Memorandum

To: ISO Board of Governors

From: Karen Edson, Vice President, Policy and Client Services

Date: May 21, 2014

Re: **State, Regional and Federal Affairs update**

This memorandum does not require Board action.

STATE AFFAIRS

<u>Regulatory Update</u>:

United States Environmental Protection Agency (US EPA) Standard for Greenhouse Gas Emissions from New Electric Generating Units:

ISO Staff has collaborated with the California Air Resources Board (CARB), the California Energy Commission (CEC) and the California Public Utilities Commission (CPUC) on a May 9, 2014 letter from CARB Chair Mary Nichols to US EPA commenting on the proposed Standard of Performance for Greenhouse Gas Emissions from New Electric Generating Units. The proposed regulation, which is being developed by US EPA under Section 111(b) of the Clean Air Act, subcategorizes new electric generating units into large units (heat input rating greater than 850 MMBtu/hr) and small units (heat input rating less than or equal to 850 MMBtu/hr). US EPA is proposing emission standards of 1,000 lb CO_2/MWh for large units, and 1100 lb CO_2/MWh for small units.

The comment letter acknowledges that the proposed CO_2 emission limitations are feasible for new stationary combustion turbines used *for baseload generation*, but urges EPA to recognize operational differences between new electric generating units serving different functions such as load following, peaking and fast-start/ramping. Specifically, the letter urges US EPA to consider further subcategorization based on a new electric generating unit's operational profile.

US EPA expects to publish a draft regulation for comment by June 1, 2014 and a final draft in June 2015. In the interim, ISO staff will continue to work with CARB and the California energy agencies to provide modeling data to US EPA documenting the degree of grid operational flexibility that will be needed for renewables integration.

California drought:

The 2013-2014 water year has been one of the driest years on record for California and follows a year of drought-level precipitation. California snow pack and reservoir levels are tracking well below average and the Governor has declared a drought emergency for the state, issuing special emergency orders and provisions for water management.

Nevertheless, electricity supplies are adequate. Fire risk, as opposed to resource adequacy, is the most significant risk to reliability of the electric system. While total energy production from hydroelectric generation will be reduced, the strategic use of this generation over peak hours, combined with available energy from gas-fired plants, is expected to meet the forecasted demand. Some initial concerns about potential drought impacts to thermal stations have been mitigated and resource-scenario forecasts have included the potential for drought-related outages or curtailments. The drought impact on electric system operation will be to increase the use of gas-fired generation, causing additional production of greenhouse gasses and potentially creating upward pressure on wholesale prices. However, the impact to electric system reliability is minimal.

The ISO is participating in a joint-agency hydropower sub-working group of the State of California Governor's Drought Task Force (led by the CEC and including the CPUC, the State Water Resources Control Board, the Department of Water Resources and the Office of Emergency Services). This group has been monitoring and updating developing conditions, exploring options for water management, and assuring close coordination with electric power needs for the state. This interagency group has provided an update to the Federal Energy Regulatory Commission (FERC) and input to a Federal Department of Homeland Security assessment of the drought impacts on electric system reliability. Notwithstanding the significant impacts of the drought to the state's economy and other aspects of life in California, electric resource margins remain adequate.

Joint Reliability Plan:

The Joint Reliability Plan is the collaborative effort between the ISO and the CPUC (as adopted by the CPUC February 5, 2013 and in concert with the subsequent adoption by the ISO Board in December 2013) to address the void in resource planning between the existing one-year resource adequacy program and the 10-year forward Long Term Procurement Plans and to avoid disorderly retirement of needed resources. Following initial stakeholder meetings at the ISO, the collaborative effort for the Joint Reliability Plan focused on the associated proceeding at the CPUC, with the first two workshops in the proceeding held earlier this month. The first of these workshops generally explored the schedule and inter-dependencies in actions of the three elements of the plan: the need and development considerations of a multi-year forward procurement requirement in the CPUC resource adequacy program; what constitutes a market-based backstop replacement for the current capacity procurement mechanism used by the ISO; and how a longer term (4-10 year) assessment of further resource adequacy needs could inform the multi-year procurement. The second workshop will be more focused on the potential scope, design and mechanics of multi-year forward resource adequacy requirements.

Legislative Update:

Now that we are further into the legislative session and most of the spot bills are fleshed out, one bill stands out as critically important to the ISO. SB 1277 (Steinberg), would require the ISO to obtain the formal concurrence of the CPUC before seeking FERC-approval of a new auction or market-based mechanism for forward procurement of electricity or capacity products to implement the Joint Reliability Plan in California. In considering the proposal, the CPUC would have to open a proceeding and issue a decision reasonably concluding that the principles of the state will not be diminished. The measure is sponsored by The Utility Reform Network and the Office of Ratepayer Advocates.

Mary Nichols, CARB Chair, Robert Weisenmiller, Chair of the CEC, Michael Peevey, President of the CPUC and Steve Berberich, CEO of the California ISO, sent a joint letter to Senator Steinberg expressing grave concerns about the bill's implications. The letter points out that SB 1277 would be preempted and is unenforceable because the Federal Power Act gives exclusive jurisdiction of the wholesale markets to FERC. Moreover, it would have the effect of seeking to subject many of the ISO's market participants that are not state jurisdictional to CPUC jurisdiction. In addition, the ISO and the state agencies are collaborating exceptionally well to achieve the state's energy and environmental mandates under the current construct, and this bill would only disrupt that strong collaboration.

Supporters of the measure believe that it would afford the state a greater ability to protect its environmental mandates. They have expressed concern that if the ISO implemented a backstop capacity procurement mechanism as described in the Joint Reliability Framework, which was adopted by the ISO Board and the CPUC, it might resemble a centralized capacity market such as those in the East, which have been the subject of controversy. Unfortunately, the proponents have failed to recognize that California's FERC-approved wholesale market is based on backstopping bilateral procurement under the direction of local regulatory authorities (CPUC and municipal utility boards). Further, there are neither court precedents nor FERC rulings that warrant legal battles, which could then serve as a catalyst for entities wanting to impede the cooperative state and federal efforts to advance California's modernization of the grid.

Below is a brief overview of other important measures we are following:

- **SB 1078 (Jackson) Electricity: emissions of greenhouse gases:** This measure seeks to codify state energy planning beyond the current 2020 GHG target. The bill was amended after its first committee hearing and now directs the CEC and CPUC to initiate a joint proceeding, once post-2020 GHG reduction goals are set, to recommend actions to CARB to achieve those goals, and to transmit the recommended compliance actions to the ISO for consideration in its transmission planning process. The ISO is in the process of coordinating the response to the most recent version of the measure with CARB, CEC, and CPUC. It is essentially calling for a similar process as when the first GHG reduction goals came out.

- **SB 1090 (Fuller) Electricity: rates: default time-of-use pricing:** This measure would require the CPUC to make certain findings before it could require or authorize an electrical corporation to employ default time-of-use pricing to residential customers.

- **SB 1139 (Hueso) California Renewables Portfolio Standard Program:** This measure would require that 250 MW of geothermal electric generation be procured by 2019 from retail sellers and publicly-owned utilities serving more than 75,000 customers, with an additional 250 MW procured by 2024.

- **SB 1414 (Wolk) Electricity: resource adequacy requirements:** This measure would add maximizing the cost-effective use of demand response as an objective of the resource adequacy requirements. The author's stated goal of this measure is to get more demand response into the market.

- **AB 2363 (Dahle) Electricity procurement:** This measure would require the California Public Utilities Commission to adopt a nonzero integration cost adder methodology when approving procurement of eligible renewable resources and direct electrical corporations to include the integration cost adders in their proposed procurement plans.

FEDERAL AFFAIRS:

Administration:

On April 10, the Department of Justice and the Federal Trade Commission issued a joint guidance statement advising that companies can share detailed information on cybersecurity attacks without being concerned with antitrust issues. The guidance was directed at information related only to cyber attacks, excluding "competitively sensitive information." Utility advocacy organizations had urged the clarification.

On April 17, EPA announced that it will not meet the established deadline for regulations to reduce greenhouse gas emissions from existing power plants, which was scheduled to be issued on June 1. The agency will release the regulations under Section 111(d) of the Clean Air Act sometime in late June. An EPA official also announced that the rule will include ideas on how to promote low- or no-emission energy resources such as efficiency, renewable energy and new technologies for pollution reduction. The agency has met several times with ISO and RTO representatives to discuss ways to mitigate the impacts of new regulations on regional grid reliability.

EPA also announced on April 17 that it will delay its cooling water rule under Section 316(b) of the Clean Water Act for the fifth time. EPA's new deadline is May 18.

Congress:

On April 8, Representatives Zoe Lofgren (D-19th District – San Jose) and Doris Matsui (D-6th District – Sacramento) introduced legislation that would enable the Treasury Department to issue small-denomination bonds to fund and provide tax incentives for renewable energy and energy efficiency projects. The bonds would be available for individuals to purchase for as little as $25 to create up to $50 billion in direct project investments. A similar bill was introduced in 2012 but did not advance to the House floor for a vote.

On April 10, the Senate Energy and Natural Resources Committee held a hearing exploring whether current grid protections for reliability and security are adequate. The hearing featured key industry regulators, including Acting FERC Chairman LaFleur, NERC President and CEO Gerry Cauly, and NARUC President Colette Honorable. Topics included cyber and physical security issues, causes and outcomes related to fuel price spikes during this year's polar vortex, and impacts of environmental regulations on grid reliability. There was significant discussion of the Metcalf incident and an April 9 management alert issued by the Department of Energy's Inspector General finding that some FERC presentations on Metcalf and other critical substations should have been classified.

On May 1, the Senate Energy and Natural Resources Committee announced that it will hold a hearing on the nomination of Norman Bay to become Chairman of FERC and the renomination of Cheryl LaFleur to a second five-year term on the Commission. The hearing is currently set for May 20.

Judiciary:

On April 25, a federal judge in Minnesota ruled that the Commerce Clause of the United States Constitution applies to state-mandated restrictions on interstate power sales. The court held that North Dakota companies are not bound by a Minnesota law that required that electricity generated by out-of-state plants must offset emissions in some way, such as allowance trading. The U.S. District Judge in St. Paul determined that the state law violated the Commerce Clause, in part by requiring out-of-state entities to obtain regulatory approval in Minnesota.

STRATEGIC ALLIANCES AND REGIONAL AFFAIRS

Energy imbalance market (EIM):

Tariff stakeholder process: The ISO's tariff amendment to incorporate EIM was filed February 28, 2014. Both the ISO's tariff changes and PacifiCorp's changes to their OATT tariff are under review at FERC. Both request FERC approval by June 20 to support start of the market simulation activities on July 8.

EIM Implementation: Work is continuing between ISO and PacifiCorp on preparations for the October 1, 2104 go-live date of the EIM. Much of the work now is focused on preparations and development of scenarios for market simulation.

NV Energy: NV Energy filed with the Public Utilities Commission of Nevada (PUCN) on April 16 requesting approval to participate in the energy imbalance market. On the same day the ISO filed the NVE/ISO implementation agreement with FERC. With both approvals, NV Energy will go live in October 2015, 12 months after PacifiCorp. NV Energy has received several inquiries and data requests from the PUCN and the Nevada Bureau of Consumer Protection. Work is underway to complete the project plan by June 1, in accordance with the implementation agreement.

Transitional Committee process: Twenty-five nominees were ranked by seven industry sectors. The seven confidential ranked lists were provided to the ISO Assistant Corporate Secretary, consolidated, and provided to the Board for their review. The Board met in a closed executive session on April 30 to discuss the nominees, their qualifications and the sector rankings to develop a slate of candidates for consideration and appointment at the general session of the May 29 Board meeting.

The Transitional Committee will meet approximately as often as the Board and their meetings and deliberations will be subject to the requirements contained in the ISO's Open Meeting Policy. Committee efforts will commence immediately following the appointment of the committee members by the Board and will be supported by an ISO Management-designated liaison and other administrative staff as necessary.

Engagement with other potential EIM entities: Ongoing discussions continue with other interested balancing authority areas to explore EIM within their territories.