

CALIFORNIA PUBLIC UTILITIES COMMISSION

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The California Public Utilities Commission (CPUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the CPUC regulates energy, some aspects of transportation (rail, moving companies, limos, shared-ride carriers), water/sewage, and limited aspects of communications. The CPUC licenses more than 1,200 privately-owned and operated gas, electric, telephone, water, sewer, steam, and pipeline utilities, in addition to 3,300 truck, bus, “shared ride,” railroad, light rail, ferry, and other transportation companies in California. The CPUC grants operating authority, regulates service standards, and monitors utility operations for safety.

A Commission consisting of five full-time members appointed by the Governor and subject to Senate confirmation directs the agency. The California Constitution directly authorizes the Commission and provides it with a mandate to balance the public interest—the need for reliable, safe utility services at reasonable rates—with the constitutional right of a utility to compensation for its “prudent costs” and a fair rate of return on “used and useful” investments.

The Commission has quasi-legislative authority to adopt regulations, some of which are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR). The Commission also has quasi-judicial authority to take testimony, subpoena witnesses and records, and issue decisions and orders. The CPUC’s Administrative Law Judge (ALJ) Division supports the Commission’s

decision-making process and holds both quasi-legislative and quasi-judicial hearings when evidence-taking and findings of fact are needed. In general, the CPUC ALJs preside over hearings and forward “proposed decisions” to the Commission for all final decisions. At one time, the CPUC decisions were solely reviewable by the California Supreme Court on a discretionary basis, but Public Utilities Code section 1756 permits courts of appeal to entertain challenges to most CPUC decisions. Still, judicial review remains discretionary, and most petitions for review are not entertained. The CPUC’s decisions are effectively final in most cases.

The CPUC allows ratepayers, utilities, and consumer and industry organizations to participate in its proceedings. Non-utility entities may be given “party” status and, where they contribute to a beneficial outcome for the general public beyond their economic stake, may receive “intervenor compensation.” Such compensation facilitated participation in many Commission proceedings over the past twenty years by numerous consumer and minority-representation groups, including San Francisco-based TURN (The Utility Reform Network), San Diego-based UCAN (Utility Consumers’ Action Network), and the Greenlining Institute, an amalgam of civil rights and community organizations in San Francisco.

The CPUC staff—which includes economists, engineers, ALJs, accountants, attorneys, administrative and clerical support staff, and safety and transportation specialists—is organized into 16 divisions.

In addition, the CPUC maintains services important to public access and representation. The San Francisco-based Public Advisor’s Office, as well as the Commission’s outreach offices in Los Angeles and San Diego, provide procedural information and advice to individuals and groups who want to participate in formal CPUC proceedings. Most importantly, under Public

Utilities Code section 309.5, a Public Advocate’s Office of the CPUC independently represents the interests of all public utility customers and subscribers in Commission proceedings in order to obtain “the lowest possible rate for service consistent with reliable and safe service levels.”

Pursuant to [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#), the Wildfire Safety Division (WSD) is the CPUC’s newest division; its purpose is to “evaluate and approve or deny electrical corporations’ Wildfire Mitigation Plans . . . in order to ensure that the electrical utilities are taking effective actions to reduce utility-related wildfire risk, . . . actively audit and evaluate [Investor Owned Utilities (IOUs)] compliance with Wildfire Mitigation Plans, promptly addressing faults, including Public Safety Power Shutoff protocols, and [issue] safety certifications to the electrical corporations if they have satisfied several requirements.” The California Wildfire Safety Advisory Board’s purpose is to advise the Wildfire Safety Division, established pursuant to section 326 of the Public Utilities Code in response to increased risk of catastrophic wildfires. On July 1, 2021, pursuant to [AB 111 \(Committee on Budget\) \(Chapter 81, Statutes of 2019\)](#), the duties, powers, and responsibilities of the Wildfire Safety Division will transfer to the newly-established Office of Energy Infrastructure Safety within the Natural Resources Agency under the supervision of a director appointed by the Governor.

The five CPUC Commissioners each hold office for staggered six-year terms. On June 15, 2020, the State Senate confirmed the appointment of Marybel Batjer to the CPUC; Governor Newsom originally appointed President Batjer on July 12, 2019. Current commissioners include President Marybel Batjer and Commissioners Liane M. Randolph, Clifford Rechtschaffen, Martha Guzman Aceves, and Genevieve Shiroma. Rachel Peterson is the Commission’s Acting Executive Director.

Additionally, amidst the ongoing COVID-19 pandemic, the Capitol shut down for more than a month in March and extended a July recess after several members tested positive for COVID-19. As of November 15, 2020, the CPUC continues to hold its public meetings remotely.

[\[25:2 CRLR 156–57\]](#)

HIGHLIGHTS

The CPUC Dismisses Executive Director Following California Personnel Board Special Investigation Report on Hiring Practices

At the CPUC [meeting](#) on August 31, 2020, the CPUC voted to dismiss Executive Director Alice Stebbins in closed session after a public hearing on the matter. Ms. Stebbins had served as the CPUC’s Executive Director since February 21, 2018. Her dismissal came after an August 6, 2020, [California State Personnel Board Special Investigation Report](#) concluded that a series of hires made by the CPUC during Stebbins’s tenure were “highly questionable.” Although the report did not name Ms. Stebbins directly, it alleged that under the supervision of “AS,” the CPUC hired many employees with whom “AS” had previously worked. The report further concluded that “AS” preselected a former colleague for appointment to a career executive assignment even though that individual was less qualified than other candidates and identified several irregularities in processing the hiring of this individual. It also found the Commission’s lack of an anti-nepotism policy to be problematic.

In an August 4 [letter](#) from Stebbins’s attorney addressed to the Commissioners, Ms. Stebbins asserted that the Commission initiated her termination proceeding in retaliation for her

repeated reports to the Commissioners during her tenure regarding illegal practices at the CPUC. Specifically, Ms. Stebbins stated that shortly after assuming the role of Executive Director, she briefed the Commissioners about the CPUC's alleged failure to collect about \$200 million in unpaid accounts receivable from the industries that the CPUC regulates. Ms. Stebbins further alleged that the Commissioners showed no interest in recovering these uncollected fees and that Commission President Marybel Batjer resisted her efforts to develop policies and systems to remedy the collection of fees owed to the CPUC.

Ms. Stebbins requested a public hearing pursuant to Government Code section 11126(a)(2), which took place during the Commission's August 31, 2020 meeting. Arocles Aguilar, General Counsel for the CPUC, moderated the hearing. At the hearing, President Batjer reiterated that under the California civil service system, all permanent hires and promotions must be based on merit. President Batjer stated that Ms. Stebbins was directly involved in the five hires which the State Personnel Board found to be questionable in its investigation. Among other things, President Batjer highlighted the report's finding that Ms. Stebbins had preselected a candidate, that this candidate was less qualified than several other applicants, and that Ms. Stebbins had previously worked with this candidate for a total of fifteen years. President Batjer denied that the Commission had \$200 million in uncollected fees and fines, and she further denied that Ms. Stebbins was appropriately characterized as a whistleblower.

In response, Ms. Stebbins's attorney argued that her firing would be a clear case of retaliation against a whistleblower, and Ms. Stebbins further noted that some of the hiring processes in question were changed due to persistent challenges when attempting to fill vacancies at the CPUC. Ms. Stebbins also reiterated that she had been involved in many hiring processes

during her time as Executive Director, only a small fraction of which were called into question. At the hearing, Ms. Stebbins also referenced the Commissioners’ [text messages](#) discussing her continued employment, which she cited as evidence that in early July 2020, President Batjer lobbied the other Commissioners in non-noticed, serial meetings to fire her in violation of the Bagley-Keene Open Meeting Act.

After its closed session, the Commission announced the dismissal of Ms. Stebbins in a 5-0 vote. Ms. Rachel Peterson is currently the Commission’s Acting Executive Director. The CPUC has listed a job opening for the Executive Director position on the Cal Careers website, with an application deadline of December 7, 2020.

The CPUC Adopts Framework for Accessing Utility Service Affordability ([R.18-07-006](#))

At its [meeting](#) on July 16, 2020, the CPUC unanimously voted to adopt a [decision](#) (D.20-07-032) adopting metrics and methodologies for assessing the relative affordability of utility service—specifically, electricity, natural gas, water, and communications services to residential customers [Agenda Item 44]. The CPUC first opened this proceeding by initiating an [Order Instituting Rulemaking](#) (OIR) in July 2018. [[24:1 CRLR 138–40](#); [24:2 CRLR 190–191](#); [25:1 CRLR 222–223](#); [25:2 CRLR 167](#)] Moving forward, the CPUC will use these metrics in rate setting proceedings and publish an annual report on the affordability of utility services in California.

The legislature charges the CPUC with making energy, water, and communications services affordable under various sections of the Public Utilities Code. At the July 16, 2020 meeting, Commissioner Rechtschaffen noted that in the past, the CPUC “tend[ed] to view these

services individually, one application at a time, one industry at a time.” He went on to explain that in developing this affordability framework, the CPUC sought to understand the affordability of all essential utility services rather than viewing individual bills in isolation.

Throughout this proceeding, consumer advocacy groups and utility companies questioned the CPUC’s ability to adequately assess affordability. [[25:1 CRLR 222–223](#)] The decision ultimately adopted by the Commission defines affordability as, “the degree to which a representative household is able to pay for an essential utility service, given its socioeconomic status.” [p. 10]

The Commission adopted three metrics to aid it in understanding how Californians are faring when it comes to paying for essential utilities: the socioeconomic vulnerability index (SEVI), the affordability ratio (AR), and hours at minimum wage (HM). The first metric, SEVI, uses publicly available data from the California Office of Environmental Health Hazard Assessment to measure the socioeconomic vulnerability of a given census tract. The SEVI metric describes the relative socioeconomic characteristics of communities. This metric allows for a deeper understanding of how the same rate impact may affect one community’s ability to pay more than others. The second metric, AR, seeks to quantify the percentage of a household’s income that is required to pay for an essential utility after removing housing costs from income. In essence, the AR metric analyzes the ratio of essential utility service charges to disposable household income. The third metric, HM, is the result of dividing the essential service charge for any given utility service by the minimum wage in that area. In this way, HM demonstrates how other variables, like minimum wage rates, impact the affordability of utility bills.

The July 16, 2020 decision referenced certain issues that the CPUC would continue to refine during the second phase of this proceeding. On September 10, 2020, the Public Advocates Office filed a [Motion to Amend the Scope of the Second Phase of R.18-07-006](#) and proposed to add two new issues to the scope of this proceeding: (1) the development and implementation of a rate and bill impact tracking tool for Class A Water Utilities, and (2) using the energy and water rate and bill impact tracking tools for ongoing support of the Commission’s work. On October 21, 2020, Commissioner Rechtschaffen issued a [Third Amended Scoping Memo and Ruling](#) to clarify the issues to be determined during this proceeding’s second phase and granted the motion of the Public Advocates Office. In addition to the areas suggested by the Public Advocates Office, the second phase will explore topics including (1) developing tools for calculating these metrics, (2) refining the methodologies for calculating these metrics, and (3) making the measurement of the affordability metrics publicly available and accessible.

The decision concluded with an order directing Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company to each submit quarterly rate and bill tracker tool information to the Commission’s Energy Division, and work with CPUC staff during a second phase of the proceeding with respect to using the rate and bill tracker tool for evaluating affordability metrics’ inputs and other ongoing support of the Commission’s work. That order became effective on July 16, 2020.

The CPUC Considers Regulating the Cost of Telecommunications Services Used by Incarcerated People ([R.20-10-002](#))

At its [meeting](#) on October 8, 2020, the CPUC unanimously voted to adopt an [OIR to Consider Regulating Telecommunications Services Used by Incarcerated People](#) (R.20-10-002) [Agenda Item 10]. The CPUC opened this OIR on its own motion. During this proceeding, the CPUC will consider how to ensure incarcerated people’s access to intrastate telecommunications services at rates that are just and reasonable. According to the OIR, the CPUC has not previously regulated the rates of telephone services provided to incarcerated people in California’s prisons and jails.

In the OIR, the Commission framed this proceeding as a response to a regulatory gap. Although the Federal Communications Commission (FCC) caps rates for interstate inmate calls, the FCC’s authority does not extend to intrastate calls. As noted in the OIR, the vast majority of calls made by incarcerated people are intrastate calls and are thus not subject to FCC regulation. For this reason, the CPUC noted that the FCC recently urged its state partners—including the CPUC—to take action to address high intrastate rates.

Pursuant to Public Utilities Code section 451, the CPUC has a statutory mandate to ensure that all charges demanded or received by any public utility are “just and reasonable.” In the OIR, the CPUC emphasized the high costs imposed on incarcerated people and their families as part of being in prison or jail. For example, the CPUC highlighted that the average cost of a fifteen-minute intrastate phone call placed from a California jail or prison is \$1.23, the twenty-eighth most

expensive in the nation. While these calls are free in some California counties, a fifteen-minute call from a young person incarcerated in a juvenile facility costs \$13.65 in San Benito County.

In this OIR, the CPUC further characterized these costs as an undue financial burden on low-income families and communities of color, both of whom face disproportionate rates of incarceration. The CPUC also noted that the COVID-19 pandemic has exacerbated many of these inequalities; during the pandemic, incarcerated people face significant limitations when attempting to access their families.

The Commission accepted public comments on this proceeding through November 9, 2020. Reply comments are due by November 19, 2020. The CPUC further ordered specified wireline service providers and others to respond to the following questions within thirty days of the Commission adopting this OIR:

1. Should the Commission exercise its authority to regulate the companies that provide those telecommunications services to incarcerated minors and people in California, and if so, how?
2. Should the Commission set rate caps for intrastate calling for incarcerated people, including video calls?
3. Should the Commission limit the types of additional fees providers can charge users of calling services for incarcerated people?
4. Should the Commission act to protect calling services for incarcerated people with communications disabilities by limiting charges for inmate calling services calls involving the use of text telephones?

At this writing, a number of stakeholders have submitted opening comments answering the four questions outlined in the October OIR; commenters included [TURN](#), the [Public Advocates Office](#), and companies providing telecommunications services to people incarcerated in California like [Securus Technologies, LLC](#).

Preliminarily, the OIR outlines a prehearing conference date of December 10, 2020, and a scoping memo due sometime during the first quarter of 2021. The Commission anticipates a decision on this proceeding sometime during the second or third quarter of 2021.

Commission Approves SDG&E Power Line Despite Opposition of Local Government and Homeowners

On October 5, 2020, the CPUC issued its [final decision](#) granting San Diego Gas & Electric Company's (SDG&E) request for a permit to construct the Tie Line (TL) 6975 San Marcos to Escondido project, ending the [three-year proceeding](#). The Commission voted unanimously to approve SDG&E's permit at its September 24, 2020 [meeting](#). According to SDG&E's original [application](#), filed on November 15, 2017, the project includes "the rebuild, new build, and re-conductoring/ re-energizing of approximately 12 miles of 69 kV overhead electric power line from the existing San Marcos Substation to the existing Escondido substation." SDG&E also asserts that the project is needed in order to "improve service reliability and reduce electricity congestion" in North County.

Throughout the CPUC's three-year proceeding, in considering whether or not to grant the requested permit, the Commission heard from the City of San Marcos, and a number of homeowners, who opposed the project. The opposition centered on arguments that the power line

will increase fire risks and decrease the value of homes in the area. For example, in response to Administrative Law Judge Brian Stevens' August 5, 2020, [proposed decision](#) to grant the permit, the City of San Marcos submitted [comments](#) in opposition to Tie Line 6975 on August 25, arguing that the [Final Initial Study/Mitigated Negative Declaration](#) (MND) prepared in support of the application did not comply with the California Environmental Quality Act (CEQA) as the impacts on the City, its residents, public property, and public in general were not sufficiently identified, evaluated, and/or addressed. Specifically, the City argued that the MND was not the proper environmental review document for the project because there was substantial evidence in the record indicating that the project may have a significant impact on the environment, thus requiring a full Environmental Impact Report before the project can be approved. The City also argued that the wildfire risk, noise impact, and visual impact analyses were insufficient and unsupported by expert opinion or evaluation.

Likewise, a coalition of homeowners associations and an individual, Dr. Robert H. Pack, submitted [joint comments](#) on the proposed decision on August 25, focusing on the increased fire risk, as well as the impact on a local scenic vista. These homeowners also argued for a full Environmental Impact Report before the permit can be granted.

The Commission heard public comment to this effect at its September 24, 2020 meeting, consisting almost entirely of opposition to the power line. Members of the public asked for the power line to be underground to mitigate fire risk and requested that a proper Environmental Impact Report be conducted. Some members of the public feared that a downed power line could spark a fire, while others spoke on the increased difficulty to obtain fire insurance. In response, SDG&E claimed that moving the lines underground would double or triple its cost.

The CPUC’s final order noted that SDG&E agreed to implement the CPUC’s recommended mitigation measures to reduce the impacts on wildfires, traffic, and other concerns, and concluded that “there is no evidence the project may have a significant impact on the environment that cannot be mitigated or avoided.” Commissioner Shiroma further noted during the public hearing that the project had a “thorough environmental assessment.” The mitigation measures with which SDG&E must comply when building the power line are set forth in [Attachment A](#) to the final decision.

While the October 5 decision ends the proceeding, some homeowners have reportedly stated their intent to appeal or sue to reverse the decision and prevent the building of the power line. At this writing, no such appeal has been filed.

The CPUC Jointly Issues Root Cause Analysis with Other State Agencies Regarding Rolling Blackouts

On October 6, 2020, the Commission issued a preliminary “[Root Cause Analysis](#)” with respect to California’s August 14 and 15, 2020, rolling blackouts—the first time in nearly 20 years that such outages occurred. The CPUC published the analysis in coordination with the California Independent System Operator (CAISO) and the California Energy Commission (CEC), after executives from all three agencies received a scathing [letter](#) from Governor Gavin Newsom on August 17, 2020, expressing his “deep concern about the broadscale de-energizations” that occurred in August. The Governor characterized the fact that the blackouts occurred without warning and sufficient time to prepare “unacceptable and unbecoming of the nation’s largest and most innovative state,” stating that the energy regulators “must do more to ensure reliable service

and to safeguard California’s energy future.” Accordingly, the Governor directed the agencies to prepare a report analyzing the causes of the supply deficiencies, why timely warnings were not provided, and potential actions that can be taken to minimize these events in the future.

The agencies collectively [responded](#) to the Governor on August 19, 2020, briefly describing factors that contributed to the blackouts, emphasizing the need for better collaboration among the agencies, and setting forth immediate actions each were taking to prevent further blackouts pending the completion of the root cause analysis.

The CPUC and its counterparts also came under fire from the legislature. On October 12, 2020, the Assembly Committee on Utilities and Energy held an oversight [hearing](#) with respect to the August blackouts, issued a [white paper](#) providing further background into the situation, and called on the executives from all three agencies to [present](#) the findings from the Preliminary Root Cause Analysis to the Committee.

The Preliminary Root Cause Analysis found that there was no single root cause for the blackouts, but identifies three categories of factors that contributed to them: the climate-change-induced extreme heat storm which resulted in demand for electricity exceeding the existing electricity resource planning targets; the failure, to balance supply and demand while transitioning to a reliable, clean and affordable resource mix; and practices in the day-ahead energy market that exacerbated the supply challenges under highly-stressed conditions.

The Preliminary Root Cause Analysis noted that all of these circumstances combined was an extraordinary event but acknowledged that it was the responsibility of the CPUC, CAISO, and CEC to plan for such extraordinary events. In a joint [press release](#) following the release of the Preliminary Root Cause Analysis, CPUC president Marybel Batjer commented, “[t]he extreme

heat storm in August was an extraordinary one-in-35-year event that, with climate change, is unfortunately, becoming more common, We will absolutely adjust our planning, procurement, and market policies to meet these changing circumstances and ensure our energy future is clean, reliable, and affordable for all Californians.”

In the aftermath of the blackouts, the CPUC approved [new measures](#) to prevent additional blackouts. These include additional clean energy generation and storage measures and a ten-year investment in the development of new technologies. In the Preliminary Root Cause Analysis, the CPUC outlined additional steps for future conditions similar to those during the August blackouts, including implementing an emergency procurement fund, improving market conditions through a stakeholder process, and partaking in statewide summer assessments and planning.

A final Root Cause Analysis is expected before the end of the year.

Commission’s Independent Watchdog Recommends \$166 Million Fine Against Pacific Gas & Electric (R.18-12-005)

On October 30, 2020, the Public Advocates Office, the consumer protection watchdog of the CPUC, recommended a \$166 million fine against Pacific Gas & Electric (PG&E) for failing to warn customers of multiple intentional power outages in October and November 2019.

The recommendation was filed in a [brief](#) before the CPUC as part of its ongoing [Order Instituting Rulemaking](#) to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions ([R.18-12-005](#)). The proceeding pertains to power outages or shutoffs that came during a spate of weather combining dry heat with high winds. The shutoffs were meant to prevent wildfires, which could be sparked by a downed PG&E power line. Customers across 38 counties

were affected, with some being without electricity for up to one week. In addition, during the blackouts, customers overwhelmed PG&E’s website and call centers seeking information. [[24:2 CRLR 198–200](#)]

The Public Advocates Office arrived at the \$166 million figure by assessing \$101,290,000 for failure to inform “Medical Baseline Customers” (customers who need electricity in order to power life-sustaining treatments); \$15,300,000 for PG&E’s failure to inform “Public Safety Partners,” such as hospitals and emergency responders; \$7,639,000 for “repeated failures to inform Customers, previously not notified”; and \$41,513,000 for “failures associated with PG&E’s unavailable website.”

In its brief, the Public Advocates Office notes that IOUs such as PG&E do have the ability to implement shutoffs in emergency situations under Public Utilities Code section 451. However, the Public Advocates Office notes that in order to comply with section 451, IOUs must give as much notice as possible to customers and partners. Further, IOUs could “remain liable for power interruptions that are initiated at wind speed conditions below the requirements set forth in General Order 95.” The Public Advocates Office claims that PG&E failed to meet these minimum standards.

PG&E responded with its own [brief](#), in which it claimed that climate change was causing increased and never-before-seen fire risks, which the company and state were still adapting to. PG&E further claims to have undertaken “a months-long process to educate, prepare, and support the company’s customers and communities, beginning long before the events of October 2019.” PG&E says these efforts included notifying “over 97% of the population affected by the events in question.”

In addressing claims about its website, PG&E asserts that though the website was overwhelmed by traffic during the October 9–12, 2019 shutoff due to the unprecedented nature of the events, it had the site ready in preparation for larger shutoffs during October 26–November 1, 2019. PG&E further stated that it is cooperating fully with regulators and seeking to learn from its mistakes, thus, penalties “in the context of unprecedented events in California or elsewhere, would serve little purpose.” Additionally, PG&E has already credited customers over \$86 million for these issues.

The Public Advocates Office’s recommendation comes after PG&E similarly shut off power to nearly 360,000 customers in October of 2020. This occurred during similar conditions in Northern California arising from strong winds and warm, dry weather.

Implementation of the penalty would require the approval of the judge overseeing proceedings against PG&E and the five members of the CPUC. According to the CPUC’s September 21, 2020 [ruling](#) setting a procedural schedule in this matter, the Presiding Officer’s Decision must be submitted within 60 days of the submission of the briefs, the last of which is due November 17, 2020.

Commission Approves Renewal of the Electric Program Investment Charge

On September 2, 2020, the CPUC issued [D.20-08-042](#), which renews the Electric Program Investment Charge (EPIC) (“the Program”) through December 31, 2030. The decision states that EPIC is the largest state-level public interest energy research program in the country, and its primary purpose, among other things, is to invest in greenhouse gas emission mitigation and low-

emission vehicles and transportation. The CPUC approved an annual budget of \$148 million for the first five years of the Program's extension, with an opportunity for inflation adjustment for the second five years.

[D.11-12-035](#) first authorized the program in 2012 to order three major California utility companies to create ratepayer surcharges for the year of 2012 to be the sole source of funding for the program. [D.12-05-037](#) then established three, three-year investment periods for the program through December 2020. In 2012, this same decision directed the hiring of an outside consultant upon completion of the first three-year investment period to evaluate the Program's management and effectiveness and identify opportunities for improvement. The resulting [Evaluation Report](#) in 2017 found EPIC was on track to achieve its program objectives of producing energy innovations and helping California meet its energy policy goals.

Based in part on this evaluation, and public comment from the August 27, 2020, [voting meeting](#), the CPUC concluded that EPIC has yielded tangible benefits thus far and believes it has the potential to help California meet its energy savings and carbon reduction commitments moving forward. The Commission referenced in its decision comments from utility companies that the decision terminated their involvement in the program. The Commission responded in its decision that it is not terminating the utilities' involvement but has simply pushed back a determination on their exact role in order to develop further detail and plans for the utilities. The decision also stated that the CPUC revised its decision to respond to concerns that the program does not provide certain ratepayer territories with enough value, although it did not explain what specific revisions were made. Some positive results the CPUC referenced include advancements in renewable integration that promotes a cleaner, modernized grid, more adaptable to electric vehicles; ratepayer benefits;

and potential savings estimates from EPIC investments that nearly match the Program's budget itself.

The 2020 decision states that Phase Two will address the role of the utility companies in the Program moving forward, who are included to facilitate research and development. The decision gives the companies 30 days after issuance of Phase One to file opening briefs.

Commission Expands Southern California Edison's Charge Ready 2 Transportation Electrification Program

On September 2, 2020, the CPUC issued [D.20-08-045](#) to authorize Southern California Edison's (SCE) Charge Ready 2 infrastructure program. With the decision, the Commission approves \$436 million in funding toward electric vehicle charge ports in SCE's service territory, which includes \$417.5 million for charging infrastructure; \$14.5 million for marketing, education, and outreach; and \$4.3 million for an evaluation of the Charge Ready 2 program.

SCE first filed [A.14-10-014](#) for approval to start Phase One of the program on October 30, 2014. According to CPUC's 2020 decision, the initial goals of Phase One were geared towards deploying charging stations, marketing, and education in support of electric transportation. SCE filed [A.18-06-015](#) on June 26, 2018, for approval of Phase Two of the program. The 2020 decision noted a number of issues with the second application, including whether the results of Phase One justified implementing Phase Two, whether Phase Two was in the interest of ratepayers, and whether Phase Two meets the goals of the Clean Energy and Pollution Reduction Act of 2015 ([SB 350 \(de León\) \(Chapter 547, Statutes of 2015\)](#)). [*see* [23:2 CRLR 165–166](#)] In its Phase Two

application, SCE initially sought \$760.1 million in funding for charging infrastructure installation and education and outreach programs.

In its 2020 decision, the CPUC made revisions in response to various comments the Commission received. Notably, the CPUC revised the decision to ensure costs associated with Phase Two are recovered by allocating program costs on an equal cents per kWh basis. The CPUC also declined to provide that all charging stations must be constructed by Electric Vehicle Infrastructure Training Program certified electricians, as was authorized in Phase One.

Among other things, the decision ordered SCE to submit its requests to the CPUC for adjustments to the program after 18 months of its implementation to address the program's status; a breakdown of costs to utilities, customers, and others; and an explanation of the efforts taken to reach the target number of charging ports, as well as any other challenges to customer interests.

The CPUC, in its decision, noted the significance of approving Phase Two on various emissions goals throughout the state. The decision moves California toward its goal of attaining 40% reduction of greenhouse gas emissions by 2030 and an 80% reduction by 2050.

Commission Issues Proposal for New Autonomous Vehicle Programs

On November 19, 2020, the CPUC will vote on whether to adopt Commissioner Shiroma's October 15, 2020, [Proposed Decision](#) Authorizing Deployment of Drivered and Driverless Autonomous Vehicle Passenger Service (Rulemaking 12-12-011). The Proposed Decision follows [D.18-05-043](#), dated June 6, 2018, in which the Commission created a framework for two pilot

programs to regulate both drivered and driverless autonomous vehicles (AVs) providing passenger services to the public.

The October proposed decision would create two new AV programs that authorize fare collection: one for drivered AVs and the other for driverless AVs. The programs would allow AV companies to provide passenger transportation services, charge fees, and offer shared trips. The proposal would also require applicants to the existing driverless pilot program, and the new driverless deployment program, to submit Passenger Safety Plans, and receive a permit from the Department of Motor Vehicles (DMV) in order to participate.

The Proposed Decision also establishes four main goals that apply to both the existing pilot programs and the new deployment programs: 1) protect passenger safety; 2) expand the benefits of AV technologies to all of California's communities; 3) improve transportation options for all, particularly for disadvantaged communities and low-income communities, and 4) reduce greenhouse gas emissions, criteria air pollutants, and toxic air contaminants, particularly in disadvantaged communities. The CPUC will collect various data to monitor each permit holder's progress towards all four goals by requiring permit holders in both drivered and driverless deployment programs to submit detailed quarterly program reports.

With respect to the goal to reduce greenhouse gas emissions, the Proposed Decision notes that on October 22, 2019, the Commission and the DMV hosted a workshop with AV providers, trade groups, advocacy groups, and public agencies to discuss the pilot programs, and subsequently ordered these groups to submit comments on the effectiveness of, and next steps for, the pilot programs, particularly with respect to the ways in which the CPUC should incorporate environmental and climate concerns into its program goals. While some groups proposed that the

CPUC focus on how to encourage electric vehicle (EV) adoption by permit holders, the October proposed decision declines to implement the promotion of EV adoption as a specified goal. The Commission reiterated that the goals of the new programs are to reduce greenhouse gases, criteria pollutants, and toxic air contaminants, and these objectives are appropriately reflected without including a formal goal to promote EV adoption.

MAJOR PUBLICATIONS

The following reports have been conducted by or about the CPUC during this reporting period:

- [*Deaf and Disabled Telecommunications Program Annual Report 2018–2019*](#), CPUC, April 2020. (Pursuant to Public Utilities Code section 914.5(a), provides annual report to the legislature summarizing the accomplishments of the Deaf and Disabled Telecommunications Program, a state-mandated program of the CPUC that provides deaf and disabled Californians with specialized telephone equipment and relay services.)
- [*Special Investigation Report on the CPUC*](#), State Personnel Board, August 6, 2020. (The State Personnel Board report called into question a series of hires made by the CPUC during the tenure of then-Executive Director Alice Stebbins (see HIGHLIGHTS).)
- [*Report to the Legislature on the Progress Reported by Investor-Owned Utilities in Procuring Goods, Services, Power, and Fuel from Women-Owned, Minority-Owned, Disabled Veteran-Owned, and LGBT-Owned Business Enterprises*](#), CPUC, September 2020. (Pursuant to Public Utilities Code section 910.3, provides annual report to the legislature regarding the progress reported to the CPUC by investor-owned utility companies in procuring goods,

services, power, and fuel from women-owned, minority-owned, disabled veteran-owned, and lesbian, gay, bisexual, and/or transgender-owned business enterprises (WMDVLGBTBEs) in 2019. Reports that the utilities' diverse expenditure from WMDVLGBTBEs increased by 2.83 percent, from \$12.32 billion in 2018 to \$12.66 billion in 2019.)

- [2020 California Solar Initiative \(CSI\) Annual Program Assessment](#), CPUC, June 2020 (Pursuant to Public Utilities Code section 913.7, provides yearly report to the legislature on the progress of the CSI program, which is overseen by the CPUC and was created to install 1,940 MW of customer-sited solar capacity and transition the solar industry into a self-sustaining one. Reports, among other things, that as of the end of 2019, California has exceeded its solar capacity goal at customer sites in the large IOU territories by 293% and its million solar roof goal established by the legislature in [SB 1 \(Murray\) \(Chapter 132, Statutes of 2006\)](#) through the CSI program.)

RULEMAKING

The following is a status update on recent rulemaking proceedings that the CPUC has initiated:

Internal

- [Resolution M-4846](#): Resolution Adopting Commission Enforcement Policy. On November 5, 2020, the Commission voted to adopt a new Enforcement Policy. Among other things, the Enforcement Policy established nine guiding enforcement principles; standardized existing enforcement tools, documents, and procedures; and created two new administrative tools—the Administrative Consent Order and the Administrative Enforcement Order.

- **R.18-07-006:** Decision Adopting Metrics and Methodologies for Assessing the Relative Affordability of Utility Service. On July 16, 2020, the Commission adopted a [decision](#) (D.20-07-032) which adopts metrics and methodologies for assessing the relative affordability of utility service—specifically, electricity, natural gas, water, and communications services to residential customers (see HIGHLIGHTS). [[24:1 CRLR 138–40](#); [24:2 CRLR 190–191](#); [25:1 CRLR 222–223](#); [25:2 CRLR 167](#)]

Energy

- **R.14-07-002:** OIR to Develop a Successor to Existing Net Energy Metering Tariffs. On April 23, 2020, the Commission issued [D.20-04-012](#), determining revenue availability and adequacy of participation and interest in the Solar on Multifamily Affordable Housing (SOMAH) Program. Pursuant to [AB 693 \(Eggman\) \(Chapter 582, Statutes of 2015\)](#) [*see* [23:2 CRLR 160–161](#)], the CPUC issued a decision to authorize continued allocation of funds to the SOMAH Program through June 30, 2026. AB 693 ordered the Commission to continue authorizing funds for this period if the Commission determined that revenues were available after 2020 and that there was adequate interest and participation in the program.

- **A.19-07-006:** Application of SDG&E for Approval of Electric Vehicle High Power Charging Rate. On April 24, 2020, the Commission issued [D.20-04-009](#), authorizing Interim Rate Waiver for Electric Vehicle High Power Charging, implementing an interim rate waiver for commercial and industrial customers of SDG&E with a dedicated revenue-grade utility meter installed to measure EV load. As part of its decision, the Commission found that the new plan

encourages charging during periods that are beneficial for grid management. The decision became effective as of April 16, 2020.

- [R.20-05-002](#): Order Instituting Rulemaking to Review Climate Credits for Current Compliance with Statute and for Potential Improvements. On May 15, 2020, the CPUC initiated a rulemaking proceeding to review current customer climate credits, provided by the state through the California Air Resources Board (CARB) Cap-and-Trade Program, to ensure the credits' compliance with statute and regulation. The rulemaking also considered what steps to take if a credit was no longer compliant and how the Commission could improve crediting processes. [see D.20-10-002 below]

- [R. 18-07-003](#): OIR regarding California Renewables Portfolio Standard Program. The Commission issued three decisions during this reporting period pertaining to this ongoing proceeding, which was first initiated in July 2018. This ongoing rulemaking proceeding was originally instituted in July of 2018 [24: [CRLR 152–153](#)]:

- On September 1, 2020, the CPUC issued [D.20-08-043](#), Revising Bioenergy Market Adjusting Tariff (BioMAT) Program. The decision extends the BioMAT Program end date to December 31, 2025, and adopts various rule changes to cost allocation, definition of “other agriculture” projects, directed biogas reporting, and guaranteed commercial operation date. The decision also changes various contract terms and processes. The decision became effective on August 27, 2020.

- On October 2, 2020, the Commission issued [D.20-09-022](#) on New Community Choice Aggregators' 2019 Renewables Portfolio Standard (RPS) Procurement Plans (Plans), PacifiCorp's On-Year Supplement, and EnerCal's Request for Waiver, accepting the 2019

RPS Plans submitted by four new Community Choice Aggregators (CCAs) who are expected to start providing electricity to customers in 2021. The decision also accepted PacifiCorp’s on-year supplement to its 2019 Integrated Resource Plan and granted the request of EnerCal USA, LLC for a waiver from filing RPS Plans, until EnerCal serves retail load.

○ On October 16, 2020, the Commission issued [D.20-10-005](#), Resuming and Modifying the Renewable Market Adjusting Tariff (ReMAT) Program. Of note, the CPUC modified aspects of the ReMAT Program to bring it in compliance with the Public Utility Regulatory Policies Act of 1978 (“the Act”) and Public Utilities Code section 399.20. Previously, the Program was suspended after the District Court for the Northern District of California granted summary judgment for plaintiffs on December 6, 2017, finding that the ReMAT Program violated the Act.¹ The Ninth Circuit affirmed.² [see [25:1 CRLR 272–273](#)]. The October decision adopted an electricity pricing methodology to calculate a fixed rate available to qualifying renewable generators and authorized the Energy Division to annually update the ReMAT prices and use an expanded data set and adjust the lookback period to include a complete data set of CCAs and Electric Service Providers. The decision also eliminated caps on procurement during bimonthly Program periods and instead authorized procurement at the authorized rate on a first-come, first-served basis until each electric utility fulfills its proportionate share of procurement under Public Utilities Code section 399.20.

¹ *Winding Creek Solar, LLC v. Peevey, et al.*, 293 F.Supp.3d 980 (N.D. Cal. 2017).

² *Winding Creek Solar, LLC v. Peterman, et al.*, 932 F.3d 861 (9th Cir. 2019).

- **A.18-06-115:** Application of Southern California Edison Company for Approval of its Charge Ready 2 Infrastructure and Market Education Programs. On September 2, 2020 the Commission issued [D.20-08-045](#), Authorizing Southern California Edison Company’s Charge Ready 2 Infrastructure and Market Education Programs (see HIGHLIGHTS).
- **R.19-10-005:** OIR regarding EPIC. On September 2, 2020, the Commission issued [D.20-08-042](#), renewing the EPIC Program (see HIGHLIGHTS).
- **R.19-01-11:** OIR Regarding Building Decarbonization. On September 24, 2020, the assigned ALJ, Jeanne M. McKinney, [ruled](#) to set a prehearing conference for October 9, 2020, and directed comment on the Energy Division’s [Phase II Staff Proposal](#) to address issues surrounding Phase II of the Decarbonization Programs. Phase II issues include: whether to implement programs to support the construction of decarbonized buildings in communities affected by wildfires; whether the Commission should change existing policies, rules, or procedures to better facilitate building decarbonization; and whether new policies, rules, and procedures should be adopted to facilitate the decarbonization of buildings. At this writing, the Commission has not issued a final decision on Phase II.
- **R.20-05-002:** OIR to Review Climate Credits for Current Compliance with Statute and for Potential Improvements. On October 16, 2020, the Commission issued [D.20-10-002](#), Addressing Threshold and Near Term Issues with Respect to Climate Credits. The decision confirms that the Commission will coordinate with CARB to ensure that decisions on climate credits made in this proceeding do not conflict with CARB policies. The decision also confirms that the CPUC will maintain the current method for determining the Small Business Climate Credit and continue to explore methods for a future decision and review funding levels and the timing for

the credit. Further, the decision extended existing formulas for large emissions intensive trade exposed entities until CARB begins to provide assistance or the Commission directs additional change. Additionally, the CPUC issued an [email ruling](#) on October 21, 2020, noticing a virtual workshop to address longer term issues of the rulemaking on November 17, 2020.

- **I.19-09-016:** Order Instituting Investigation to Consider Ratemaking and Other Implications for Proposed Plan for Resolution of Voluntary Case Filed by PG&E Pursuant to Chapter 11 of the Bankruptcy Code. On May 8, 2020 the CPUC [announced](#) that it had issued a [decision](#) approving PG&E’s reorganization plan, which completed its bankruptcy process. This approval was pursuant to statutory outlines made in [AB 1054 \(Chapter 79, Statutes of 2019\)](#), and in accordance with the CPUC’s own guidelines. The approved plan provides for increased oversight of PG&E, reform of its structure and compensation to victims affected by wildfires of 2017 and 2018. This includes a \$13.5 billion trust fund for wildfire victims. [[25:2 CRLR 163–166, 180–181](#)]

- **R.19-09-009:** OIR Regarding Microgrids Pursuant to SB 1339 and Resiliency Strategies. On June 11, 2020, the CPUC [announced](#) that it had issued [D.20-06-017](#), requiring large electric, investor-owned utilities to speed-up deployment of microgrids and other projects which seek to minimize the effects of power outages and shutoffs caused by wildfires. This mandates greater collaboration with local governments in order to protect those most vulnerable during shutoffs. The rulemaking proceeding is now in “Track 2,” which will focus on the more complex issues surrounding the implementation of [SB 1339 \(Stern\) \(Chapter 566, Statutes of 2018\)](#) regarding the commercialization of microgrids. Commissioner Shiroma issued a [scoping memo](#) on July 3, 2020, setting forth a schedule for Track 2, and the Commission has been considering

comments on staff's [proposal](#) for microgrids and resiliency strategies, issued July 23, 2020. [[see 25:1 CRLR 223–224; 24:1 CRLR 160–161](#)]

- **[R.18-07-005](#)**: OIR to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs. On June 11, 2020, the CPUC [announced](#) that it had issued [D.20-06-003](#) for Phase I of the proceeding, approving additional protections for utility customers to prevent future power disconnections. These protections were directed at the four major investor-owned utilities: PG&E, SCE, Southern California Gas Company, and SDG&E. They include debt forgiveness programs, elimination of deposits and reconnection fees and additional consumer protection measures. Pursuant to Commissioner Aceves' [Scoping Memo](#), issued on October 30, 2020, the proceeding has now entered the Percentage of Income Payment Plan phase. [[24:1 CRLR 146; 24:2 CRLR 200–201](#)]

- **[R.19-10-005](#)**: EPIC. On August 27, 2020, the CPUC [announced](#) that it had approved new measures to ensure electricity reliability. The Commission issued [D.20-08-042](#), which renewed EPIC for an additional ten years at a cost of \$1.48 billion. This will seek to support research and development of clean energy technologies. On the same day, the Commission approved seven new clean energy contracts with PG&E ([Res E-5100](#)), and the procurement of 770 megawatts of energy storage for SCE customers ([Res E-5101](#)).

- **[R.20-05-012](#)**: OIR Regarding Self-Generation Incentive Program (SGIP). On October 22, 2020, the CPUC [announced](#) that it had issued [D.20-10-025](#), revising SGIP to focus on energy storage for low income customers and those who are medically vulnerable. This includes \$108.5 million for the SGIP “equity budget” which incentivizes energy storage in low-income communities.

Telecommunications

A.18-07-011 & A.18-07-012: Consolidated Proceedings Regarding the Joint Application of Sprint Communications Co., LP and T-Mobile USA, Inc. For Approval of Transfer of Control of Sprint Communications Co., LP and Joint Application of Sprint Spectrum L.P. and Virgin Mobile USA L.P. and T-Mobile USA, Inc., for Review of Wireless Transfer Notification per Commission Decision 95-10-032. On April 27, 2020, the CPUC issued [D.20-04-008](#), approving the Merger of Sprint Communications Company and T-Mobile subject to certain conditions. On October 16, 2020, ALJ Karl J. Bemserderfer issued a [proposed decision](#) with respect to Sprint and T-Mobile's [Petition for Modification](#), granting their request to extend the compliance date for 5G wireless service but denying additional requested modifications. At this writing, the CPUC has not issued a final decision. On October 20, 2020, the CPUC [announced](#) the appointment of Dr. Douglas Sicker as its T-Mobile Compliance Monitor. Dr. Sicker, a Senior Associate Dean and Professor at the University of Colorado Denver, will oversee and evaluate whether T-Mobile is satisfying the conditions imposed by the CPUC in approving T-Mobile's acquisition of Sprint in April 2020. [\[25:2 CRLR 167\]](#)

- **R.18-03-011:** Wireless Provider Resilience Strategies. On June 11, 2020, President Batjer issued a [proposed decision](#) to adopt wireless provider resiliency strategies. On July 20, 2020, the Commission issued [D.20-07-011](#) outlining rules for wireless provider resiliency strategies. Under the decision, the CPUC required wireless providers to submit emergency operations plans, adopt a seventy-two-hour backup power requirement, and file comprehensive communications resiliency plans with the CPUC. [\[25:2 CRLR 167\]](#)

- **R. 20-02-008:** California LifeLine Program. The CPUC issued a series of decisions during this period pertaining to the California LifeLine Program, which provides discounts on home phone and cell phone services to qualified households. On June 5, 2020, the CPUC issued [D.20-05-043](#) temporarily suspending the renewal process for the California LifeLine program in response to the COVID-19 pandemic. On October 16, 2020, the CPUC further issued [D.20-10-006](#) establishing specific support amounts and minimum service standards for the California LifeLine program between December 1, 2020 and November 3, 2021. Additionally, this decision authorized the replacement of \$2.00 per month of reduced federal support for wireline participants between December 1, 2020 and November 3, 2021. On November 10, 2020, the Commission issued [D.20-11-006](#) modifying D.19-04-021 regarding iFoster, a pilot program for foster youth. Citing data usage increases during the COVID-19 pandemic, this decision raised the California LifeLine subsidized amount for communications services for eligible foster youth from \$25 per month to \$40 per month during the current school year.

- **R.18-03-011:** OIR Regarding Emergency Disaster Relief Program. On September 3, 2020, the CPUC issued [D.20-08-037](#) reaffirming its prior decision to fine AT&T \$3.75 million for refusing to provide information about how it delivers 911 service as well as for misrepresenting and disregarding the CPUC rules.

- **R. 20-10-002:** OIR to Consider Regulating Telecommunications Services Used by Incarcerated People. On October 8, 2020, the Commission unanimously voted to adopt an [OIR to Consider Regulating Telecommunications Services Used by Incarcerated People](#). The Commission opened this OIR on its own motion (see HIGHLIGHTS).

Transportation

- **R.12-12-011:** OIR Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services. On October 22, 2020, the CPUC issued for public comment a [proposed decision](#) that would allow autonomous vehicle companies to provide passenger transportation services, charge fares, and offer shared trips. The item may be heard, at the earliest, at the Commission’s November 19, 2020 Business Meeting (*see* HIGHLIGHTS). [[25:2 CRLR 167](#)]

- **R-19-02-012:** OIR to Implement Senate Bill 1376 Requiring Transportation Network Companies to Provide Access for Persons with Disabilities, Including Wheelchair Users who need a Wheelchair Accessible Vehicle. On April 21, 2020, Commissioner Shiroma filed an [Amended Track 3 Scoping Memo and Ruling](#) in an OIR that the Commission initiated in March 2019. Because the [Decision on Track 2 Issues](#) (D.20-03-007) raised some additional topics to be raised in Track 3 or failed to address some Track 2 issues, the April Scoping Memo modified the scope of Track 3 to include transportation network company offset requirements, Access Fund disbursement, reporting requirements, questions regarding advice letters, intervenor compensation, and additional transportation network company access issues. At this writing, the CPUC had not issued a proposed or final decision on Track 3 issues. [[25:1 CRLR 247–48](#); [25:2 CRLR 168](#)]

Wildfire

- **R.18-10-007:** OIR to Implement Electric Utility Wildfire Mitigation Plans Pursuant to SB 901 (2018). On June 11, 2020, the CPUC [announced](#) that it had ratified its Wildfire Safety

Division’s proposals to approve utilities’ [Wildfire Mitigation Plans](#) designed to decrease the risk of future wildfires. The proposal also includes additional conditions the utilities must meet. Additionally, the Commission issued a [press release](#) on June 30, 2020, announcing that the Wildfire Safety Advisory Board had adopted recommendations on the 2021 Utility Wildfire Mitigation Plan Guidelines, Performance Metrics, and Safety Culture at its June 24, 2020 Board meeting. According to the press release, the recommendations fall under six categories which include: structural improvements to the utility, recommendations on performance metrics, and recommendations on mitigation measures. The Wildfire Safety Advisory Board was created by [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#) and is mandated to make such recommendations to the CPUC. [[25:1 CRLR 224-225](#)]

LEGISLATION

Energy

- [SB 350 \(Hill\)](#), as amended on June 11, 2020, known as the Golden State Energy Act, amends a number of provisions in, and adds sections 222.5, 713, Article 7 (commencing with section 1825), and Division 1.7 (commencing with section 3400) to the Public Utilities Code, to authorize creating a nonprofit public benefit corporation, Golden State Energy, to acquire PG&E under specified circumstances, and to authorize the CPUC to petition a court to appoint a receiver to assume possession of and operate PG&E property, in the event that the CPUC determines such action, is necessary. Governor Newsom signed SB 350 on June 30, 2020 (Chapter 27, Statutes of 2020).
- [SB 702 \(Hill\)](#), as amended July 27, 2020, amends sections 399.13, 399.30, and 454.52 of the Public Utilities Code to authorize a retail seller of electricity to rely on contracts or

ownership agreements entered into by its end-use customer prior to January 1, 2019, to comply with a requirement for long-term contracts in the state's renewable energy program. According to the author, this bill will reverse an inequity on direct access customers who have made significant investments to advance the level of renewables in California due to an unintended consequence of the last significant change in RPS law. Governor Newsom signed SB 702 on September 29, 2020 (Chapter 305, Statutes of 2020).

- [AB 841 \(Ting\)](#), as amended August 28, 2020, amends section 740.12 of, adds sections 740.18, 740.19, and 740.20 to, and adds and repeals Chapter 8.7 of Part 1 of Division 1 of the Public Utilities Code to require the CPUC to approve specified transportation electrification vehicle charging applications by electric IOUs and make changes to allow electric IOUs to more easily recover costs from electric ratepayers for the deployment of transportation electrification vehicle charging infrastructure. The bill also establishes new programs at the California Energy Commission to fund appliance, plumbing and heating, ventilation, and air conditioning upgrades to local education agencies using ratepayer-funded energy efficiency incentives. According to the author, this bill ensures ratepayer dollars are used to invest in clean and efficient technologies that improve public health and help the environment. Governor Newsom signed AB 841 on September 30, 2020 (Chapter 372, Statutes of 2020).

Telecommunications

- [AB 82 \(Committee on Budget\)](#), as amended June 29, 2020, and as it applies to the CPUC, amends section 281 of the Public Utilities Code regarding infrastructure projects that provide broadband access. The bill makes a number of changes to the CPUC's administration of

the California Advanced Services Fund, including allowing the Commission to award funds to projects that also receive federal funds through the Rural Digital Opportunity Fund program. Governor Newsom signed AB 82 on June 29, 2020 (Chapter 14, Statutes of 2020).

- [AB 2421 \(Quirk\)](#), as amended July 31, 2020, adds and repeals section 65850.75 of the Government Code regarding land use and emergency standby generators for wireless communications. New section 65850.75 requires cities and counties, until January 1, 2024, to expedite the permitting of emergency standby generators for macro cell tower sites with the goal of maintaining cellular communications during implemented power shutoffs. Governor Newsom signed AB 2421 on September 29, 2020 (Chapter 255, Statutes of 2020).

Transportation

- [Proposition 22](#) is an initiative measure that adds Chapter 10.5 (commencing with section 7448) to Division 3 of the Business and Professions Code and amends section 17037 of the Revenue and Taxation Code. Among other things, Proposition 22 enables app-based rideshare and delivery companies to hire drivers as independent contractors.

Previously, [AB 5 \(Gonzalez\) \(Chapter 296, Statutes of 2019\)](#) provided the standard for determining whether app-based drivers should be classified as employees or independent contractors. AB 5 codified the so-called “ABC test,” three requirements developed in the California Supreme Court case *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) that presume that a worker is an employee unless a hiring entity satisfies a three-factor test. As employees, drivers would get standard job benefits and protections unavailable to independent contractors. On October 22, 2020, the First District Court of Appeal—citing AB 5—[affirmed a](#)

[preliminary injunction](#) requiring Uber and Lyft to classify their drivers as employees and not as independent contractors.

On November 3, 2020, voters approved Proposition 22 with about 58% of the vote, although the results will not be fully certified until December. In doing so, voters enabled app-based rideshare and delivery companies to hire drivers as independent contractors subject to certain conditions. Additionally, Proposition 22 provides a net earnings floor for app-based drivers; requires companies to provide a quarterly healthcare subsidy to qualifying drivers; requires California transportation network companies to carry, provide, or otherwise make available occupational accident insurance; and prohibits drivers from logging in and driving on an application or platform for more than twelve hours in any twenty-four hour period, subject to certain conditions. Proposition 22 also contains provisions regarding antidiscrimination, sexual harassment prevention, driving under the influence, driver safety training, and local and national criminal background checks for drivers. Proposition 22 further provides that the legislature may amend this chapter only if such a statute is consistent with and furthers the purpose of Proposition 22. Additionally, such a statute would need to garner a seven-eighths vote in each chamber.

The effective date of Proposition 22 is governed by the California Constitution at Article II, section 10. Proposition 22 will go into effect five days after the Secretary of State files the Statement of Vote for the 2020 election, which will report the county-by-county votes cast for Proposition 22. At this writing, the Statement of Vote has not yet been filed, but it is anticipated that Proposition 22 will likely go into effect sometime in mid-December 2020.

The following bills, reported in Volume 25, No. 2 (Spring 2020), died in committee or otherwise failed to be enacted during the 2019–2020 legislative session: [SB 1198 \(Durazo\)](#),

relating to subsurface gas installation; [SB 862 \(Dodd\)](#), relating to deenergization events; [AB 1916 \(Chu\)](#), relating to emergency services; [SB 801 \(Glazer and McGuire\)](#), relating to backup electrical resources; [SB 802 \(Glazer\)](#), relating to electrical corporations and cooperatives; [SB 952 \(Nielsen\)](#), relating to tax exemptions; [SB 1185 \(Moorlach\)](#), relating to air districts; and [SB 1448 \(Bradford\)](#), relating to Wildfire Mitigation Plans.

LITIGATION

- ***Clopton v. Cal. Pub. Util. Comm’n*, No. CGC-17-563082 (Cal. Super. Ct. San Francisco, filed Mar. 8, 2018).** On July 24, 2020, counsel for the CPUC filed a [Notice of Settlement](#) in an ongoing employment dispute between former Administrative Law Judge Karen Clopton and the Commission, specifying that the entire case had settled unconditionally. On September 3, 2020, Judge Clopton’s attorney filed a [Request for Dismissal](#) and the court dismissed the entire action with prejudice. [[23:1 CRLR 213](#); [23:2 CRLR 185–186](#); [24:1 CRLR 170–171](#); [24:2 CRLR 219–220](#); [25:1 CRLR 266](#); [25:2 CRLR 178–179](#)]

- ***Am. Cable Ass’n v. Becerra*, No. 2:18-cv-02684 (E.D. Cal., filed Oct. 3, 2018).** On August 5, 2020, Plaintiffs, comprised of a number of trade associations in the cable industry, filed their [First Amended Complaint](#) in this matter, seeking declaratory and injunctive relief with respect to the constitutionality of the California Internet Consumer Protection and Net Neutrality Act of 2018, [SB 822 \(Weiner\) \(Chapter 976, Statutes of 2018\)](#). Specifically, they assert that the Act is preempted by federal law. Plaintiffs filed the amended complaint pursuant to a July 30, 2020 [Order Regarding the Resumption of Litigation and Scheduling](#), after the matter had been stayed since October 2018 pending the final resolution of *Mozilla Corp. v. Fed. Commc’n Comm’n*, 940

F.3d 1 (D.C. Cir. 2019). In that case, the D.C. Circuit held that states are not preempted by the FCC's net neutrality rules under the Trump administration. That decision became final and non-appealable on July 6, 2020. Oral arguments on the pending [Renewed Motion for Preliminary Injunction](#) are scheduled for January 26, 2021. [[24:1 CRLR 175](#); [24:2 CRLR 225–26](#); [25:1 CRLR 274–76](#); [25:2 CRLR 179](#)]

- ***MetroPCS Cal., LLC v. Picker*, 970 F.3d 1106 (9th Cir. 2020).** On August 14, 2020, the Ninth Circuit issued a [decision](#) reversing and remanding a prior grant of summary judgment in favor of Plaintiff-Appellee MetroPCS (*MetroPCS Cal. LLC v. Picker*, 348 F. Supp. 3d 948 (N.D. Cal 2018)). MetroPCS, a subsidiary of T-Mobile, offers prepaid cell phone plans in California and is required by federal law to remit a portion of its interstate revenue to the federal Universal Service Fund, which helps provide affordable telecommunications access. The FCC implements this rule and has adopted specific factors for calculating the amount owed. In 2014, California enacted the Prepaid Mobile Telephony Service Surcharge Collection Act, ([AB 1717 \(Perea\) \(Chapter 885, Statutes of 2014\)](#)), imposing its own surcharges on prepaid wireless customers for intrastate revenues, the calculations of which are determined by the CPUC's resolutions. MetroPCS filed a lawsuit, arguing that these resolutions are preempted by the FCC's decisions implementing the federal law, and the District Court agreed. On appeal, the Ninth Circuit held that the CPUC's resolution regarding the intrastate allocation factor was not facially preempted by the FCC's policy that universal service rules cannot unfairly advantage one provider over another. Additionally, the Ninth Circuit held that the CPUC's actions were not facially

preempted by the FCC's ruling permitting states to impose universal service contributions on intrastate interconnected Voice over Internet Protocol providers.

On remand before the United States District Court for the Northern District of California, Judge Susan Illston held a telephonic Case Management Conference regarding this case on September 25, 2020. A motion hearing is set for April 16, 2021 before Judge Illston.

- ***Cannara, et al. v. Nemeth, et al.*, Case No. 19-CV-04171, 467 F. Supp. 3d 877 (N.D. Cal. June 17, 2020); No. 20-16202 (9th Cir.)** On June 17, 2020, Judge James Donato of the Northern District of California [granted](#) the CPUC and other defendants' motion to dismiss plaintiff ratepayers' claims that the Commission unlawfully sought to impose charges on ratepayers in implementing [AB 1054 \(Holden\) \(Chapter 79, Statutes of 2019\)](#), which established a fund to help cover the losses from future wildfires caused by public utilities. Plaintiffs filed the complaint on July 19, 2019. [[25:1 CRLR 271–72](#)] In dismissing the case, the District Court held that the action was a challenge to an order affecting utility rates, and thus would preclude federal court jurisdiction under the Johnson Act, and that the Commission's underlying proceeding imposing the rates satisfied the reasonable notice and hearing requirements of Johnson Act, also precluding federal court jurisdiction over ratepayers' action. Plaintiffs appealed to the Ninth Circuit, and briefs are currently pending.

- ***Pacific Gas & Electric Company v. Federal Energy Regulatory Commission*, Case No. 19-71615 (9th Cir.)** On October 7, 2020, the Ninth Circuit Court of Appeals issued a [decision](#) dismissing PG&E's petitions for review of two orders of the Federal Energy Regulatory Commission (FERC), and directed FERC to vacate its orders. The court also dismissed FERC'

appeal from the order of the bankruptcy court. The court emphasized that it was not ruling on the merits, but rather that both of these issues were rendered moot upon entry the bankruptcy court order confirming a Chapter 11 plan that required PG&E to assume, rather than reject, the contracts at issue. [[24:2 CRLR 223–224](#); [25:1 CRLR 237–238, 268–270](#)]

United States v. Pacific Gas & Elec. Co., Case No. 14-CR-00175-WHA (N.D. Cal.). On October 20, 2020, U.S. District Judge William Alsup, who is supervising PG&E’s criminal probation and monitoring the utility’s safety compliance following PG&E’s role in a deadly gas pipeline explosion in San Bruno, issued an [order](#) directing the utility to respond to a letter from the court-appointed monitor assessing PG&E’s safety standards by November 3, 2020. According to the order, the monitor reported to the court that PG&E’s court supervised tree-trimming was focused more on meeting numerical targets than reducing wildfire risk. The Monitor also reported that as of August 31, 2020, PG&E failed to conduct any enhanced, ignition-based climbing inspections of the 967 applicable transmission structures selected for 2020 inspections in high-fire threat districts, and that this shortcoming was caused by “human error, lack of oversight, miscommunications, and failure to appropriately escalate matters.” PG&E submitted its response under seal with the court’s permission. Three days later, on November 6, 2020, Judge Alsup issued another order pertaining to evidence in the investigation of the deadly Zogg fire, stating, “The Court has read today that PG&E has used a helicopter to haul away potential evidence from the Zogg Fire. By this order, PG&E shall not destroy or despoil any of the evidence so removed and shall keep it preserved with records sufficient to show its exact locations when removed.” At this writing, PG&E has not submitted a response in this proceeding.