

# Memorandum

**To:** ISO Board of Governors

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

**Date:** October 21, 2009

**Re: Briefing on Status of State and Federal Legislative Matters**

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*This memorandum does not require Board action.*

## STATE AFFAIRS

### *The Legislature*

State lawmakers recessed on September 11, which was the last day to pass bills out of the Legislature and on to the Governor. Governor Arnold Schwarzenegger then had until October 11 to either sign or veto bills. Although he threatened to veto hundreds of bills if a water deal was not reached, the Governor opted to weigh measures before him based on their merits. He instead will call a special session to address the pressing issue of water, which was preempted during the regular session by budget negotiations and other key issues such as renewable energy.

### *Legislative Schedule*

Jan. 1 - Statutes take effect (Art. IV, Sec. 8(c)).

Jan. 5 - Legislature reconvenes (J.R. 51(a)(1)).

Jan. 10 - Budget Bill must be submitted by Governor (Art. IV, Sec. 12 (a)).

### *Renewable Portfolio Standard (RPS)*

AB 64 and SB 14, both aimed at increasing the state's RPS to 33 percent by 2020 passed both houses of the Legislature. In the last hours of Session, AB 21 was amended to also include RPS provisions. However, the Governor vetoed all three measures, citing the new regulatory hurdles they would create to permitting renewable resources in the state, as well as the limitations they would cause on the importation of cost-effective renewable energy from other states in the West.

The Governor has decided to pursue the desired RPS through an Executive Order directing the California Air Resources Board (CARB) to adopt regulations increasing California's Renewable Portfolio Standard to 33 percent by 2020. As compared to the legislative bills, the Executive Order allows utilities to use more renewable energy credits and out-of-state power, both principles the ISO supports.

### ***South Coast Air Quality Management District***

The lack of air credits in the South Coast Air Quality Management District (SCAQMD) was among the top energy issues before the legislature during the first half of the session. Of the five bills aiming to free up air credits in the SCAQMD, two passed out of the Legislature, AB 1318 and SB 827. Governor Schwarzenegger signed both of these bills into law.

AB 1318 (Perez) requires that by July 1, 2010, the California Air Resources Board, in consultation with the California Public Utilities Commission (CPUC), California Energy Commission (CEC), State Water Resources Control Board (SWRCB), and the ISO, shall evaluate the reliability needs of the South Coast Air Basin and recommend the most effective and efficient means of meeting those needs. The bill also requires that these recommendations comply with all of the following: AB 32, Section 316(b) of the federal Clean Water Act and once-through cooling regulations, state and federal air pollution laws and regulations, RPS and energy efficiency, California Environmental Quality Act (CEQA), and resource adequacy. The bill also establishes special air pollution permitting procedures to allow for the Sentinel Power Plant to be built in the SCAQMD.

SB 827 (Wright) allows for air credits to be issued pursuant to South Coast District Rule 1304 and Rule 1309.1, for essential public services, including sewage treatment facilities, prisons, police facilities, fire fighting facilities, schools, hospitals, construction and operation of a landfill gas control or processing facility, water delivery operations, and public transit. This bill is not intended to affect pending federal legislation over the SCAQMD, and the provisions of the bill sunset on May 1, 2012.

### ***Legislation***

The Governor signed the following bills of particular interest to the ISO:

#### **AB 45 (Blakeslee) Distributed generation: small wind energy systems.**

Authorizes a local agency to adopt an ordinance that provides for the installation of small wind energy systems outside an urbanized area, but within the local agency's jurisdiction, and to establish a process for the issuance of conditional use permits for these systems, subject to specified conditions.

#### **AB 920 (Huffman) Solar and wind distributed generation.**

Expands the current net-metering programs for wind and solar to allow the net-metered customers to sell any excess electricity they produce over the course of a year to their

electric utility and caps the amount of net surplus electricity a utility must purchase at 2.5 percent of each electric utility's aggregate peak demand.

**AB 1110 (Fuentes) Advanced electrical distributed generation technology.**

Allows "advanced electrical distributed generation technologies" (ADG) that have better efficiency ratings than cogeneration facilities to qualify for some of the same benefits given to cogeneration facilities.

**SB 17 (Padilla) Electricity: smart grid systems.**

Establishes the smart grid policy of the state and requires the California PUC in consultation with the CEC, the ISO, and other key stakeholders to determine the requirements for a smart grid deployment plan no later than July 1, 2011.

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

Requires the PUC to increase the 1.5 megawatts feed-in tariff to three megawatts and delete the requirement that the generation facility be located on property owned or under the control of the generator. The PUC is authorized to adjust payments to reflect the value of the electricity and other factors.

**SB 412 (Kehoe) Electricity: self-generation incentive program.**

Extends the sunset date of the existing Self-Generation Incentive Program for distributed generation (fuel cells and wind) through January 1, 2016, four years longer than the current sunset. In addition to the extension, the bill expands eligibility to include stand-alone energy storage systems, as well as other technologies that support the goals of AB 32. The maximum size for eligible technologies is five MW in capacity and incentives are capped at three MW of installed capacity for fuel cells and wind turbines.

**SB 695 (Kehoe) Energy: rates.**

Eliminates the current rate freeze for electricity usage for residential customers of up to 130% of the baseline rate; lifts the current suspension and provides limited expansion of direct-access electricity service; restricts the deployment of mandatory time-variant pricing; and provides a number of other measures to stabilize rates, protect low-income customers, and address emergency measures instituted during the 2001 energy crisis.

## **FEDERAL AFFAIRS**

### *Congress*

**Continuing Resolution:** Both House and Senate have passed a continuing resolution to keep the federal government running through October 31.

**Energy and Climate Bill:** Senator John Kerry (D-MA), Chair of the Foreign Relations Committee, and Senator Barbara Boxer, Chair of the Committee on Environment and Public Works, have now introduced their energy and climate bill as S. 1733, the "Clean Energy Jobs and American Power Act" ("CEJAP"). The measure would establish an economy-wide greenhouse gas reduction program supported by a range of activities

focused on promoting low-carbon technologies, energy efficiency, assistance with climate adaptation challenges, and worker and consumer benefits. The bill does not mention “cap-and-trade,” but uses the term “pollution reduction and investment” instead. It incorporates a more aggressive short-term target for cutting greenhouse gas emissions than the House-passed bill – 20% by 2020 vs. 17% in the House – but, like the House bill, it would achieve roughly an 80% reduction by 2050. The program would begin in 2012 for utilities and carbon-intense manufacturers, with most other stationary sources covered beginning in 2014. The point of regulation would be at the individual plant level. The bill, which weighs in at 821 pages, would cover all seven greenhouse gases for entities with annual emissions over 25,000 tons of CO<sub>2</sub> equivalent. How the emission allowances will be allocated has been left to the Senate Finance Committee and others still working on the bill, but Senator Boxer has said that she hopes to follow the allocation formulas established in the House.

The bill includes the creation and funding of eight “energy innovation hubs” within the Department of Energy that would competitively award revenues from the pollution reduction and investment program to research and development focusing on renewable power generation, energy efficiency, smart grid development, energy transmission and storage, advanced sustainable materials, and water security. The hubs would conduct research needed to enable commercialization of advanced energy technologies. Activities of each hub would be coordinated with work done by the Advanced Research Projects Agency-Energy (ARPA-E).

### ***Administration***

**Norris Confirmation Hearing:** The Senate Committee on Energy and Natural Resources on October 8 approved the nomination of John R. Norris as Commissioner of FERC. As of this writing, the full Senate vote on the nomination has not been scheduled. Mr. Norris is currently Chief of Staff for Secretary Tom Vilsack at the U.S. Department of Agriculture, a position he has held since January of this year. He was Chair of the Iowa Utilities Board from 2005 until January 2009. Norris was nominated by President Obama on June 10 to fill the seat of former Chairman Joseph Kelliher, who left the Commission in March.

**Commissioner Kelly Declines Renomination:** Suedeen Kelly announced in September that she will decline President Obama’s nomination to serve a third term as FERC Commissioner. She will remain in her seat until Congress adjourns at the end of the year.

**Smart Grid Funding:** DOE has announced that the agency will cancel the third round and possibly the second round of stimulus funding awards for smart grid technologies due to an oversubscription for round one support. The funding, which totals \$4 billion, will provide \$3.3 billion for the manufacture and installation of smart grid technologies; the balance of funding will be directed to the integration of smart grid applications.

*Other*

**Climate Change Ruling:** The U.S. Court of Appeals for the Second Circuit handed down a decision in late September in *Connecticut v. AEP*, ruling that a group of states and environmental groups can sue several major utilities (including the Tennessee Valley Authority) for contributing to a “public nuisance” in the form of global warming under federal common law. The opinion was signed by two of the three judges that heard arguments in the case; the third judge, Sonia Sotomayor, is now on the Supreme Court. The opinion has been closely watched since it has bearing on the standing of states, local governments and others to bring climate change issues before the courts, and also on whether common law has been superseded by the Clean Air Act. The ruling could be accepted for rehearing by the entire Second Circuit or by the Supreme Court, and could also be nullified by pending legislative activities.