

# Memorandum

**To:** ISO Board of Governors

**From:** Nancy Saracino, Vice President, General Counsel & Chief Administrative Officer

**Date:** October 25, 2012

**Re:** Decision on Information Requests from the CFTC

---

***This memorandum requires Board action.***

## EXECUTIVE SUMMARY

The tariff generally requires the ISO to notify affected market participants before providing confidential or commercially sensitive information in response to a subpoena. There is an exception, however, when FERC requests information. The ISO may respond to FERC without notifying affected market participants. Management proposes to amend the tariff to expand this exception to include requests from the Commodity Futures Trading Commission (“CFTC”). This amendment is necessary before the CFTC will exclude the ISO market from its jurisdiction. Stakeholders do not oppose the amendment.

Management recommends the following motion:

***Moved, that the ISO Board of Governors approves the proposed tariff change to allow the ISO to respond to information requests from the Commodity Futures Trading Commission without notifying affected market participants, as described in the memorandum dated October 25, 2012; and***

***Moved, that the ISO Board of Governors authorizes Management to make all necessary and appropriate filings with the Federal Energy Regulatory Commission to implement the proposed tariff change.***

## DISCUSSION AND ANALYSIS

The Dodd-Frank Wall Street Reform Act expanded the authority of the CFTC in a way that could be construed to include certain types of transactions in the ISO market. In February 2012, a group of ISOs and RTOs, including the California ISO, jointly petitioned the CFTC to exempt transactions in their markets from the CFTC’s jurisdiction. On August 28, 2012, the CFTC issued a proposed order that would grant

the exemption on certain conditions, one of which is that the ISO tariffs must not require notice to market participants when the ISOs provide information to the CFTC in response to a subpoena or data request.

Management proposes to amend the tariff to fulfill the CFTC's condition. Under the amendment, the ISO may provide information to the CFTC on the same basis that it currently provides information to FERC – i.e., without notice to the affected market participant, but with a request that the agency treat the information as confidential for purposes of the Freedom of Information Act.

The ISO posted a paper for stakeholder review on October 12, 2012, that explained the proposed amendment and included draft tariff language. The ISO received only one written comment on the proposal -- from Southern California Edison – which asked for additional information about the proposed exemption from CFTC jurisdiction and the future role of the CFTC in the ISO market. The ISO held a stakeholder call to review the proposal and answer questions about the CFTC's proposed order. No stakeholder has objected to the proposal.

## **CONCLUSION**

Management requests that the Board approve the proposed tariff amendment to allow the ISO to respond to information requests from the Commodity Futures Trading Commission without notifying affected market participants as described above.