Memorandum

To: ISO Board of Governors

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

Date: October 20, 2011

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

This memorandum does not require Board action.

STATE AFFAIRS

Legislature

Legislation Signed by Governor Brown

On September 9, 2011 the Legislature concluded the first half of the two-year session. Governor Brown had until October 9 to sign or veto all bills on his desk. The Governor signed: AB 1150 by V. Manuel Pérez, which continues funding for the self-generation incentive program through December 2014; SB 585 by Senator Christine Kehoe which continues the ratepayer surcharge to continue funding the California Solar Initiative, which has been in place since 2007 and calls for the installation of 3,000 new megawatts of solar electricity by 2016; and SB 16 by Senator Rubio which requires the Department of Fish and Game to take steps to expedite the processing of renewable energy permits.

A Senate Joint Resolution (SJR) by Senator Vargas also passed the legislature and was signed by the Governor. SJR 13 calls upon the Secretary of the United States Department of Energy to reject Sempra Energy's application to construct the Energía Sierra Juárez cross-border transmission line between Mexico and California. Opponents of the transmission line argued that it would cause the exportation of American jobs, increase the United States' dependence on foreign energy and undermine American environmental and labor laws. Proponents of the line argued that it will help meet the 33 percent renewables portfolio standard by providing access to wind in Baja, California. Also, San Diego Gas and Electric reported that of 26 contracts for delivered renewable power, only four are out-of-state. The bill passed the legislature on an almost exact party line vote.

Public Goods Charge

Legislation to extend California's Public Goods Charge (PGC), which funds public interest energy-related research and efficiency programs, failed passage in September after considerable legislative debate. Subsequently, Governor Brown directed CPUC President Michael Peevey to take action under the Commission's authority to continue funding for programs like those supported by the PGC. The legislature could act on an extension measure after they reconvene January 4, which would supplant CPUC action.

Little Hoover Commission

Currently, the Little Hoover Commission is holding a series of hearings to review the state's coordination of energy-related activities. This study will include an organizational evaluation of entities that share authority over energy policy, permitting and regulation. The Commission will examine previous consolidation efforts and assess how the state's energy-related organizations are working together to achieve state goals and facilitate local efforts to improve the generation and delivery of power to consumers. The ISO will participate in the Commission's November 15, 2011 hearing which will be held at the State Capitol.

Legislative Hearings Regarding the September 8 Power Outage

In response to the power outage affecting the Pacific Southwest area on September 8, 2011 the Assembly Utilities and Commerce Committee is holding a hearing in conjunction with the Joint Committee on Emergency Management to explore the cause of the outage and to analyze how well the city was prepared for the outage from an emergency preparedness standpoint. The ISO will participate in the hearing which will be held in San Diego on October 26, 2011.

REGULATORY ISSUES

Work with the Governor's Office, the California Public Utilities Commission and the California Energy Commission continues on a range of regulatory issues related to renewable integration, resource adequacy policies, long-term procurement, transmission planning and generator interconnection. The following issues have required a specific focus.

Gas Transmission and Electric System Coordination

Shortly after the San Bruno gas explosion, the California Public Utilities Commission (CPUC) opened a proceeding (R.11-02-019) to review the practices of gas transmission providers. Since then, the CPUC has directed transmission gas service providers to test and appropriately replace their pipeline facilities. The ISO has been coordinating directly with PG&E, SDG&E, SCE and So Cal Gas regarding their ongoing gas pipeline work and the impacts on the electric system. Most notable in this regard are the scheduled pipeline outages in San Diego, and the reduced pressure operations in northern California. The gas transmission utilities have been required to file implementation plans as part of the CPUC decision, and hearings on these plans will begin late this year or early next year. Given the high percentage of California generation that is fueled by natural gas, the ISO participated in a June technical workshop held by the CPUC, and urged that gas utilities include specific coordination with electric operations in their respective implementation plans. As the CPUC process continues to unfold, the ISO will continue its ongoing work with gas and electric utilities as well as affected generators to improve the coordination between gas and electric operations.

Once-Through Cooling Policy Implementation

The ISO continues to work with the State Water Resources Control Board and other state agencies to implement the *Statewide Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling* (OTC Policy) which became effective on October 1, 2010. The ISO is one of seven members of a Statewide Advisory Committee on Cooling Water Intake Structures (SACCWIS) created in the OTC Policy to ensure that the implementation schedule takes into account local and grid reliability. The SACCWIS is chaired by the Water Board Executive Director and includes one representative each from the ISO, the CPUC, the California Energy Commission, the California Air Resources Board, the State Lands Commission and the California Coastal Commission.

On September 29, 2011 the SACCWIS approved (vote of 7-0) a resolution adopting a report required by the OTC Policy. The report satisfies an OTC requirement which states in part, "The SACCWIS shall review the owner or operator's proposed implementation schedule and report to the State Water Board with recommendations no later than October 1, 2011." SACCWIS members developed the report based upon implementation plans received by the Water Board from generator owners and operators on April 1, 2011.

The report recommends that the Water Board modify the OTC Policy as follows:

- Develop a compliance schedule on a unit-by-unit and facility-wide basis at existing power plants and on a facility-wide basis (the current OTC Policy does not include unit-by-unit compliance dates); and

- Require generators to supplement their implementation plans annually as new information becomes available.

The report is expected to be discussed at a November meeting of the Water Board, and the OTC Policy changes will be addressed by the Water Board following receipt of the next policy-required report from SACCWIS. By March 31, 2012, SACCWIS is expected to provide a report with recommendations on compliance date modifications based upon OTC study results that are being conducted as part of the ISO's transmission planning process and renewable integration needs determination.

In this related effort, the ISO is working with CARB to complete a study in accordance with Assembly Bill 1318 (AB 1318, Wright, Chapter 206, Statutes of 2009) which requires CARB, in consultation with the CEC, CPUC, ISO, and the State Water Board, to prepare a report for the Governor and Legislature that evaluates the electrical system reliability needs of the South Coast Air Basin. The report is to include recommendations for meeting those reliability needs while ensuring compliance with state and federal law. Of specific concern are the current restrictions on air quality permits facing power plant owners in the South Coast Air Quality Management District. The resulting report is to include recommendations for long-term, sustainable permitting of additional capacity needed in the south coast. The studies are on schedule and will support CARB's plans to deliver the full report by late March, 2012.

FEDERAL AFFAIRS

Administration

American Jobs Act

President Obama laid out his jobs package in a speech on September 8, along with a specific, $447 billion plan that he called on Congress to pass, entitled the "American Jobs Act." The proposal includes a new infrastructure bank, capitalized at $10 billion, to help finance transportation, water, and energy projects. Eligible energy infrastructure projects would include construction, alteration, or repair of clean energy generation assets, transmission and distribution facilities, energy storage, or energy efficiency enhancements for buildings. Projects that contribute to regional or national growth, have high value in relation to costs, offer clear public benefits, lead to job creation, and mitigate environmental concerns would receive priority in obtaining financing. The infrastructure bank is considered to be one of the best candidates in the proposal for gaining bipartisan support.

Senate Majority Leader Harry Reid has introduced the bill as S. 1549. On October 3, Senator Reid announced that he hopes to bring the package to the Senate floor for a vote by the end of the month, but no definitive plan for funding offsets has been established at this writing. The White House has reportedly approached the Joint Special Committee on Deficit Reduction to urge that they include the program in their deliberations and identify offsets to cover its costs.

Department of Energy

The Department of Energy on September 27 issued revised regulations for implementation of the National Environmental Policy Act (NEPA) establishing 20 new categorical exclusions for actions that the agency has determined do not individually or cumulatively have a significant environmental impact. The revisions would apply to actions with limited scale, such as development of electric vehicle charging stations and small renewable energy projects. The rule was published as a draft for comment in January, 2011.

The DOE announced during the last week of September that it had finalized $4.7 billion in loan guarantees for several solar projects, including a $1.4 billion guarantee for First Solar, Inc.'s Desert Sunlight Project, a 550-MW photovoltaic facility in Riverside County; $1.2 billion for SunPower Corporation's 250-MW solar generating facility in San Luis Obispo County; and $646 million for the 230-MW Antelope Valley Solar Ranch in Los Angeles. Projects under the program, authorized under Section 1705 of the Energy Policy Act of 2005 (EPACT'05), had to be approved by the program deadline of September 30, 2011. DOE also announced cancelation of a conditional loan guarantee for the Topaz Solar Farm, a 550-MW First Solar, Inc., project in San Luis Obispo County that the agency determined could not meet program requirements in time to meet the deadline.

Transmission Permitting

On October 5, the Administration announced a cooperative effort by nine federal agencies to expedite permitting for seven "pilot" transmission projects as part of a federal initiative to speed the development of transmission needed for reliability, congestion relief and integration of renewable energy resources nationwide. The pilot projects include two transmission lines in the Eastern United States and five in the West, although none of them are located in California. The new transmission will support Interior Department approval of 22 renewable energy projects on public lands in the West. The agencies will focus on coordinating and scheduling milestones for federal entities involved in the process, establishing clear contact points and project managers, and providing agency staff with necessary training for project management. The entire effort will be made public on agency websites, with regular updates provided. States will be invited to participate in the process.

Congress

Congressional decisions on spending for energy programs in fiscal year 2012 remain unclear. DOE's $1.6 billion clean energy loan guarantee programs were slated for elimination, but were preserved in a budget extension agreement after the Federal Emergency Management Agency determined that additional funds would not be needed immediately for disaster relief spending. Both House and Senate have now passed a continuing resolution that will keep the government operating through November 18, giving

Members additional time to negotiate offsets. Meanwhile, several House committees have announced that they will launch investigations of DOE's clean energy loans in the wake of the Solyndra bankruptcy.

Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) pushed back definitively on a proposal by the Federal Energy Regulatory Commission that DOE delegate to the authorities provided under Section 216 of EPACT'05 regarding the conduct of congestion studies and designation of National Interest Electric Transmission Corridors. The plan was posted for comment on the DOE website in September. In a letter sent on September 12 to Energy Secretary Steven Chu, Bingaman cautioned that "the decision to rewrite Section 216 is for Congress to make," and warned that efforts by agencies to reinterpret the provision would "do serious harm to our efforts to strengthen the federal siting role through legislation." FERC already has "backstop authority" under EPACT'05 to approve a transmission project located in a designated National Interest Corridor if the affected states have failed to take action on the project within a year after a developer files a siting application with state regulators. However, the U.S. Court of Appeals for the 4th Circuit has ruled that FERC does not have authority to override state decisions rejecting disputed lines.

On September 23, the House passed H.R. 2401, the "Transparency in Regulatory Analysis and Impacts Act" ("TRAIN Act"), which would establish a new Cabinet-level committee tasked with assessing the cumulative impacts of new EPA rules facing the power sector and delay new air pollution limits on coal-fired power plants. Also approved during floor debate was an amendment that would allow EPA to consider costs when establishing air quality standards. The bill passed on a vote of 233-180, with four Republicans voting against the bill and 19 Democrats crossing party lines to vote for it. Passage in the Senate is considered unlikely, but theoretically possible. The President has said he will veto the bill if it comes to his desk for signature.