

# Memorandum

**To:** ISO Board of Governors  
**From:** Karen Edson, Vice President of Policy and Client Services  
**Date:** October 26, 2010  
**Re:** Briefing on the Status of State and Federal Legislative Matters

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*This memorandum does not require Board action.*

## STATE AFFAIRS

### Legislative Schedule

November 2: General Election.  
November 30: Adjournment sine die at midnight  
December 6: 2011-12 Regular Session convenes for Organizational Session  
January 1: Statutes take effect  
January 3: New Governor takes office

### Legislation Update

September 30 marked the deadline for Governor Schwarzenegger to sign or veto bills before him. In total, he signed 1,832 pieces of legislation and vetoed 556. Of the bills the ISO tracked that made it to his desk, he signed 13 and vetoed two. Here is how he acted on the bills we were most concerned with:

#### *Bills Signed*

**AB 1954 (Skinner):** Allows IOUs to recover in retail rates costs associated with new transmission facilities that FERC does not allow in FERC-regulated rates.

**AB 2037 (V.M. Perez):** Prohibits IOUs from entering into long-term financial commitments with or for new generation that does not meet specified air pollution criteria.

**AB 2514 (Skinner):** Requires the CPUC to adopt an energy storage system procurement target to be achieved by LSEs by December 31, 2015, and a second target to be achieved by December 31, 2020. Governing boards of local publicly owned electric utilities would also have to adopt an energy storage system procurement target to be achieved by the utility by December 31, 2016, and a second target to be achieved by December 31, 2021.

**SB 1476 (Padilla):** Requires investor and publicly-owned utilities that use advanced metering (smart meters) to protect consumers energy usage data from an unauthorized access or disclosures.

### ***Bills Vetoed***

*[In both cases, the Governor's veto message called the bills unnecessary and indicated that representatives of these entities would always appear if asked.]*

**SB 1437 (Kehoe):** Requires a representative of the ISO to appear before the appropriate policy committees of the Senate and Assembly to report on the activities of the ISO.

**SB 1467 (Padilla):** Requires the chair of the California Energy Commission to appear annually before the appropriate policy committees of the Senate and Assembly to report on the activities of the commission.

## **Gubernatorial Race**

Just days before the election, gubernatorial candidates Meg Whitman and Jerry Brown are still engaged in a very tight race. An October 4 Rasmussen poll shows Brown leading Whitman 49% to 44% with a  $\pm 4\%$  margin of error. Additionally, the New York Times classifies the race as a toss-up.

## **Proposition 23**

Both candidates are officially opposed to this measure to suspend AB 32 implementation until unemployment drops below 5.5 percent for four consecutive quarters. A Reuters/Ipsos poll from early October shows the measure trailing with 49% opposition and 37% support. A Public Policy Institute of California poll indicated a much tighter race, however, political observers largely agree that the measure does not have a very strong chance of passing.

## **State Budget**

On October 8, state legislators passed the budget and closed the \$19 billion deficit without any new taxes or fees. They set a record by passing it 100 days late.

## **FEDERAL AFFAIRS**

### **Administration**

President Obama said on October 6 that his administration will approach climate policy in increments going forward, rather than attempt to gain passage of an omnibus climate and energy bill. Even though the House successfully passed an omnibus bill last year under the leadership of Congressman Waxman and Speaker Pelosi, the Senate has not been able to move an energy or climate bill to the floor.

The President's announcement that Pete Rouse will be an interim Chief of Staff following the departure of Rahm Emanuel brings a seasoned expert on energy issues to the top White House post. Rouse was Obama's Senate Chief of Staff, where he coordinated a series of energy roundtables that included ISO representatives. He was also Chief of Staff to former Senate Majority Leader Tom Daschle (D-SD), overseeing Daschle's efforts to enact energy and climate legislation in the early part of the decade.

### **Congress**

Congress adjourned for its pre-election recess on September 29 after passing a continuing resolution to keep government functioning at roughly current levels through December 3. The vote for adjournment took place eight days earlier than scheduled and required a rare tie-breaking vote by Speaker Pelosi in the House after 39 Democrats broke ranks to protest congressional inaction on tax cuts. The Senate vote was 48 to 51 in favor of recess. Members are scheduled to return to Washington on November 15 for a lame duck session. The Senate will continue to meet in *pro forma* session in the interim, a strategy aimed at preventing presidential recess appointments.

The Senate Energy and Natural Resources Committee on September 29 reported a grid-focused version of a cyber security bill that was previously passed by the House, H.R. 5026. The bill, entitled the "Grid Reliability and Infrastructure Defense Act" (GRID Act), passed in the form of an amendment by Committee Chairman Jeff Bingaman (D-NM) and focuses on any act "that disrupts, attempts to disrupt, or poses a significant risk of disrupting the operation of programmable electronic devices or communications network... essential to the reliable operation of critical electric infrastructure." The bill gives FERC the authority to issue rules and orders to protect critical electric infrastructure, including the authority to issue such directives on an emergency basis. The Secretary of Energy is granted emergency authority to direct FERC to take action against cyber threats. There is strong congressional support for a bill that will help guard the nation's electricity sector and a great deal of speculation about whether the GRID act might be able to move in lame duck session, perhaps as an add-on to another bill such as the Defense Authorization. Senate Majority Leader Reid has said that he would prefer to pass a more comprehensive cyber security bill such as the one under consideration by the Senate Homeland Security and Governmental Affairs Committee, but it is uncertain whether adequate time remains to pass a comprehensive bill this year.

A flurry of energy and climate bills circulated in the Senate just prior to recess included a bipartisan clean energy tax package, S. 3935, cosponsored by Senator Bingaman and Senator Olympia Snowe

(R-ME); a renewable energy standard proposal also sponsored by Senator Bingaman; and a proposal by Senator Lindsey Graham (R-SC) that would require utilities to obtain a percentage of their electricity from “clean energy sources,” including renewables, nuclear energy, energy efficiency and “clean coal.” Graham has promised to work with Senator Bingaman on compromise language after Congress returns from recess.

The outcome of the November 2 mid-term elections could have major impacts on key committee chairmanships and congressional legislative initiatives. In the House, Republicans need a net gain of 39 seats to win control and recent polls indicate that up to 77 seats now held by Democrats could be in play. In the Senate, the current balance of power is 59 to 41 in the Democrats’ favor, counting the two independents who usually line up with them. Of the 37 Senate races this year, Republicans would need to win 10 to take control of the Senate. Of special note, three Senate races with appointed Democrat incumbents (West Virginia, Illinois and Delaware) will end with the winners seated immediately in the lame duck session. Republican wins in any of these three races could raise further difficulties for Democrat leadership during the lame duck session.