

# Memorandum

To: ISO Board of Governors  
From: Karen Edson, Vice President, Policy & Client Services  
Date: March 13, 2013  
Re: **Legislative and State Regulatory Update**

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***This memorandum does not require Board action.***

## STATE AFFAIRS

### ISO Board:

On March 4, 2013, ISO Board member, David Olsen, had his Senate Rules Committee confirmation hearing. The committee voted unanimously to confirm him. Next, the full Senate will vote on his nomination during a floor session.

### Energy Efficiency Hearing:

On Monday, January 28, 2013, the Senate Energy, Utilities and Communications Committee held an informational hearing on energy efficiency. Keith Casey, Vice President of Market and Infrastructure Development, participated on a panel with Robert Weisenmiller, Chair of the California Energy Commission, and Edward Randolph, Director of the California Public Utilities Commission's Energy Division. The hearing focused on ensuring that state funds spent on energy efficiency will translate into the need for fewer power plants.

Following the hearing, the testifying parties were asked to respond to a letter by Chair Padilla and Vice Chair Fuller on how to account consistently for energy efficiency contributions, how energy efficiency programs can best match grid operational requirements, and how to ensure that energy efficiency investments are cost-effective. In a February 28 response letter, the three entities pledged to work cooperatively to coordinate procurement and transmission planning processes using a single demand and additional achievable energy efficiency forecast, which will be developed jointly by the ISO and CPUC during the *Integrated Energy Policy Report* proceeding.

## **Legislation:**

The deadline to introduce legislation was February 22, 2013. ISO staff is now tracking roughly 100 measures relevant to the ISO or the energy sector in general.

Key bills include:

- AB 284 (Assemblyman Quirk): Requires the California Energy Commission to convene a “Road to 2050” Board consisting of the ISO, CEC, CPUC, Air Resources Board, California Alternative and Advanced Transportation Financing Authority, California Environmental Protection Agency, and the Governor’s Office. Responsibilities would include studying how to reduce greenhouse gas emissions by 80% over 1990 levels by 2050 and how to integrate renewables onto the grid reliably and cost-effectively.
- AB 1228 (Assemblyman V. Manuel Perez): Increases the size of a fuel cell generating facility eligible for net metering from 1 MW to 3 MW.
- AB 1257 (Assemblyman Bocanegra): Enacts the Natural Gas Act and requires the CEC, every four years, to prepare and submit a report to the Legislature identifying strategies to maximize the benefits obtained from natural gas as an energy source.
- AB 1258 (Assemblywoman Skinner): Requires the CPUC to “open a new proceeding or expand the scope of an existing proceeding to determine the potential use of hydroelectric facilities and specified pumped storage facilities to provide energy resources with deliverability characteristics that may include dispatchable baseload, firm, and as-available capacity.”

## **Ballot Initiatives:**

Two energy-related ballot initiatives have been cleared for circulation. The first would require the CEC to find that the federal government has approved technology for permanent disposal of high-level nuclear waste before California’s two nuclear plants continue further electricity production. The second would establish a publicly-owned California Electrical Utility District to provide electric service, replacing most investor-owned utilities. It would require the District to be divided into 11 wards, approximately equal in population, and grant the District the power to acquire property, construct facilities necessary to supply electricity, set electricity rates, impose taxes, and issue bonds.

The proponent of both initiatives, Ben Davis, must gather 504,760 valid signatures for each initiative by early July if the measures are to qualify for the ballot.

## **Regulatory Update**

### **Huntington Beach 3 and 4 Synchronous Condensers:**

The ISO entered into a reliability must-run agreement with AES to convert Huntington Beach Units 3 and 4 into synchronous condensers, which are necessary to provide dynamic voltage support in the southern Orange County and San Diego areas in the absence of San Onofre Nuclear Generating Station generation. These units must be converted from their current inoperable state as generators into synchronous condensers under a timeline that results in a commercial operation date in June 2013 to meet summer peak challenges.

JPMorgan initially asserted that, because of their tolling agreements for all of the AES assets in the LA area, their approval was necessary to allow AES to construct and operate the units as synchronous condensers. However, an agreement was subsequently reached between the JPMorgan subsidiary, BECA, and Southern California Edison for a capacity sale and tolling agreement that transfers the energy, capacity, ancillary services and resource adequacy benefits of all of the AES assets in the LA area. The agreement term runs from October 1, 2013 to May 31, 2018 and encompasses 12 existing generating units located in the LA area (totaling approximately 3818 MW and including Huntington Beach). This agreement establishes a split consent that allows construction of the synchronous condensers to remain on schedule. However, the consent for operation is being held until the CPUC renders a final and non-appealable decision on the SCE advice filing.

SCE filed their advice letter with the CPUC on February 15, 2013. SCE has requested an expedited approval no later than May 9, which would allow sufficient time for the synchronous condensers to be placed in operation for the peak summer season. Ideally, the Commission will be able to take action as soon as mid-April, which would render a decision sooner than May 9, creating the potential for a final non-appealable decision prior to June. This is critical to ensure sufficient time to properly test and then place the new synchronous condensers into operation by June.

### **South Coast Air Quality Management District (SCAQMD) – Proposed Rule 1304.1:**

Staff continues to actively participate in the SCAQMD working group established for proposed Rule 1304.1, initially posted on January 4, 2013. The stated purpose of the rule is to require electrical generating facilities that use the specific offset exemption described in Rule 1304(a)(2) [Electric Utility Steam Boiler Replacement] to pay annual fees for up to the full amount of offsets provided by the SCAQMD.

ISO staff and other working group members are concerned that the proposed rule could create unintended consequences that could affect reliability in the Los Angeles Basin. Of particular concern, the district proposes to require generation developers to make an upfront deposit of five years' annual fees that are 50% non-refundable prior to receiving a permit to construct. After issuance of a permit, the remaining 50% of the deposit becomes increasingly non-refundable over a five year period regardless of whether or not the generating plant is built. We have communicated our concern that this could create a

disincentive for repowering of plants that are required to comply with the state's once-through cooling regulation by 2020. As a result, SCAQMD staff will delay presentation to the Stationary Source committee of the board until April 2013, with presentation to the full board for approval in May 2013.

### **San Onofre Nuclear Generating Station:**

SCE expects the Nuclear Regulatory Commission to make a decision by May regarding SCE's proposal to restart SONGS Unit 2 at 70 percent capacity. The outcome of the hearing with the Atomic Safety and Licensing Board on the Friends of the Earth petition arguing that SCE's plan to restart the unit would be a violation of the SONGS operating permit remains uncertain. SCE has stated that it would like to have Unit 2 operating before summer, and also plans to accelerate transmission upgrades to increase flows into South Orange County by summer 2013.

### **Long-Term Procurement Plan (LTPP) Proceeding:**

At its February 13, 2013 voting meeting, the CPUC adopted D.13-02-015 (modified from the proposed decision), authorizing SCE to procure between 1,400 and 1,800 MW to meet local capacity requirements in the Los Angeles basin by 2021, and between 215 and 290 MW in the Big Creek/Ventura area. The decision specified the following: 1) at least 50 MW must be procured from energy storage resources; 2) at least 150 MW must be procured from preferred resources; and 3) SCE may procure up to an additional 600 MW of capacity from preferred resources and/or energy storage. This was the first long-term procurement decision to create a set-aside for preferred resources. ISO staff supported a range of 2,370 – 3,741 MW in the LA Basin and 430 MW in Ventura/Big Creek.

It is important to note that this track of the LTPP proceeding did not consider potential local needs in the absence of SONGS. It is possible that the CPUC will consider local procurement needs in a "no SONGS" future within this proceeding before the end of the year.

### **San Diego Gas & Electric Power Purchase Tolling Agreements Proceeding:**

At its February 28, 2013 voting meeting, the CPUC held the proposed decision denying the tolling agreements and the alternate proposed decision approving only the power purchase tolling agreement between SDG&E and the Escondido Energy Center (20 MW expansion) for further review. The Commission expects to consider both decisions at its March 21 voting meeting. ISO staff has participated in *ex parte* meetings with Commissioners and staff as well as an all-party meeting on February 20. In all meetings, we have advocated for approval of the alternate proposed decision plus authorization for the 300 MW Pio Pico project.

## **Resource Adequacy (RA) Flexibility Capacity Initiative:**

In June 2012, the CPUC specified its intent to finalize a flexible capacity framework by the end of 2012 for implementation in the 2014 RA compliance year. ISO staff and investor owned utilities worked collaboratively to craft an interim flexible capacity proposal that could:

- 1) be implemented by the 2014 RA compliance year;
- 2) minimize added complexity and modifications to the current RA program; and
- 3) start the process of adding flexibility to the forward procurement process, allowing a more comprehensive solution to be developed and implemented for 2017 RA compliance.

ISO staff issued a “Flexible Resource Adequacy Criteria and Must-Offer Obligation” straw proposal on December 14, 2012, which stated that the ISO plans to hold a two-stage stakeholder process to implement flexible capacity obligations. The first stage focuses on:

- 1) Crafting default provisions for local reliability authorities that may not have flexible capacity procurement obligations; and
- 2) Creating ISO backstop procurement authority to procure flexible capacity resources when a load serving entity is deficient in meeting its flexible capacity procurement obligation.

The second stage would address the following:

- 1) Development of performance obligations for flexible capacity resources, including ISO market must-offer obligations;
- 2) Backstop procurement compensation for resources procured to remedy deficiencies in meeting flexible capacity resource obligations; and
- 3) Revisions to the ISO standard capacity product tariff provisions to apply to flexible RA capacity resources.

A final workshop on flexible capacity is scheduled for March 20, 2013 at the CPUC with a comment period to follow. This will likely conclude the record development in this proceeding until a proposed decision is issued sometime in May and a final decision in June, which the ISO hopes will include a flexible capacity procurement obligation for the 2014 RA compliance year. In preparation for the upcoming workshop, ISO staff will preview its updated flexible capacity data with CPUC Energy Division staff on March 11 to answer and clarify any issues.

## **FEDERAL AFFAIRS**

### **Cabinet Transition:**

On February 6, President Obama nominated Sally Jewell, President and CEO of the outdoor and recreational retailer REI, as Secretary of the Interior. Senate confirmation hearings will take place in March.

On March 4, President Obama nominated Gina McCarthy, EPA Assistant Administrator for Air and Radiation, to serve as the Administrator of the Agency; and Ernest Moriz, Director of the Laboratory for Energy and Environment at the Massachusetts Institute of Technology, as Secretary of Energy. Both positions require Senate confirmation.

### **Cybersecurity Executive Order:**

On February 12, President Obama issued an Executive Order entitled "Improving Critical Infrastructure Cybersecurity." The Order cites cyber threats to critical infrastructure such as the electric grid as one of the nation's most serious national security challenges and establishes a public-private partnership to improve information sharing and collaborative development and implementation of risk-based standards. Key provisions include timely production of unclassified reports on cyber threats by federal agencies and establishment of a process to share the information to targeted entities; consultation with stakeholders, including operators of critical infrastructure, independent regulatory agencies, local governments, and outside experts; and development of incentives for private sector participation. In addition, the Order designates the National Institute of Standards and Technology (NIST) to lead development of standards, procedures and processes to align policy, business and technological approaches addressing cyber risk. NIST published a notice in the *Federal Register* on February 26 seeking information on how to best implement requirements of the Order. Comments are due on April 8. NIST will also hold a stakeholder meeting on the framework initiative on April 3.

### **Department of Interior Expedited Renewable Energy Projects:**

On February 6, the Department of Interior announced 23 wind, solar and geothermal projects on federal lands that will receive expedited permitting and construction. The projects will total approximately 5300 MW when completed. Projects located in California include eight solar projects with a potential output of 2169 MW, four wind projects with a potential output of 495 MW, and one geothermal project with a potential output of 33 MW.

### **Sequestration Impacts:**

Automatic federal spending cuts went into effect on March 1, the result of Congress' inability to agree on a deficit-reduction package. The Office of Management and Budget (OMB) estimates that the Department of Energy will have to reduce spending by nearly \$1.9 billion, with \$524 million in cuts to the Department's energy programs, the four federal Power

Marketing Administrations and administrative expenses. Recipients of unpaid Treasury Department clean energy grants through the American Recovery and Reinvestment Act of 2009 will also face significant cuts, according to OMB.

### **Legislation:**

- On February 13, the House of Representatives unanimously approved H.R. 267, the “Hydropower Regulatory Efficiency Act of 2013.” The bill was authored by Congresswoman Cathy McMorris Rodgers (R-WA) and Diana DeGette (D-CO) and is aimed at speeding the development of small hydropower facilities and “conduit” projects involving tunnels, canals, pipelines, and similar manmade water conveyances for electricity production. It also contains provisions promoting hydropower development at nonpowered dams and closed-loop pumped storage facilities. A similar bill passed in the House in 2012 but was not taken up in the Senate.
- On February 12, Congressman Ted Poe (R-TX) introduced legislation (H.R. 621) that would prohibit funding for USEPA to implement or enforce a cap and trade program for greenhouse gases. The bill has been referred to the House Energy and commerce committee.
- On February 14, Senator Bernie Sanders (I-VT) introduced a bill entitled the “Sustainable Energy Act” (S. 329). Among other provisions, the measure would eliminate subsidies for fossil fuels and end funding for fossil fuel R&D within the Department of Energy. It would also extend the production and investment tax credits for renewable energy projects through 2020. Senator Sanders introduced a similar bill last year. It has been referred to the Committee on Finance.
- On February 14, Senators Barbara Boxer and Bernie Sanders announced a greenhouse gas tax bill that would impose a fee starting at \$20 per ton of carbon released by large, upstream fossil fuel facilities such as coal mines, refineries, and importation points. Of the total proceeds, 40% would fund energy efficiency and renewable energy projects, as well as high-risk energy research and deficit reduction initiatives. The balance would be refunded to U.S. residents monthly on a per capita basis. Senator Boxer has committed to hold a vote on the bill in the Senate Environment and Public Works Committee, which she chairs, with the intent of bringing it to the floor this summer.