

# Memorandum

**To:** ISO Board of Governors

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

**Date:** February 9, 2012

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

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*This memorandum does not require Board action.*

## STATE AFFAIRS

**Confirmations and Appointments:** Confirmation hearings took place in January for three of Governor Brown's four appointees to the California Energy Commission and California Public Utilities Commission. On January 11, the Senate Rules Committee unanimously confirmed CEC Commissioner Carla Peterman. On January 18, the Committee unanimously confirmed CPUC Commissioners Catherine Sandoval and Mike Florio. All three nominees have now been confirmed by the Senate. CPUC Commissioner Mark Ferron's Senate Rules confirmation hearing has not yet been scheduled, but he must be confirmed by March of this year.

On January 27, Governor Brown reappointed Richard Maullin to the ISO Board of Governors to a term that expires on December 31, 2014. His Senate Rules Committee confirmation hearing and that of Governors Galiteva and Bhagwat have yet to be scheduled.

## Regulatory Issues

**Flexible Capacity:** At the August 2011 Board of Governors meeting, Management presented information identifying concerns about flexible capacity adequacy in the 2017-2020 timeframe due to retirement of power plants using once-through cooling technology. The timeline for acquiring additional flexible capacity creates an urgency to define flexible capacity needs in near-term resource adequacy procurement as well as in the utilities' long-term procurement plan. An intermediate-range procurement backstop mechanism may also be needed.

The ISO has commenced a stakeholder process to address flexible forward capacity procurement and intends to file a tariff amendment in the third quarter of this year so that these provisions are in effect for the 2013 resource adequacy compliance year. In addition,

the ISO has requested that the CPUC adopt flexible capacity procurement targets in California's resource adequacy program. January workshops will consider forward procurement requirements. The ISO has also filed a petition at the Federal Energy Regulatory Commission for waiver of the capacity procurement mechanism to designate capacity for Sutter Energy Center, which is at risk of retirement.

The ISO filed its waiver request on January 26. The filing asks FERC to waive the tariff provision under the capacity procurement mechanism that limits the procurement of capacity "at risk of retirement" to cases where the facility is needed in 2013, the next resource adequacy compliance year. The purpose of the waiver is to permit the ISO to designate capacity at the Sutter plant at risk of retirement under the capacity procurement mechanism. The ISO projects that it will need this capacity by the end of 2017 and absent this designation or some other procurement the Sutter plant will retire in 2012.

In a related activity, the Energy Division of the CPUC issued a draft resolution that would require the investor owned utilities to jointly negotiate a limited-term contract with Calpine for the Sutter plant. The draft resolution orders Calpine to not retire the facility during the negotiations. This resolution is expected to be considered for adoption by the full Commission during their meeting on February 16. Some parties have suggested the ISO petition and the CPUC draft resolution are in conflict. However, the proposed CPUC resolution and the ISO request for tariff waiver both share the same goal—to keep the Sutter plant available for 2012. These complementary efforts will run in parallel over the next few months. The ISO tariff provisions provide that, if the Sutter plant is procured, the ISO will either not provide the capacity procurement mechanism designation or will stop the ISO capacity payment to avoid making duplicate payments. Either approach will result in an agreement with Calpine and avoid the retirement of this flexible resource during 2012.

**Bay/Delta Water Quality Control Plan:** The ISO has received a copy of a letter from the Northern California Municipal Utilities and the Westlands Water District to the State Water Resources Control Board regarding concerns about possible action on the Bay/Delta Water Quality Control Plan. The co-signers of the letter indicate that they have conducted analyses of impacts to users if the SWRCB's proposed flow criteria were implemented. With regard to energy, the letter notes that the plan could result in an average 30% reduction in hydropower generation and a summertime hydropower reduction of 50-70% for their facilities. The ISO has begun a review to determine the potential effect on the hydro resources in our balancing authority area. SWRCB Executive Director Tom Howard responded to the letter acknowledging concerns, requesting agencies' analyses, and seeking input throughout the process. The ISO has engaged the SWRCB staff and will participate in the process to ensure that any issues affecting the ISO's ability to reliably operate the grid are addressed in the final decision. The SWRCB staff anticipates a final decision on this issue by June 2013 at the earliest.

## **Legislature**

The legislature returned for the second half of the two-year session on January 4.

### **Legislation Introduced:**

Assemblywoman Huber introduced a bill (AB 1457) that would delete references to the Electricity Oversight Board in existing statute. Current law vests both the EOB and the CPUC with responsibility for determining if any direct or indirect policy or action undertaken by the ISO unreasonably discourages the connection of new or existing self-generation or cogeneration to the grid. AB 1457 makes the CPUC the sole entity responsible for making that determination and undertaking all necessary efforts to revise, mitigate, or eliminate that policy or action. Current law states that the CPUC and the EOB will jointly facilitate efforts of the state's transmission-owning electrical corporations to obtain authorization from FERC to recover reasonable expenditures related to transmission planning, design and expansion. The deletion of the reference to the EOB would vest the authority to facilitate the authorization with the CPUC.

Senator Yee introduced SB 981, which would prevent CPUC Commissioners and their executive employees from taking a job with a regulated utility for two years after leaving the agency or from joining the Commission if they worked for a regulated utility in the past two years.

**Legislative Hearings:** On February 3, the Assembly Utilities and Commerce Committee and the Joint Committee on Emergency Management held an oversight hearing on the December 2011 Southern California windstorm, which caused significant structural damage and left several hundred thousand Southern California Edison and Los Angeles Department of Water and Power customers without power. The power outage also affected pumping infrastructure supplying water to several Los Angeles suburbs.

### **State of the State Address**

On January 18, Governor Brown delivered his State of the State address. He spoke of California's leadership in creating jobs in the areas of renewable energy and construction of more efficient buildings and technologies. He also indicated that California is on track to not only meet but exceed his goal of 20,000 MW of renewable energy by 2020 (33% Renewables Portfolio Standard).

### **Little Hoover Commission**

On January 23, the Little Hoover Commission held a public meeting at ISO headquarters. Commission Chair Daniel Hancock and Commissioner David Schwarz, along with several Commission staff, participated in the tour and briefing. The meeting followed Karen Edson's testimony before the Commission on November 15, 2011, which emphasized the looming

need for flexible generation on the system. Little Hoover Commissioners and staff requested the meeting to further discuss the challenge of integrating renewable resources while phasing out once-through cooling.

On February 28, 2012 at 9:00 a.m. in Capitol Room 2040 Bob Foster, Chair of the ISO Board of Governors, will speak to the Commission. This will be their third hearing on the status of energy governance and related matters.

## **FEDERAL AFFAIRS**

### **Administration**

**State of the Union Address:** Energy policy was a central theme of President Obama's January 14 State of the Union Address. The President endorsed an "all of the above" approach to domestic energy development, including expansion of offshore oil and gas production; increased funding for wind, solar and other clean technologies; support for energy efficiency in the manufacturing sector; and a promise to "double down" on support for clean energy research and development and green jobs development.

**State-Federal MOU:** On January 13, Interior Secretary Ken Salazar and Governor Brown signed a Memorandum of Understanding to continue and expand a 2009 agreement to expedite federal review and processing of California renewable energy projects. The new agreement calls for accelerated treatment of transmission projects related to renewable energy power generation and also provides for input by the ISO, the CPUC and the California State Lands Commission. The ISO has been actively involved with this effort over the past two years through a monthly meeting of the Renewable Energy Policy Group. This meeting between the Federal and State signatories of the MOU is jointly hosted by the Governor's office and representatives of Secretary Salazar. With this new MOU, the ISO is increasing its active involvement as the co-chair of transmission-related deliberations.

**FERC Nominee:** President Obama on January 24 announced his intent to nominate Tony Clark of North Dakota to the vacant Republican seat on the Federal Energy Regulatory Commission previously held by Marc Spitzer. Mr. Clark has been the senior member of the North Dakota Public Service Commission since 2000 and is the immediate past president of the National Association of Regulatory Utility Commissioners. He was a state legislator representing North Dakota's 44<sup>th</sup> District (Fargo) from 1994 to 1997.

## **Congress**

**Outlook:** The House returned to Washington on January 17 following its holiday recess and the Senate returned on January 23. Energy issues are expected to be on the congressional agenda early in 2012. Majority Leader Harry Reid (D-NV) has said that he will introduce legislation focused on clean energy jobs, with possible provisions promoting energy efficiency and electric vehicles. Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM) plans to introduce a bill establishing a national clean energy standard. Senator Lisa Murkowski (R-AK), the ranking member of the Energy and Natural Resources Committee, has announced that she is considering legislation to address concerns about possible legal consequences for utilities if the Department of Energy orders power plants to operate for electricity reliability, resulting in air quality violations under new EPA regulations. On the House side, Congressman Pete Olson (R-TX) is also considering such a bill.

**California Delegation Retirements:** Six of California's 53 members of the House of Representatives have now announced that they will not seek reelection in 2012. Elton Gallegly (R-24<sup>th</sup> District – Thousand Oaks), Wally Herger (R-2<sup>nd</sup> District – Chico), Jerry Lewis (R-41<sup>st</sup> District – Redlands), Lynn Woolsey (D-6<sup>th</sup> District – Santa Rosa), Dennis Cardoza (D-18<sup>th</sup> District – Merced), and Bob Filner (D-51<sup>st</sup> District – Chula Vista) have now announced their imminent retirement.