

Memorandum

To: ISO Board of Governors

From: Mary McDonald, Director of State Affairs
Terri Moreland, Director of Federal Affairs
Karen Edson, Vice President of External Affairs

Date: May 8, 2009

Re: *Status of State and Federal Legislative Matters*

This memorandum does not require Board action.

State Affairs

Mary McDonald and Grant Rosenblum, Manager of Renewable Integration, have been briefing members of the California Legislature on the California Independent System Operator Corporation's (the ISO) renewable integration efforts. They have met with Assembly Members Felipe Fuentes, Chair of the Assembly Utilities & Communication Committee; Michael Duvall, Vice-Chair; Warren Furutaini and Brian Nestande, along with Senators Alex Padilla, Chair of the Senate Energy, Utilities & Communication Committee; John Benoit, Vice Chair; Roderick Wright and Randy Chinn, the Principle Consultant to the Senate's Energy, Utilities & Communication Committee.

The legislators and members of their staff have been to visit the ISO for tours and briefings regarding the operation of the grid and the demand response lab. These discussions have particularly helpful due to the volume of energy legislation that is currently under consideration in the legislature.

State Legislative Schedule:

- May 22: Last day for policy committees to meet prior to June 8 (J.R. 61(a)(4)).
- June 5: Last day for bills to be passed out of the house of origin (J.R. 61(a)(8)).
- June 15: Budget must be passed by midnight (Art. IV, Sec. 12(3)).
- July 17: Summer recess begins upon adjournment, provided the State Budget Bill has been passed (J.R. 51 (a)(3)).
- Aug. 17: The Legislature reconvenes from summer recess (J.R. 51 (a)(3)).

Sept. 11: Last day for any bill to be passed (J.R. 61(a)(14)). Interim recess begins on adjournment (J.R. 51(a)(4)).

As legislative deadlines approach, many measures have been passing out of their first policy committees with few changes other than what was recommended in the committee analyses.

Legislation:

The ISO is currently tracking 143 energy-related bills. Of these, 38 have the potential to affect the ISO; while seven of the bills mention the ISO specifically.

AB 45 (Blakeslee) Distributed Generation: small wind energy systems.

Last Amended: April 13, 2009

Current Location: Assembly Local Government Committee

Summary: The renewables portfolio standard (RPS) requires each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. This bill would authorize a local agency to provide for the installation of small wind energy systems and to establish a process for the issuance of conditional use permits for these systems.

AB 64 (Krekorian) Energy: renewable energy resources: generation and transmission.

Last Amended: April 15, 2009

Current Location: Assembly Natural Resources Committee. Set to be heard April 27.

Summary: This bill amends California's RPS to require 33 percent by 2020. It establishes flexible ranking criteria for contracts, including price, time of delivery, dispatchability, and location. Preference is given to California suppliers. It requires a benchmark price to capture cost and benefits of renewable energy as well as a cost cap for total expenditures for resources above benchmark prices. This bill also establishes the Renewable Infrastructure Authority (RIA) to formalize the Renewable Energy Transmission Initiative (RETI) process and serve as the lead agency for siting renewable facilities over 5MW among other things. The bill calls for the president of the ISO Governing Board to sit on the RIA.

AB 51 (Blakeslee) Public Utilities Commission: demand-side management programs.

Amended: April 14, 2009

Current Location: Assembly Utilities and Commerce Committee

Summary: This bill would require the California Public Utilities Commission (CPUC) to require that at least 90 percent of energy efficiency program funds expended are used for direct implementation of energy efficiency programs and would define direct implementation to include incentives and rebates and to exclude administrative, marketing, and outreach costs. This bill contains other related provisions and other existing laws.

AB 1016 (Villines) Energy: commission and department.

Current Location: Assembly Utilities and Commerce Committee

Summary: The aim of the reorganization is to consolidate the State's authority for energy policy and related functions. Specifically, the bill will create the California Department of Energy (CDOE) with a cabinet-level Secretary of Energy. The Energy Secretary will also serve as the Governor's Principal Advisor on energy matters, as well as the Chairperson of a newly configured Energy Commission (which would continue its current licensing and regulatory responsibilities with support from CDOE staff). The energy related functions such as transmission siting, building efficiency and appliance standards will be housed in the CDOE.

This bill proposes to streamline the siting of vital electric generation infrastructure necessary to meet the State's RPS goals, and will create within the CDOE a one-stop licensing process for renewable power plants 50 megawatts (MW) and greater, which will apply to all renewable technologies and transmission line projects.

Within the CDOE would be a newly configured California Energy Commission (CEC), chaired by the CDOE Secretary. Four other Commission members would be appointed by the Governor and subject to Senate confirmation. In addition, three *ex officio* members would serve on the Commission, including the Chief Executive Officer (CEO) of the ISO.

A newly created Office of Energy Market Oversight would assume the responsibilities of the Electricity Oversight Board (EOB) and be tasked with overseeing the ISO by acting as the appeal body for ISO Board members regarding certain ISO Board decisions and by approving any amendment to ISO bylaws following adoption by the ISO Board. Additionally, the CDOE would conduct market monitoring and oversight functions in conjunction with the ISO.

The ISO has concerns with this measure and a similar measure, AB3X 33.

The chief concern is that the bill makes the "chief operating officer" of the ISO a member of the Energy Commission. If this were to become law it is unclear how the staff could interact with the ISO CEO in matters coming before the Energy Commission. As a member of the Commission the ISO CEO would be a state official, subject to the requirements of the Political Reform Act (such as financial disclosure rules), but the ISO staff would not be state agency employees.

Second, the bill amends provisions of existing law related to the ISO and the EOB that are obsolete because they address "start-up" issues related to the ISO.

Third, some functions of the EOB that are carried forward to the Office of Energy Market Oversight are unnecessary and misdirected because the structure of the ISO has changed from governance by a large market participant board to a five member board of Governor's appointees.

Fourth, the Office of Energy Market Oversight's proposed investigative and monitoring function as it relates to wholesale electricity market practices is limited under the Supremacy Clause of the United States Constitution because the Federal Power Act vests in FERC exclusive regulatory authority on the regulation of such practices. As an ISO, the California ISO is restricted on the amount of investigative support it may provide a state agency's investigation of such practices.

AB 1016 has now become a two year bill, but AB3X 33, which contains most of the same provisions has been introduced in the 3rd Extraordinary Session. It has made some minor edits suggested by the ISO such as deleting some obsolete language. It has corrected some obvious errors such as changing “chief operating officer” to “chief executive officer.”

AB 1283 (Smyth) Public Utilities Commission: review of pending legislation.

Amended: April 14, 2009

Current Location: Assembly Utilities and Commerce Committee

Summary: This bill would require the CPUC to consult with the ISO in order to advise the Legislature whenever it comes to the attention of the commission that a bill that is pending before the Legislature would likely (1) reduce the reliability of the electrical transmission and distribution system in any area of the state, (2) result in a shortage of electricity needed to meet projected demand in any area of the state.

AB 1305 (V. Manuel Perez) Air pollution: imported electricity: mitigation fee.

Amended: March 31, 2009

Current Location: Assembly Utilities and Commerce Committee

Summary: This bill imposes a \$0.001 per kilowatt-hour air contaminant emission electricity generation mitigation fee on any person that imports certain electricity into the state, or causes that electricity to be imported into the state. In order to determine the amount of electricity that is imported into the state from an electrical generating facility, the state board shall consult with the ISO. Generating facilities subjected to the fee must meet certain requirements.

SB 14 (Simitian, Kehoe, Padilla, Steinberg) Utilities: renewable energy resources.

Amended: March 24, 2009

Current Location: Held at desk.

Summary: This measure addresses a broad range of issues. Among other things, it requires investor-owned and municipal utilities to achieve a 33 percent RPS by December 31, 2020, restricts direct access and addresses AB1X provisions. Additionally, it mandates that the California Energy Commission (CEC) facilitate, in consultation with the ISO and the publicly owned utilities, a process for the execution of seams agreements; the development of a statewide transmission plan; and the siting and approval of new transmission lines that can be jointly owned or utilized by IOUs, municipal utilities, and merchant transmission companies. The measure states that through this process the transmission could be jointly operated by the ISO and municipal utilities. SB 14 also mandates the ISO to undertake all feasible efforts to seek the approval of FERC if necessary to: 1) Adjust its market structure to achieve 33 percent RPS in the most cost-effective manner possible; and 2) Develop a statewide transmission plan in consultation with the publicly-owned utilities that incorporates the publicly-owned utilities transmission plans and potential joint privately-owned and publicly-owned infrastructure projects. Finally, the bill also has several implications for the CPUC. It requires the Governor to appoint, subject to the approval of the Senate, a president of the CPUC from among its members; repeals the requirement that the president direct CPUC staff and mandates that the CPUC hold one meeting a month in Sacramento.

The ISO collaborated with the Sacramento Municipal Utility District (SMUD) and the Los Angeles Department of Water and Power (LADWP) to develop suggested amendments to SB 14. After a meeting with the author's office, he committed to accepting the amendments we proposed.

SB 32 (Negrete-McLeod) Renewable electric generation facilities.

Amended: April 14, 2009

Current Location: Senate Appropriations Committee

Summary: This bill requires the CPUC to increase the 1.5 MW Feed-in Tariff (FIT) to 3 MW. New contract terms would remove the requirement that the contracting party be a customer of the IOU and allow the CPUC to adjust the rate of the FIT to include time-of-delivery, the attributes of renewable generation and the locational value of the renewable resource relative to the distribution circuit. This bill requires publicly-owned utilities (POUs) that serve more than 75,000 retail customers to make a renewable energy FIT available for facilities up to 3 MW. Each POU would be limited to its proportional share of a 250 MW statewide cap. This bill requires the CPUC, in consultation with the ISO, to monitor and examine the impacts of the FITs established by this measure on the transmission and distribution grid.

The ISO will be seeking clarifying amendments to this bill.

SB 42 (Corbett) Coastal resources: once-through cooling.

Current Location: Senate Energy, Utilities and Communications Committee

Summary: This bill would prohibit a state agency, as defined, from authorizing, approving, or certifying a new powerplant or industrial facility, as defined, that uses once-through cooling, as defined. The bill would require the State Water Resources Control Board (state board) to adopt and implement a statewide policy on once-through cooling at coastal and estuarine powerplants. The bill would also require each regional water board to review and issue a powerplant's national pollutant discharge elimination system (NPDES) permit for its once-through cooling system within six months of the expiration of that permit.

After substantial contact with the author's office, the bill was set to be heard in the Senate Energy, Utilities and Communications committee on April 21. At the start of the hearing, Chair Alex Padilla announced that SB 42 is now a two-year bill, meaning the soonest it will be acted on is next year.

SB 655 (Padilla) Independent System Operator: California Renewables Portfolio Standard Program: greenhouse gas emissions.

Amended: Not yet amended

Current Location: Senate Appropriations Committee

Summary: This bill replaces the requirement that the grid be managed consistent with applicable state law intended to protect the public's health and the environment with the requirement that the grid be managed consistent with supporting implementation and compliance with California's RPS and greenhouse gas emission reduction laws.

The ISO is concerned that this bill confuses our roles and responsibilities by mandating that the ISO assist in the compliance of RPS and Green House Gases (GHG) mandates. Compliance is a

function better carried out by state agencies, not a federally regulated entity such as the ISO. Our concerns with the bill have been communicated to the author's office through meetings with Senator Padilla's staff, and we continue to work with them to amend the bill.

SB 696 (Wright) Air quality: CEQA exemptions: emission reduction credits.

Amended: April 13, 2009

Current Location: Senate Energy, Utilities, and Communications Committee

Summary: The California Environmental Quality Act (CEQA) requires a lead agency to prepare and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect.

SB 805 (Wright) Energy: renewable energy resources: procurement.

Amended: April 14, 2009

Current Location: Senate Appropriations Committee

Summary: This bill requires retail sellers to increase their purchases of renewable energy so that 33 percent of retail sales are procured from renewable energy resources by December 31, 2020 with no regulations on the amount of energy procured from out-of-state generation and eliminates the one percent annual target that is in existing law. It also prohibits the CPUC from finding a retail seller out of compliance with the RPS if they find that an insufficient supply of resources is available or that there has been a lack of competitive offers for resources. The bill also caps the direct and indirect costs for compliance with the RPS at three percent of a utility's annual revenue for the previous calendar year, commencing January 1, 2012. Additionally, the bill permits a retail seller or a Publicly Owned Utility (POU) to meet up to 25 percent of its RPS goal with unbundled renewable energy credits (RECs) from renewable energy resources located anywhere outside of California but within the territory of the WECC. RECs may be used to satisfy the RPS provided the electricity is delivered to a retail seller, the ISO, or a local publicly owned electric utility.

Federal Affairs

Congress:

House and Senate leaders continue to work toward producing comprehensive energy legislation incorporating clean energy technology deployment, renewable energy standards, energy efficiency, transmission infrastructure development, improved energy market transparency, and greenhouse gas controls. While more than 50 relevant bills have already been introduced in the 111 Congress, the principal congressional focus to date has been on the bills introduced by key committee leadership.

In the Senate, Senate Majority Leader Harry Reid (D-NV) and Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) have indicated that they will address major issues individually, then incorporate the resulting bills into omnibus legislation to be taken up later this year. To begin, both Reid and Bingaman have offered legislative proposals that include transmission planning, siting and cost allocation.

Senator Reid's bill, S. 539 ("Clean Renewable Energy and Economic Development Act") is focused on developing new transmission lines that would allow renewable energy to reach a wider market. The bill requires the President, in consultation with Governors, the public, utilities, state regulators, regional electricity planning organizations and others, to identify "National Renewable Energy Zones" in each interconnection that have significant renewable resources but lack sufficient transmission capacity to achieve their potential. FERC must designate one or more regional entities to produce an "interconnection-wide green transmission grid project plan" designed to enhance access for renewable energy in these zones. FERC would have siting authority for lines that would carry at least 75 percent renewable energy. FERC would also have backstop planning and cost allocation authority for lines in these corridors. The transmission provider would certify annually to FERC that the 75 percent renewables criterion is met.

Senator Bingaman's proposal (still unnumbered) does not limit FERC authority to renewable energy. The measure would provide for FERC to certify one or more regional entities to prepare a centralized, interconnection-wide transmission plan as part of the "national interstate transmission system." FERC could approve or modify the plan, and would have exclusive authority to site "high priority national transmission projects." Planning for high-priority projects is focused on maximizing net benefits of the system, including development of new renewable generation capacity, emission reductions, alleviation of congestion, and enhancement of competition in electricity markets.

In the House, Energy and Commerce Committee Chairman Henry Waxman has determined to advance all of the issues in one omnibus bill. He convened four days of hearings during the week of April 20 on the 648-page climate and energy discussion draft that he and Energy and Air Quality Subcommittee Chairman Ed Markey (D-MA) have written. Entitled the "American Clean Energy and Security Act of 2009," the draft would establish a cap-and-trade program to reduce emissions 20 percent below 2005 levels by 2020 and create a 25 percent renewable portfolio standard by 2025. It also includes provisions on energy efficiency, vehicle emission standards, smart grid development, and promotion of plug-in vehicles. The transmission section of the bill contains a policy statement endorsing regional grid planning to facilitate deployment of renewables and zero-carbon resources while ensuring reliability, reducing congestion, protecting cybersecurity and providing cost-effective service. It also states that regional planning should consider demand as well as supply resources. Unlike the Reid and Bingaman bills in the Senate, which establish backstop planning, siting and cost allocation authority for FERC in certain circumstances, the Waxman-Markey bill limits FERC's role to assistance with regional planning.

Chairman Waxman has said that he hopes to mark up the bill in full committee during the week of April 27. Democrats hold a 36-23 majority on the committee, but moderate Democrats are expected to weigh in with significant suggestions on how the bill can be modified to help protect auto manufacturers, regions without major renewable resource potential, areas that are coal-dependent, and other interests. The allocation of emission credits produced in a cap-and-trade program is not yet determined and continues to be a highly contentious issue, as is the impact of cap-and-trade implementation on consumers and businesses.

The Administration:

President Obama: On March 20 the President announced the designation of Commissioner Jon Wellinghoff as Chair of FERC and his intent to renominate Commissioner Suedeen Kelly for another term. The designation of Wellinghoff as Chair does not require Senate confirmation. Commissioner Kelly must be confirmed for her new term. Her current term expires on June 30, 2009.

On March 25 the President issued a memorandum for executive departments and agencies intended to ensure that American Reinvestment and Recovery Act funds will be expended for projects that further job creation and economic recovery. The memorandum establishes four specific criteria for projects: 1) demonstrated or potential ability to deliver programmatic results; 2) optimized number of jobs created or saved in relation to federal dollars allocated; 3) ability to achieve long-term public benefits, foster energy independence or improved educational quality; and 4) ability to satisfy the Act's transparency and accountability objectives.

FERC: On April 2, FERC filed a petition seeking an *en banc* hearing asking the U.S. Court of Appeals for the Fourth Circuit to reconsider the ruling in the case of *Piedmont Environmental Council v. FERC*, which rejected FERC's ability to invoke backstop siting authority under the Energy Policy Act of 2005's National Interest Electric Transmission Corridors provisions. The only related proceeding at FERC to date involves Southern California Edison's application to build the Arizona portion of the Devers-Palo Verde No. 2 project. FERC's request for the court to reconsider its decision on the matter argued that "Congress intended to permit FERC to exercise jurisdiction when a state denies a permit that is necessary to ensure reliability of the national transmission grid, not just to exercise jurisdiction when a state has not ruled on the application one way or another for a certain period of time."

At his first meeting as the official FERC Chair on April 17, Commissioner Wellinghoff named his priorities for the commission as "the intersection between environmental policy and energy policy." He also reiterated his interest in fostering competitive energy markets, developing energy infrastructure and maintaining FERC's oversight of markets and reliability standards. Chairman Wellinghoff also announced the establishment of a new Office of Energy Policy and Innovation that will focus on efficiency of markets, integrating renewable energy resources, and fostering demand response. The new Office will include the Energy Innovations Sector and the Division of Policy Analysis and Rulemaking, which were formerly under the Office of Energy Market Regulation.

DOE: On April 16, the Department of Energy (DOE) released its Draft Funding Opportunity Announcement for the Smart Grid Investment Grant Program and a draft Funding Opportunity Notice for smart grid regional demonstration projects to be funded through the American Reinvestment and Recovery Act. The Smart Grid Investment Grant Program has a total of \$3.375 billion for matching grants for grid technology deployment and grid monitoring devices to be disbursed via a competitive process. The programs will be administered by DOE's Office of Electricity Delivery and Energy Reliability.

EPA: On April 20, the Environmental Protection Agency (EPA) released its proposed finding that carbon dioxide and five other greenhouse gases endanger public health and welfare, opening the way for the agency to promulgate regulations to control greenhouse gas emissions from a wide range of mobile and stationary sources. The finding was prepared in response to a directive from the Supreme Court in its 2007 ruling in *Massachusetts v. EPA*, a case in which California, eleven other states and several cities brought suit to force EPA to regulate carbon dioxide and other greenhouse gases as pollutants under the Clean Air Act. Observers believe that the agency's move will encourage industry to support congressional action on the issue, rather than address it through regulation. The Administration has said that it would prefer a legislative approach.