governor of Massachusetts approved An Act to Advance Clean Energy (MA Act).<sup>150</sup> Among other things, the MA Act created a Clean Peak Standard, which requires each retail electric provider “providing service under contracts executed or extended after December 31, 2018 [to] provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from clean peak resources.<sup>151</sup> Clean peak resources are renewable, storage, or “demand response resource[s] that generate[], dispatch[], or discharge[] electricity” during seasonal peak periods, or reduce load.<sup>152</sup> The Massachusetts Department of Energy Resources has begun to develop regulations to implement the Clean Peak Standard.<sup>153</sup>

B. *Offshore Wind Procurement*

On April 12, 2019, the Massachusetts Department of Public Utilities (MA DPU) issued a ruling approving power purchase contracts for 800 megawatts of offshore wind energy generation and associated renewable energy certificates between Massachusetts electric distribution companies and Vineyard Wind.<sup>154</sup> Under the contracts, the Massachusetts electric distribution companies will “purchase 100 percent of the energy and [renewable energy certificates] generated” from two 400 megawatt Vineyard Wind projects for a term of twenty years.<sup>155</sup> In addition to these projects, on March 27, 2019, the Massachusetts distribution companies filed a petition with the DPU for approval of a proposed “timetable and method for [a second] solicitation and execution of long-term” contracts for offshore wind energy generation resources.<sup>156</sup> On May 17, 2019, the MA DPU approved the petition.<sup>157</sup> Under the approved timeline, MA DPU anticipates that contracts resulting from the request for proposals will be submitted to the MA DPU in January 2020 for regulatory approval.<sup>158</sup>

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150. 2018 Mass. Adv. Legis. Serv. 227 (West).

151. *Id.* § 13(a).

152. *Id.* § 7.

153. See *Clean Peak Energy Standard*, MASS.GOV, <https://www.mass.gov/service-details/clean-peak-energy-standard> (last visited Oct. 26, 2019).

154. Mass. Dep’t Pub. Util. Docket Nos. 18-76, 18-77, 18-78 (Apr. 12, 2019).

155. *Id.* at 5.

156. Mass. Dep’t Pub. Util. Docket No. 19-45 (Mar. 27, 2019).

157. Mass. Dep’t Pub. Util. Docket No. 19-45 (May 17, 2019).

158. *Id.* at 12.

## IX. MICHIGAN

A. *Integrated Resource Plans*

Michigan utilities have begun submitting Integrated Resource Plans (IRPs), pursuant to MCL 460.6t of Public Act 341 of 2016.<sup>159</sup> Under that statute, seven of the State's electric utilities have or will submit specific components in an IRP filing for their long-term energy plans and how their plans fit into the State's energy future.<sup>160</sup> The Michigan Public Service Commission (MPSC) approves proposed IRPs if it determines that the proposals "represent[] the most reasonable and prudent means of meeting the electric utility's energy and capacity needs."<sup>161</sup> To make such a determination, the Commission considers whether the proposed IRP "appropriately balances all of the following factors":

- "Resource adequacy and capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement.
- Compliance with applicable state and federal environmental regulations.
- Competitive pricing.
- Reliability.
- Commodity price risks.
- Diversity of generation supply.
- Whether the proposed levels of peak load reduction and energy waste reduction are reasonable and cost effective. Exceeding the renewable energy resources and energy waste reduction goal in section 1 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001, by a utility shall not, in and of itself, be grounds for determining that the proposed levels of peak load reduction, renewable energy, and energy waste reduction are not reasonable and cost effective."<sup>162</sup>

To date, following public hearings and subsequent negotiations, the MPSC has reviewed and approved the IRP submission of Michigan's second largest investor-owned utility, Consumers Energy, by issuing an order on June 7, 2019, approving a contested settlement.<sup>163</sup> The order represented a significant step for Consumers, approving an annual competitive bidding process that will add "1,200 MW of new solar energy from 2019-21."<sup>164</sup> Under the regimen, Consumers are allowed to "own up to half of all the future additional capacity that it procures through competitive bidding," but the remainder must be acquired

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159. Reply Brief of Consumers Energy Company, Mich. Pub. Serv. Comm'n Case No. U-20165 (Jan. 11, 2019).

160. MICH. COMP. LAWS SERV. § 460.6t (LexisNexis 2019).

161. *Id.* § 460.6(t)(8)(a).

162. *Id.* § 460.6(t)(8)(a)(i-vii).

163. *Id.*

164. Order Approving Settlement Agreement, *Consumers Energy Co.*, Mich. Pub. Serv. Comm'n Case No. U-20165 (June 7, 2019).

“through power purchase agreements with [unaffiliated] third parties.”<sup>165</sup> As a result, Consumers subsequently filed a settlement on August 8, 2019, placing 584 MW of renewable energy products under contract by September 1, 2023.<sup>166</sup> The settlement resolved a number of outstanding complaint cases filed by qualifying facilities (QFs) over their right to connect to Consumers’ system under PURPA,<sup>167</sup> and addressed QF power prices, making them more consistent with the market.<sup>168</sup>

### B. Tax Credit and Jobs Act Refunds

The MPSC addressed the Tax Cuts and Jobs Act (TCJA), enacted on December 22, 2017, lowering the federal corporate income tax rate from 35% to 21%.<sup>169</sup> The MPSC ordered Michigan’s jurisdictional utilities (all utilities except co-ops and municipal-owned utilities) to make a series of filings about how the tax legislation impacted their current and deferred taxes, and how the benefits of the reduced tax rate would be returned to utility customers.<sup>170</sup> Each rate-regulated utility made three filings: 1) Credit A, addressing how customers would be credited “on a going-forward basis” for the lower tax rates”; 2) Credit B, on how customers would be credited from the TCJA’s effective date of January 1, 2018, to the date the utility implemented its Credit A discount; and 3) Calculation C, a catch-all, on how utilities would credit customers for all remaining savings arising from TJCA, including excess deferred taxes and bonus depreciation.<sup>171</sup> The deadlines for the three credit filings were spread out over 2018, with the final Credit C calculation filing deadline of October 1, 2018.<sup>172</sup>

### C. Renewable Initiatives

In February 2019 as part of DTE’s MIGreenPower initiative, Ford Motor Company and DTE Energy announced an initiative to power several of Ford’s manufacturing facilities in and around southeast Michigan with 100% locally sourced renewable energy.<sup>173</sup> In reviewing the program and its proposed tariffs, the MPSC also approved separate renewable-only optional rates under that pro-

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165. DEP’T LICENSING & REG. AFFAIRS, MICHIGAN.GOV (June 7, 2019), <https://www.michigan.gov/lara/0,4601,7-154-11472-498156--,00.html>.

166. *Id.*

167. Application for Approval of Settlement Agreement, *Consumers Energy Co.*, Mich. Pub. Serv. Comm’n Case No. U-20165 (Aug. 8, 2019).

168. *Id.* at 6-8.

169. *Id.* at 10. *See also* 16 U.S.C. § 2601 (2019).

170. Order, *Consumers Energy Co.*, Mich. Pub. Serv. Comm’n Case Nos. U-20309, U-18494, U-20102, U-20103, U-20286, U-20287 (Sept. 26, 2019); 115 P.L. 97 (2017).

171. Order, *supra* note 170, at 3-4.

172. *Id.* at 2-3.

173. *Ford Motor Company to Procure Locally Sourced Michigan Wind Energy Through Collaboration with DTE Energy*, DTE (Feb. 21, 2019), <http://newsroom.dteenergy.com/index.php?s=26817&item=137239#sthash.kjINP17x.dpbs>.

gram, allowing DTE customers to subscribe to a wind and solar utility rate or a wind-only rate.<sup>174</sup>

#### *D. Cybersecurity*

While not directly related to utilities, the Michigan legislature addressed cybersecurity concerns that impact utilities as they contend with threats directed at the energy infrastructure systems while maintaining compliance with NERC and other regulatory standards.<sup>175</sup> The “Freedom of Information” Act, MCL Section 15.243, amended the previously enacted FOIA statute to exclude records relating to the “confidentiality, integrity or availability of [] information systems” from public disclosure in response to FOIA requests.<sup>176</sup> Specifically included is any information relating to a utility’s cybersecurity plans, assessments or vulnerabilities.<sup>177</sup> Under the law, a utility’s “cybersecurity-related practices, procedures, methods, results, organizational” information system infrastructure, hardware, and software are also exempt from disclosure under the amended statute.<sup>178</sup>

### X. MISSOURI

#### *A. Authorization of Plant-in-Service Accounting*

In 2018, the state of Missouri passed Senate Bill 564, which modified multiple statutes related to the provision of utility service in the state.<sup>179</sup> Senate Bill 564, among other things, authorizes utilities to utilize plant-in-service accounting (PISA) to mitigate the impacts of regulatory lag between rate cases.<sup>180</sup> To utilize the PISA option, electric utilities must provide notice to the Missouri Public Service Commission (MoPSC) of a five-year capital investment plan setting out the categories of capital expenses that the utility will pursue for the security, replacement, and modernization of its electric infrastructure.<sup>181</sup> The MoPSC received five-year capital investment plans from: Union Electric Company d/b/a Ameren Missouri (File No. EO-2019-0044); KCP&L Greater Missouri Operations Company (File No. EO-2019-0045); and Kansas City Power & Light Company (File No. EO-2019-0047).<sup>182</sup> This PISA provision is authorized for a five-year period, until 2023, at which time the MoPSC may, upon an electric corporation’s request, evaluate whether authorization to utilize PISA should be extended through 2028.<sup>183</sup>

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174. *Id.*

175. H.B. 4540, 2015 Leg., 98th Sess. (Mich. 2015).

176. *Id.*

177. *Id.*

178. *Id.*

179. S.B. 564, 99th Gen. Assemb., 2d Sess. (Mo. 2018).

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

In addition to allowing the use of PISA, Senate Bill 564 also allows the state's largest electric utilities to invest at least \$14 million in solar projects between 2018 and 2023,<sup>184</sup> and provide solar rebates to customers installing solar panels a total of \$28 million from 2019 through 2023.<sup>185</sup> Senate Bill 564 also allows the creation of an economic development discount of up to 40% through 2023 for qualifying customers who add incremental load in the electric utility's Missouri service territory.<sup>186</sup>

## XI. NEVADA

### A. *Energy Choice Initiative*

The Nevada Energy Choice Initiative which sought to amend the Nevada State Constitution by requiring that under the Constitution "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"<sup>187</sup> was defeated in the November 2018 election with nearly two-thirds of voters opposing the initiative.<sup>188</sup>

### B. *Revision of Laws Allowing Large Customers Retail Choice*

On June 12, 2019, the Governor of Nevada signed into law Nevada Senate Bill 547 (SB 547), which made significant changes to Nevada's retail access program.<sup>189</sup> It requires the regulated utilities d/b/a NV Energy to include in their integrated resource plans annual limits on the energy and capacity new eligible customers (average annual load equal to or greater than one (1) MW)<sup>190</sup> are authorized to purchase from alternative retail providers of electricity.<sup>191</sup> But, it also gives the Public Utilities Commission of Nevada (PUCN) the discretion to modify or reject such proposed limits.<sup>192</sup>

Alternative providers of retail electric service must now be licensed by the PUCN.<sup>193</sup> Application for eligibility of the retail access program has now been limited to a window of the month of January each year instead of being generally available at any time.<sup>194</sup> SB 547 clarifies the type of energy and capacity that

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184. S.B. 564, *supra* note 179.

185. *Id.*

186. *Id.*

187. NEV. CONST. art. I, § 1 (2016).

188. Mick Akers, *Nevada ballot questions: Voters reject breaking up NV Energy, pass Marsy's Law*, LAS VEGAS SUN (Nov. 7, 2018, 1:00 AM), <https://lasvegassun.com/news/2018/nov/07/nevada-ballot-questions-voters-reject-breaking-up/>.

189. S.B. 547, 2019 Leg., 80th Sess. (Nev. 2019).

190. NEV. REV. STAT. § 704B.080 (2017).

191. S.B. 547, *supra* note 189, § 5.

192. *Id.* § 6.

193. *Id.* § 16.

194. *Id.* § 17.

can be sold to eligible customers by alternative providers,<sup>195</sup> clarifies the filing requirements,<sup>196</sup> changes the burden of proof from approval, unless the transaction will be contrary to the public interest, to no approval unless the transaction can be found in the public interest.<sup>197</sup> The bill also clarifies specific fees and costs that must be paid before a new eligible customer can be approved to buy from an alternative retail electric service provider in the future.<sup>198</sup>

### C. *Revision of Renewable Portfolio Standard Requirements*

On April 22, 2019, the Nevada Governor signed into law Nevada Senate Bill 358 (SB 358).<sup>199</sup> The bill calls for Nevada's Renewable Portfolio Standard (RPS) to reach 50% by the year 2030.<sup>200</sup> It expands the types of hydropower eligible as a renewable energy resource,<sup>201</sup> and expands the applicability of the RPS requirements to rural electric cooperatives, general improvement districts, cooperative associations, certain nonprofit corporations, and certain nonprofit associations.<sup>202</sup> SB 358 also allows certain electric utilities to acquire renewable energy facilities in certain circumstances without approval of the Public Utilities Commission of Nevada (PUCN) and allows those electric utilities to acquire renewable energy facilities without putting them into rate base, and "to charge just and reasonable" rates based on competitive market pricing.<sup>203</sup>

### D. *Enactment of Laws Enabling Alternative Rate-Making Procedures*

On May 29, 2019, the Governor of Nevada approved Nevada Senate Bill 300 (SB 300).<sup>204</sup> This bill authorizes NV Energy to submit an application to establish alternative rate-making plans.<sup>205</sup> The bill authorizes alternative rate-making mechanisms such as performance-based rates, formula rates, multi-year rate plans, subscription pricing, earnings-sharing, and decoupling.<sup>206</sup>

## XII. NEW HAMPSHIRE

### A. *Integrated Distribution System Plans*

On May 29, 2019, the New Hampshire Public Utilities Commission issued an Order (NH Order) establishing the next steps in a stakeholder process for developing the framework for electric distribution utility integrated distribution

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195. *Id.* § 13.

196. S.B. 547, *supra* note 189, § 17.

197. *Id.*

198. *Id.*

199. S.B. 358, 2019 Leg., 80th Sess. (Nev. 2019).

200. *Id.* § 22.

201. *Id.* §§ 17, 19, 21.

202. *Id.* §§ 20, 22.

203. *Id.* §§ 6, 7.

204. S.B. 300, 2019 Leg., 80th Sess. (Nev. 2019).

205. *Id.*

206. *Id.* §§ 16, 17.

system plans.<sup>207</sup> The NH Order requires the New Hampshire electric distribution companies (and invites others) to file proposals on the following by September 6, 2019: (a) Cost Effectiveness Methodology; (b) Utility Cost Recovery; (c) Utility and Customer Data and Third Party Access; (d) Hosting Capacity/Locational Value Analysis/Interconnection; (e) Annual Reporting Requirements; (f) Rate Design Policy; (g) Strategic Electrification Policy; (h) Consolidated Billing/General Billing; (i) Consumer Advisory Council/Stakeholder Engagement; (j) Capital Budgeting Process; and (k) Least Cost Integrated Resource Plan/Integrated Distribution Plan Integration.<sup>208</sup>

### XIII. NEW YORK

#### A. *Offshore Wind Procurement*

On July 12, 2018, the New York State Public Service Commission (NY PSC) issued an Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement.<sup>209</sup> In the order, in furtherance of the general purpose of New York's Clean Energy Standard, the NY PSC established a goal pursuant to which "the quantity of electricity supplied by renewable resources and consumed in New York State should include the output of 2.4 GW of new offshore wind generation facilities by 2030."<sup>210</sup> In support of this goal, the NY PSC adopted an Offshore Wind Standard.<sup>211</sup> The Offshore Wind Standard includes solicitations for Offshore Wind Energy Credits and an obligation that load serving entities obtain Offshore Wind Energy Credits for their retail customers.<sup>212</sup> Two projects, the Empire and Sunrise Wind projects, were selected for contract negotiation in the first phase of solicitations.<sup>213</sup> In the aggregate, the projects have a capacity of 1,696 megawatts.<sup>214</sup>

#### B. *Effects of the 2017 Tax Cuts and Jobs Act*

On August 9, 2018, the NY PSC issued an Order Determining Rate Treatment of Tax Changes in which it addressed the effects on utility rates of the Tax Cuts and Jobs Act of 2017.<sup>215</sup> The NY PSC provided for deferral accounting to preserve savings from the Tax Act for the benefit of ratepayers "until all net ben-

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207. Order on Procedural Issues for Developing Requirements for Integrated Distribution System Plans, N.H. Pub. Util. Comm'n Docket No. IR 15-296 (May 29, 2019).

208. *Id.* at 4.

209. Order Establishing Offshore Wind Standard and Framework for Phase 1 Procurement, N.Y. Pub. Serv. Comm'n Case No. 18-E-0071 (July 12, 2018).

210. *Id.* at 3-4.

211. *Id.* at 3.

212. *Id.*

213. NYSERDA, 2018 SOLICITATION RESULTS, <https://www.nyserda.ny.gov/All-Programs/Programs/Offshore-Wind/Offshore-Wind-Solicitations/Generators-and-Developers/2018-Solicitation>.

214. *Id.*

215. Order Determining Rate Treatment of Tax Changes, N.Y. Pub. Serv. Comm'n Case No. 17-M-0815 (Aug. 9, 2018).



efits are fully reflected in rates.”<sup>216</sup> The NY PSC also required certain utilities to issue sur-credits to customers to reflect the effects of the Tax Act.<sup>217</sup>

### C. Energy Storage

On December 13, 2018, the NY PSC issued an Order Establishing Energy Storage Goal and Deployment Policy.<sup>218</sup> In the order, among other things, the NY PSC “adopt[ed] a statewide energy storage goal of installing up to 3,000 MW of qualified storage energy systems by 2030, with an interim objective of deploying 1,500 MW of energy storage systems by 2025.”<sup>219</sup> The NY PSC also adopted other policies and took other actions to further this goal,<sup>220</sup> and directed the distribution utilities to file implementation plans to develop a procurement process for deploying energy storage systems.<sup>221</sup>

### D. Energy Service Company Prices

On May 9, 2019, the Court of Appeals of New York issued a decision in *National Energy Marketers Association v. New York State Public Service Commission* in which it concluded that the NY PSC is authorized to cap the prices that energy service companies charge.<sup>222</sup> The court reached this conclusion based on the NY PSC’s authority to condition energy service companies’ access to utility systems on just and reasonable conditions.<sup>223</sup>

## XIV. OKLAHOMA

### A. Order Approving OG&E Purchase of Two Electric Generating Facilities

On December 28, 2018, Oklahoma Gas and Electric (OG&E) filed an application with the Oklahoma Corporation Commission (OCC) for preapproval of its plans to acquire AES Shady Point, a plant near Poteau, Oklahoma, and Oklahoma Cogeneration LLC, a facility in Oklahoma City, Oklahoma.<sup>224</sup> OG&E, the OCC’s Public Utility Division, and the Oklahoma Attorney General entered into a Joint Stipulation and Settlement Agreement, whereby the parties agreed that OG&E had an immediate need for additional generation capacity; that the proposed acquisition was in the public interest; and that the proposed cost recovery mechanism was proper and fair to ratepayers.<sup>225</sup> Oklahoma Energy Re-

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216. *Id.* at 2.

217. *Id.*

218. Order Establishing Energy Storage Goal and Deployment Policy, N.Y. Pub. Serv. Comm’n Case No. 18-E-0130 (Dec. 13, 2018).

219. *Id.* at 4.

220. *Id.* at 4-5.

221. *Id.* at 13-14.

222. *Nat’l Energy Marketers Ass’n v. N.Y. St. Pub. Serv. Comm’n*, 126 N.E.3d 1041 (N.Y. 2019).

223. *Id.* at 1047.

224. Application, *OG&E*, Okla. Corp. Comm’n Cause No. 201800159 (Dec. 28, 2018).

225. Non-Unanimous Joint Stipulation and Settlement Agreement, *OG&E*, Okla. Corp. Comm’n Cause No. 201800140 (May 24, 2019).

sults, LLC (OER), a group representing independent power producers and large consumers, objected to OG&E's application on the grounds that OG&E had failed to consider reasonable alternatives, including potentially entering into energy supply agreements rather than acquiring additional generation capacity.<sup>226</sup> On May 13, 2019, the OCC approved OG&E's application for preapproval of its plans to acquire those two facilities.<sup>227</sup> On June 12, 2019, OER filed an appeal with the Oklahoma Supreme Court.<sup>228</sup> OER's appeal is still pending with the Oklahoma Supreme Court.<sup>229</sup>

### B. Task Force to Study OCC Issues Report

During the 2017 legislative session, the Oklahoma Legislature passed legislation creating an executive-level task force to study the operation of the OCC and suggest possible changes to the structure and function of the OCC.<sup>230</sup> On August 7, 2017, the Governor of Oklahoma issued an executive order establishing the Second Century Corporation Commission Task Force (Task Force).<sup>231</sup> The report on the OCC was presented to the Task Force on November 15, 2018.<sup>232</sup> The report made no specific recommendations regarding the structure and function of the OCC, but did include recommendations to improve the OCC's performance.<sup>233</sup>

### C. PSO Withdraws Application with OCC for Wind Catcher Energy Connection Project

"On July 31, 2017, [Public Service Company of Oklahoma] (PSO) filed [an] [a]pplication" with the OCC for "approval of the cost recovery [for] the wind catcher energy connection project" (Wind Catcher Project).<sup>234</sup> Wind Catcher Project was a joint effort between Southwestern Electric Power Co. (SWEPCO) and PSO, proposing a wind farm with "2,000 MW of wind generation [to be] located in [Cimarron and Texas counties] in the panhandle of Oklahoma."<sup>235</sup> As part of the project, PSO and SWEPCO planned to build a 350 to 380-mile generation interconnection tie-line to connect the Wind Catcher Project

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226. Summary of the Responsive Testimony of Steve Gabel, *Oklahoma Energy Results, LLC*, Okla. Corp. Comm'n PUD Cause No. 201800159 (Feb. 22, 2019).

227. Final Order, *OG&E*, Okla. Corp. Comm'n Cause No. PUD 201800159 (May 13, 2019).

228. Petition in Error, *OG&E*, Okla. Corp. Comm'n Cause No. PUD 201800159 (June 12, 2019).

229. *Id.*

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

231. OKLA. SEC'Y ST., EXEC. ORDER 2017-23 (Aug. 7, 2017), <https://www.sos.ok.gov/documents/executive/1569.pdf>.

232. *Id.*; Jack Money, *Study on Oklahoma Corporation Commission Urges Greater Focus on Mission*, TULSA WORLD (Nov. 16, 2018), [https://www.tulsaworld.com/business/study-on-oklahoma-corporation-commission-urges-greater-focus-on-mission/article\\_1e309cc4-62fe-50f9-b24e-49ba37636a41.html](https://www.tulsaworld.com/business/study-on-oklahoma-corporation-commission-urges-greater-focus-on-mission/article_1e309cc4-62fe-50f9-b24e-49ba37636a41.html).

233. Money, *supra* note 232.

234. Report and Recommendation of the Administrative Law Judge, *PSO*, Okla. Corp. Comm'n Cause No. PUD 201700267 (Feb. 12, 2018).

235. *Id.*

to the PSO grid near Tulsa, Oklahoma.<sup>236</sup> “The project [was] estimated to cost \$4.5 billion with PSO’s share being \$1.36 billion.”<sup>237</sup> Then, “[o]n July 26, 2018, the Texas Public Utility Commission [TPUC] voted to reject the Certificate of Convenience and Necessity sought by SWEPCO” for the project.<sup>238</sup> Following the decision by the TPUC, “American Electric Power Company, the parent company for both SWEPCO and PSO . . . decided not to pursue the Wind Catcher Project.”<sup>239</sup> On August 7, 2018, PSO filed to withdraw its Application.<sup>240</sup> PSO’s motion was granted by the OCC on August 30, 2018.<sup>241</sup>

## XV. OREGON

### A. *Oregon Senate Bill 978 Report*

Oregon Senate Bill (SB) 978 directed the Oregon Public Utility Commission (Oregon PUC) to develop a public process to identify potential regulatory and statutory changes to state electric utility regulation “that could accommodate developing industry trends and support new policy objectives without compromising affordable rates, safety and reliable service.”<sup>242</sup> In response to the legislation, the Oregon PUC engaged participants statewide in a public process to develop a roadmap for adapting to the existing utility regulatory structure to changes in the electric industry.<sup>243</sup> The Oregon PUC’s report was issued in September 2018,<sup>244</sup> and outlined (1) the key features of the state’s existing electric regulatory system, (2) challenges to the existing system, and (3) possible next steps for addressing those challenges. The report discusses statutory limits on the Oregon PUC’s authority to directly address greenhouse gas emissions, the need to address affordability and environmental justice in the electric sector, tradeoffs and tensions associated with an increasing number of options for customer choice, and the need to explore new regulatory approaches for incentivizing utility investment.<sup>245</sup> The Oregon PUC also committed to ongoing public outreach to engage community-based organizations and others with both economic and environmental interests in the electric sector, and continuing to explore the benefits of regional markets.<sup>246</sup>

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236. *Id.*

237. *Id.*

238. Motion for Applicant to Withdraw a Portion of the Requested Relief, *PSO*, Okla. Corp. Comm’n Cause No. PUD 201700267 (Aug. 7, 2018).

239. *Id.*

240. *Id.*

241. Final Order, *PSO*, Okla. Corp. Comm’n Cause No. PUD 201700267 (Aug. 30, 2018).

242. S.B. 978, 79th Leg., 2017 Reg. Sess. (Or. 2017).

243. OR. PUB. UTIL. COMM’N, SB 978 ACTIVELY ADAPTING TO THE CHANGING ELECTRICITY SECTOR (Sept. 2018), <https://www.oregon.gov/puc/utilities/Documents/SB978LegislativeReport-2018.pdf>.

244. *Id.* at 19-24.

245. *Id.* at 13, 16-18.

246. *Id.* at 3.

### B. *New Load Direct Access Programs*

In September 2018, the Oregon PUC “adopt[ed] rules for New Large Load Direct Access [(NLDA)] programs.”<sup>247</sup> Oregon direct access regulations previously allowed existing non-residential, cost-of-service customers to elect alternative electric service suppliers, subject to transition charges and utility-specific caps. The NLDA program is a separate program that applies to “new large load”, meaning “any load associated with a new facility, an existing facility, or an expansion of an existing facility, which: (a) [h]as never been contracted for or committed to in writing by a cost-of-service consumer with an electric company; and (b) [i]s expected to” reach an average threshold of ten megawatts over a 12-month period in the first three years of program enrollment.”<sup>248</sup> The NLDA program is subject to an independent participation cap of “six percent of [a utility’s] weather normalized annual load” and will be subject to ongoing review by the Oregon PUC.<sup>249</sup> The participation cap places a limit on the amount of load that an incumbent utility could be required to forfeit to any one alternative electric service provider, which is designed to protect the investment-backed expectation in generating assets owned by the incumbent utilities while still increasing the generation supplier choices that are available to large customers.<sup>250</sup>

### C. *Transmission Workshops*

Between January and May of 2019, the Oregon PUC hosted a series of workshops designed to help state regulators better understand federal transmission and interconnection issues that increasingly intersect with state regulatory efforts.<sup>251</sup> The series of workshops included speakers from Oregon investor-owned utilities, FERC staff, Bonneville Power Administration environmental advocates, and others.<sup>252</sup> Speakers addressed a number of topics, including an overview of the Northwest regional transmission landscape, the fundamentals of FERC jurisdiction and federal transmission policy, and FERC-jurisdictional transmission and interconnection service.<sup>253</sup> The workshops also included presentations on transmission products, reliability standards, and transmission planning.<sup>254</sup> These issues continue to intersect with a wide variety of Oregon PUC proceedings, including state integrated resource planning, implementation of the Public Utility Regulatory Policies Act,<sup>255</sup> the state’s community solar program, and others.

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247. New Rules Adopted, Or. Pub. Util. Comm’n Order No. 18341 (Sept. 14, 2018).

248. *Id.*

249. *Id.*

250. *Id.*

251. OR. PUB. UTIL. COMM’N, FERC STAFF PRESENTATION FOR OPUC TRANSMISSION WORKSHOP 1 (Jan. 17, 2018), <https://www.oregon.gov/puc/utilities/Documents/TxWorkshop-FERC-Overview.pdf>.

252. *Id.* at 6-10.

253. *Id.* at 7, 9-12.

254. *Id.* at 13, 22, 25-27.

255. *Id.* at 3 (citing 16 U.S.C. § 796(17)-(18)).

#### D. *Wildfire Mitigation*

In January 2019, in the wake of wildfires in California and Oregon, Oregon Governor Kate Brown signed an executive order creating the Governor's Council on Wildfire Response.<sup>256</sup> On June 18, 2019, the Oregon PUC held a special public meeting to discuss wildfire mitigation as it relates to the state's electric sector.<sup>257</sup> The workshop included presentations from the Oregon Wildfire Response Council, the Oregon Department of Forestry, Portland General Electric Company, and PacifiCorp, and included discussion of the state's priorities for wildfire prevention and mitigation, as well as individual utility wildfire mitigation plans.<sup>258</sup> The Oregon PUC will continue its work on this issue by hosting a West Coast Utility Commissions Wildfire Risk Dialogue on August 16, 2019.<sup>259</sup> At that meeting, public utility commissioners from British Columbia, California, Nevada, Oregon, and Washington will engage in an all-day, public workshop in Portland, Oregon to discuss strategies for managing and mitigating wildfire risk.<sup>260</sup>

### XVI. PENNSYLVANIA

#### A. *Newly Created Office of Cybersecurity Compliance and Oversight*

On September 20, 2018, the Pennsylvania Public Utility Commission (PA PUC) announced the creation of a new Office of Cybersecurity Compliance and Oversight (OCCO), and appointed a Director of that Office to coordinate the PA PUC's efforts to protect Pennsylvania's regulated utilities from cyber-attacks and ensure "safe and reliable public utility service to consumers."<sup>261</sup> The Director of the OCCO will "advise . . . on policy issues and procedural improvements" to help the PA PUC oversee the cybersecurity functions of regulated utilities; draft proposed regulations on cyber-security; and issue policy statements and other guidance documents to assist regulated utilities in implementing effective cybersecurity programs and practices.<sup>262</sup> The PA PUC had previously issued an online cybersecurity guide<sup>263</sup> with advice on preventing identity theft, protecting passwords, and securing mobile devices and developed a Cybersecurity Best Practices Guide for Small and Medium Pennsylvania Utilities.<sup>264</sup>

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256. Establishing the Governor's Council on Wildfire Response, Office of the Governor in the State of Or., Executive Order No. 19-01 (Jan. 30, 2019).

257. OR. PUB. UTIL. COMM'N, PUBLIC MEETINGS (June 18, 2019), <http://www.puc.state.or.us/Pages/Live-Stream.aspx>.

258. *Id.*

259. *Id.*

260. *Id.*

261. PA. PUB. UTIL. COMM'N, PUC CREATES NEW OFFICE OF CYBERSECURITY COMPLIANCE AND OVERSIGHT, APPOINTS MICHAEL C. HOLKO AS DIRECTOR (Sept. 20, 2018), [http://www.puc.pa.gov/about\\_puc/press\\_releases.aspx?ShowPR=4092](http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=4092).

262. *Id.*

263. *Protecting Yourself Online*, PA.GOV, <https://www.pa.gov/guides/cybersecurity/> (last visited Oct. 22, 2019).

264. *Id.*

### B. *Utility Mergers and Acquisitions*

On October 23, 2018, Bryn Mawr, Pennsylvania-based Aqua America Inc., “the second-largest U.S. [investor-owned] water utility,” announced that it would acquire Pittsburgh-based Peoples Natural Gas, the “fifth-largest U.S. stand-alone natural gas distribution company” (NGDC), and the largest NGDC in Pennsylvania, from Steel River Infrastructure Partners in an all-cash transaction with an enterprise value of \$4.2 billion.<sup>265</sup> On November 13, 2018, Aqua and Peoples filed a Joint Application<sup>266</sup> with the PA PUC for approval of a change “in control of Peoples,” that is pending review by the presiding Administrative Law Judge. A final decision by the PA PUC is expected later this year.<sup>267</sup> Additional approvals are also required from the Kentucky Public Service Commission and West Virginia Public Service Commission for the change in control of the Peoples Gas utilities operating in those states.<sup>268</sup>

### C. *Policy Statement on Third-Party Electric Vehicle Charging*

On November 8, 2018, the PA PUC issued a Final Policy Statement Order to reduce regulatory uncertainty surrounding the operation of electric vehicle (EV) charging stations.<sup>269</sup> The PA PUC adopted a policy for a prospective application interpreting Section 1313 of the Pennsylvania Public Utility Code<sup>270</sup> as not applicable to “electricity sales by a person, corporation or other entity . . . for the sole purpose of recharging an electric vehicle battery for compensation.”<sup>271</sup> Section 1313 by its terms applies when a “person, corporation or other entity, not a public utility . . . purchases service from a public utility and resells it to consumers and limits the resale price to not more than “the public utility would [charge] its own residential customers for the same quantity of service.”<sup>272</sup> The Policy Statement also directs electric distribution companies to adopt tariff provisions stating reasonable times and procedures for developers to furnish notice of the planned installation of EV charging facilities.<sup>273</sup> On February 28, 2019, the PA PUC approved tariff supplements filed by the Pennsylvania public utility subsidiaries of FirstEnergy Company adopting the PA PUC’s policy on the application

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265. *Aqua America Announces Agreement to Acquire Peoples*, PEOPLES (Oct. 23, 2018), <https://www.peoples-gas.com/news/aqua>.

266. Interim Order Granting Leave to Withdraw Petition to Intervene, Pa. Pub. Util. Comm’n Docket Nos. A-2018-3006061, A-2018-3006062, A-2018-3006063 (Feb. 19, 2019).

267. *Id.*

268. *Id.*

269. Final Policy Statement Order, Pa. Pub. Util. Comm’n, Docket No. M-2017 2604382 (Nov. 8, 2018); Pa. Pub. Util. Comm’n, PUC Adopts Final Policy Statement on Third-Party Electric Vehicle Charging; Reduces Regulatory Uncertainty, Promotes New Investment (Nov. 8, 2018), [http://www.puc.state.pa.us/about\\_puc/press\\_releases.aspx?ShowPR=4119](http://www.puc.state.pa.us/about_puc/press_releases.aspx?ShowPR=4119).

270. 66 PA. STAT. AND CONS. STAT. ANN. § 1313 (West 2019).

271. 52 Pa. Code § 69.3501 (2019).

272. 66 Pa. Stat. and Cons. Stat. Ann. § 1313.

273. Pub. Util. Comm’n Statements of Policy (Feb. 2, 2019) (explaining 52 Pa. Code § 69.3501 (2019)).

of Section 1313, and requiring 120 days advance notice of developers' intent to install EV charging facilities.<sup>274</sup>

#### *D. Investigation of Default Service Rate Design Reform*

On February 26, 2019, the PA PUC initiated an investigation to explore default service rate structure options to better align with wholesale market design, and to optimize smart meter investments in the Commonwealth.<sup>275</sup> The PA PUC presented more than a dozen questions in the Order soliciting input on three principal topics.<sup>276</sup> The first area of inquiry involved wholesale cost allocation methodologies and the impact that PJM Interconnection, LLC market reforms may have on retail customers.<sup>277</sup> Second, the Commission sought comments on how default service rate design can evolve to incorporate time-varying and demand-based pricing to incentivize customers to change their usage patterns.<sup>278</sup> Finally, the PA PUC sought input on the prudence of procuring default service generation supplies by long-term contracts.<sup>279</sup> On July 26, 2019, eighteen stakeholders submitted comments on the issues identified in the Order, and the PA PUC accepted reply comments until late August.<sup>280</sup>

#### *E. Implementation of Alternative Ratemaking Legislation*

Pennsylvania Act 58 of 2018 (Act 58), which was signed into law on June 28, 2018, added Section 1330 to the Pennsylvania Public Utility Code,<sup>281</sup> authorizing the PA PUC to approve alternative ratemaking mechanisms for electric, natural gas, water, and wastewater utilities.<sup>282</sup> Act 58 directed the PA PUC to prescribe, by regulation or order, specific procedures for the approval of an application to establish alternative rates.<sup>283</sup> Pursuant to that directive, the PA PUC issued a Tentative Implementation Order on August 23, 2018, seeking comments on specific implementation issues.<sup>284</sup> Following its review of those comments, the PA PUC issued a final Implementation Order on April 25, 2019.<sup>285</sup> The Im-

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274. Order, Pa. Pub. Util. Comm'n Docket Nos. R-2019-3007069, R-2019-3007070, R-2019-3007071, R-2019-3007072 (Feb. 28, 2019).

275. Comments of the Retail Energy Supply Association to Investigation Order Entered February 26, 2019, Pa. Pub. Util. Comm'n Docket No. M-2019-3007101 (Feb. 26, 2019) [hereinafter Docket No. M-2019-3007101].

276. *Id.*

277. *Id.* at 9.

278. *Id.* at 5-6.

279. *Id.* at 12.

280. Docket No. M-2019-3007101, *supra* note 275.

281. 66 PA. CONS. STAT. § 1330 (2018).

282. Section 1330 provides a non-exclusive list of authorized alternative ratemaking methods that include (1) decoupling mechanisms; (2) performance-based rates; (3) formula rates; (4) multiyear rate plans; and (5) any combination of the foregoing. *Id.* § 1330 (b)(1)(i-v).

283. *Id.* § 1330(e).

284. Implementation Order, Pa. Pub. Util. Comm'n Docket No. M-2018-3003269 (Apr. 25, 2019) [hereinafter Implementation Order].

285. *Id.* at 1.

plementation Order provides that proposals to implement an alternative ratemaking must be made initially in a general rate proceeding where “a utility’s total revenues, expenses, taxes, capital costs and rate structure” will be thoroughly examined in connection with the PA PUC’s investigation of the proposed alternative rate method.<sup>286</sup> Additionally, the Implementation Order details the requirements for furnishing notice to customers of a utility’s proposal to implement an alternative ratemaking mechanism.<sup>287</sup> The PA PUC also established the burden and standard of proof that utilities must meet to demonstrate that a proposed alternative ratemaking mechanism will produce just and reasonable rates.<sup>288</sup> In so doing, the PA PUC determined that Act 58 did not alter the traditional ratemaking requirements that a utility prove, by a preponderance of evidence, that the costs and expenses it seeks to recover are “reasonable and prudently incurred,” and that property to be included in rate base must satisfy the Pennsylvania Public Utility Code’s “used and useful” standard.<sup>289</sup>

#### *F. Final Policy Statement on Fixed Utility Distribution Rates*

Prior to the enactment of Act 58 authorizing the PA PUC to approve alternative ratemaking methods, the PA PUC issued “for comment, a proposed policy statement [to] identif[y] factors it [should] consider in” establishing “rates that promote the efficient use of electricity, natural gas or water”; facilitate “the use of distributed energy resources”; remove disincentives for conservation; and “maintain the safe and reliable operation of fixed utility[ies]’ distribution systems.”<sup>290</sup> The Proposed Policy Statement included illustrations of optional methods of “distribution ratemaking and rate design” for electric and natural gas distribution utilities.<sup>291</sup> Following the enactment of Act 58, the PA PUC decided to pursue the issuance of a final Policy Statement to provide guidance to fixed utilities and interested stakeholders on what it may consider when asked to approve alternative ratemaking methodologies in a general base rate proceeding.<sup>292</sup> To that end, the Commission issued a final Order<sup>293</sup> adopting a Policy Statement<sup>294</sup> designed to parallel the guidance furnished in its Act 59 Implementation Order.<sup>295</sup> The stated purpose of the Policy Statement is to invite public utilities to propose alternative ratemaking mechanisms that promote the objectives of Act 58, and implement Federal and Pennsylvania initiatives encouraging more effi-

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286. *Id.* at 7.

287. *Id.* at 18.

288. *Id.* at 27-28.

289. Pursuant to 66 PA. CONS. STAT. § 332(e), utility property may be reflected in rates based on data for a fully-projected future test year that is coterminous with the first year that new rates are placed in service. *See* Implementation Order, *supra* note 284, at 16.

290. Proposed Policy Statement Order, Pa. Pub. Util. Comm’n Docket No. M-2015-2518883 (May 23, 2018).

291. *Id.* at 2.

292. Implementation Order, *supra* note 284, at 3.

293. Final Policy Statement Order, Pa. Pub. Util. Comm’n Docket No. M-2015-2518883 (July 11, 2019).

294. 52 PA. CODE §§ 69.3301-69.3302 (2019).

295. Final Policy Statement Order, *supra* note 293, at 1.



cient uses of electricity, natural gas, and water that have been enabled by new technologies, including new information technology.<sup>296</sup> To help public utilities formulate alternative rate proposals, the Policy Statement delineates fourteen factors that the PA PUC may consider when investigating alternative ratemaking methods for approval in a general base rate case.<sup>297</sup>

## XVII. RHODE ISLAND

### A. *Performance Incentive Mechanism Guidance*

On March 18, 2019, the Rhode Island Public Utilities Commission (RI PUC) met at an Open Meeting to discuss a memorandum regarding principles for performance incentive mechanisms.<sup>298</sup> Subsequently, the RI PUC issued a Notice to Accept Comments.<sup>299</sup> Eight entities (Commenting Parties) submitted written comments to the RI PUC within the comment period, which ended on May 13, 2019.<sup>300</sup> In either September or October 2019, the RI “PUC plans to hold a public, in-person technical session to discuss the draft principles, the related issues in the memorandum, the Commenting Parties submissions, and a draft or to-be-drafted Guidance Document.”<sup>301</sup> “Within two months after the technical session, the [RI] PUC will release a [final] draft Guidance Document and solicit written comment on that draft from the general public.”<sup>302</sup> And, “[a]t that time, the [RI] PUC will also provide further direction on the process for formally adopting the Guidance Document.”<sup>303</sup>

### B. *Nonregulated Power Producer Consumer Protections*

On June 28, 2019, the Rhode Island General Assembly passed an Act Relating to Public Utilities and Carriers – Public Utilities Commission.<sup>304</sup> Among other things, as of August 1, 2019, the act prohibits nonregulated power producers from automatically renewing contracts with residential customers.<sup>305</sup> Further, the act also provides that “a new contract with a residential customer [is] required if the terms for electric generation services change from variable to fixed rates, fixed to variable rates, or to a different fixed rate.”<sup>306</sup>

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296. *Id.* at 27.

297. 52 PA. CODE § 69.3302(a)(1)-(14).

298. Memorandum of Commissioner Anthony, *Principles for Performance Incentive Mechanisms*, Docket No. 4943 (Mar. 5, 2019).

299. Notice to Accept Comments, R.I. Pub. Util. Comm’n Docket No. 4943 (Apr. 11, 2019).

300. *Id.*

301. Status Update and Expected Process, R.I. Pub. Util. Comm’n Docket No. 4943.

302. *Id.*

303. *Id.*

304. S. 399, Gen. Assemb., Jan. Sess. (R.I. 2019).

305. *Id.* § 2.

306. *Id.*

## XVIII. UTAH

A. *Result of Federal Tax Cut and Jobs Act*

On December 21, 2017, the Public Service Commission of Utah (Commission) issued a Notice of Comment Period initiating several dockets to investigate the revenue requirement impacts of the New Federal Tax Legislation (Tax Act) enacted December 21, 2017.<sup>307</sup> The Commission issued an order requiring PacifiCorp, doing business as Rocky Mountain Power (RMP), to begin deferring effective January 1, 2018 accounting treatment of impacts of the Tax Act in response to a motion filed by the Utah Association of Energy Users.<sup>308</sup> As an initial matter, after a hearing on April 27, 2018, the Commission issued an order approving, effective May 1, 2018, “an annual reduction of \$61 million” in RMP’s annual revenue requirement resulting from the impacts of the Tax Act until RMP’s “next general rate case (GRC).”<sup>309</sup> Thereafter, pursuant to a stipulation of the parties and approved by the Commission on November 9, 2018, the parties agreed that RMP would defer an additional “\$4.9 million per year” associated with the corporate income tax decrease “in [a] regulatory liability” account “until the effective date of rates set in [RMP’s] next GRC”; RMP would “defer [the] non-protected excess deferred income tax (EDIT) balances toward accelerated depreciation of the Dave Johnston thermal generation plant [that was] recorded prior to year-end 2018”; and RMP would “defer [the] protected property-related EDIT balances with ratemaking treatment [to be] addressed in [RMP’s] next GRC.”<sup>310</sup> In addition, the Commission authorized “use of the regulatory liability to depreciate or buy down Utah’s share of the remaining net book value of certain thermal plants.”<sup>311</sup>

B. *Reversal of Commission’s Energy Balancing Account Interim Rate Decisions*

In Utah, PacifiCorp, doing business as Rocky Mountain Power (RMP), is authorized to recover its fuel and purchased power costs from customers using a direct pass-through method known as the Energy Balancing Account (EBA).<sup>312</sup> RMP filed an application for authority to increase its rates for the EBA.<sup>313</sup> Over the objections of several parties, the Utah Public Service Commission (Commission) implemented an interim rate procedure, whereby RMP would file for recovery of costs, the Division of Public Utilities (Division) would review the filing to determine if it was similar to the previous year’s filing, and the Commission would authorize RMP to collect its alleged costs as interim rates

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307. Notice of Comment Period, Utah Pub. Serv. Comm’n Docket No. 17-035-69 (Dec. 21, 2017).

308. Notice of Scheduling Conference, Utah Pub. Serv. Comm’n Docket No. 17-035-69 (Feb. 28, 2018).

309. Order Approving Settlement Stipulation, Utah Pub. Serv. Comm’n Docket No. 17-035-69 (Nov. 9, 2018).

310. *Id.*

311. *Id.*

312. Application for Energy Cost Adjustment Mechanism of Rocky Mountain Power, Utah Pub. Serv. Comm’n Docket No. 09-035-15 (Mar. 16, 2009).

313. *Id.* at 1.

until the Division could make a substantive review of the filing.<sup>314</sup> This process was contrary to the statutory requirement<sup>315</sup> that RMP prove by evidence sufficient to show that the costs were prudently incurred and just and reasonable.<sup>316</sup> Despite repeated objections, the Commission continued this practice in the following years' EBA recovery case.<sup>317</sup> A group of consumer advocates appealed both of these decisions.<sup>318</sup>

The Supreme Court of Utah reversed both Commission decisions, determining “that the Commission violated the statutory mandate that an EBA ‘may not alter . . . the electrical corporation’s burden of proof.’”<sup>319</sup> Accordingly, the court set aside both of the Commission’s orders.<sup>320</sup>

## XIX. WASHINGTON

### A. *Proposed Avista Corporation – Hydro One Limited Merger*

On December 5, 2018, the Washington Utilities and Transportation Commission (Washington UTC) issued a final order denying a joint application by Hydro One Limited, based in Toronto, Canada, and Avista Corporation (Avista), a utility based in Spokane, Washington, for approval of the companies’ proposed merger.<sup>321</sup> The Washington UTC rejected the proposed transaction on the grounds that it failed to provide a net benefit to Avista’s Washington customers, as required by Washington law,<sup>322</sup> and that the application as a general matter was “not consistent with the public interest,” as required by commission regulations.<sup>323</sup> The Washington UTC found that the proposed transaction did not meet commission standards for approval despite a stakeholder settlement agreement that would have provided more than \$30 million in rate credits to Washington ratepayers over a five-year period, \$11 million in rate credits for low income customers, and additional ratepayer benefits.<sup>324</sup> The Washington UTC concluded that the ratepayer benefits identified in the proposed settlement were insufficient to overcome the risk that “decisions affecting Hydro One’s and Avista’s business operations and financial integrity [would be] subject to political considerations” in the Province of Ontario that might motivate provincial leaders to take actions that harmed Avista or its customers.<sup>325</sup>

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314. Order, Utah Pub. Serv. Comm’n Docket No. 09-035-15 (Feb. 16, 2017).

315. UTAH CODE ANN. § 54-7-13.5(2)(e) (West 2019).

316. Order, *supra* note 314, at 12, 23.

317. Order, Utah Pub. Serv. Comm’n Docket No. 18-035-01 (Apr. 27, 2018).

318. *Utah Off. of Consumer Services. v. Pub. Serv. Comm’n of Utah*, Nos. 20170364, 20180536 (Utah June 27, 2019).

319. *Id.* at 2, 6.

320. *Id.* at 2.

321. Final Order Denying Joint Application for Transfer of Property, Wash. Util. & Transp. Comm’n Docket No. U-170970 (Dec. 5, 2018).

322. WASH. REV. CODE § 80.12.020 (2009).

323. WASH. ADMIN. CODE § 480-143-170 (1999).

324. Final Order Denying Joint Application for Transfer of Property, *supra* note 321, at 1, 44.

325. *Id.* at 11.

*B. Implementation of Washington's 100 Percent Clean Electricity Law*

On July 30, 2019, Washington regulators held a public workshop to begin implementing Washington's 100% clean electricity law, the Washington Clean Energy Transformation Act (CETA).<sup>326</sup> The bill requires the state's electric utilities to eliminate coal power from electric rates by 2025.<sup>327</sup> After 2030, each electric utility is to be greenhouse gas neutral, either by demonstrating generation from renewable or zero-emitting resources, or by providing offsets for remaining greenhouse gas emissions for up to 20 percent of its generation from a specific set of eligible alternative compliance sources.<sup>328</sup> By 2045, 100 percent of utilities' power generation must come from renewable or zero-carbon resources.<sup>329</sup> CETA also addresses energy assistance funds for low-income households, and equitable distribution of electricity system benefits.<sup>330</sup> The Washington UTC and the Washington Department of Commerce are tasked with coordinating on implementation of the new law.<sup>331</sup> For its part, the Washington UTC has proposed a three-phase approach for implementing CETA's requirements as they apply to the state's investor-owned utilities.<sup>332</sup> Under the new law, the Washington UTC must require investor-owned electric utilities to submit clean energy implementation plans every four years with utility-specific plans for achieving numerous standards identified by CETA.<sup>333</sup> Consumer-owned utilities must submit similar four-year implementation plans to the Washington Department of Commerce.<sup>334</sup>

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326. WASH. DEP'T OF COM., AGENDA (July 30, 2019), <http://www.commerce.wa.gov/wp-content/uploads/2019/07/CETA-Workshop-Agenda-2019-07-30-1.pdf>.

327. S.B. 5116, 66th Leg., Reg. Sess. (Wash. 2019).

328. *Id.* at 11.

329. *Id.* at 1.

330. *Id.* at 3, 28.

331. *Id.* at 4, 10, 16.

332. *See generally* Notice of Workshop, Attachment C, Wash. Util. & Transp. Comm'n Docket U-190485 (July 5, 2019).

333. S.B. 5116, *supra* note 327, at 11.

334. *Id.* at 18-19.

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