

# Memorandum

**To:** ISO Board of Governors

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

**Date:** July 5, 2012

**Re:** Legislative and State Regulatory Update

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

## STATE AFFAIRS

### Legislature

#### **Legislation:**

Assemblyman Bradford's bill regarding the ISO, AB 2516, was amended on May 14 to address concerns raised by the ISO about the bill potentially restricting our ability to maintain reliability while balancing costs. There are now two provisions in the measure: 1) The ISO shall conduct internal operations in a manner that minimizes cost impact on ratepayers to the extent practicable, and 2) The ISO shall communicate with all balancing area authorities in California in a manner that supports electrical reliability. On June 11, the bill was passed on the Assembly floor, and was subsequently passed in the Senate Energy, Utilities & Communications Committee.

#### **Summer Readiness Briefings:**

Briefings continue on summer readiness in light of the San Onofre Nuclear Generating Station's non-operational status. On June 20, ISO staff briefed the Environmental Caucus, made up of 46 Senators and Assembly members. Additionally, Steve Berberich, Bob Weisenmiller, Chair of the California Energy Commission, and Mike Florio, Commissioner at the California Public Utilities Commission, have held a series of meetings with state legislators on the status of summer readiness in Southern California.

ISO staff have also provided summer readiness briefings at Southern California Edison's "Spring 2012 Electricity Outlook" for customers in Santa Ana; the Irvine City Council; San Diego Gas & Electric Company's "Energy Showcase" in San Diego; and the Association of California Cities – Orange County "2012 City Infrastructure Summit" in Costa Mesa. Staff will also brief the Southern California Association of Governments in Los Angeles in July.

## **Regulatory Update**

### **Flexible Capacity:**

The ISO is pursuing the need for flexible capacity in the 2012 long-term procurement planning and 2013 resource adequacy proceedings at the CPUC.

Long-term procurement planning proceeding: The ISO agreed with the California Public Utilities Commission in April that the primary focus for 2012 should be local capacity resources, because they also contribute much to flexible capacity needs. The CPUC issued a scoping memo on May 17, 2012 that includes consideration of multi-year flexible capacity needs, with a decision expected by December, 2012. In the local reliability track of this proceeding, the CPUC will consider authorizing new capacity or infrastructure builds, or requiring the investor-owned utilities and/or other load serving entities to contract with existing resources for local reliability needs over the next several years (potentially 2014 – 2021).

2013 resource adequacy proceeding: In its June 21, 2012 decision, while the CPUC considered proposals by the ISO and the CPUC's Energy Division to address flexible capacity needs with regard to local capacity requirements over the next several years, it deferred implementing any flexible capacity requirement for the 2013 resource adequacy compliance year. However, the Commission will continue considering flexible capacity needs and policies in a new phase of the 2013 proceeding. The CPUC's goal in this proceeding will be to determine how procurement might be altered to meet flexibility needs and to determine if flexibility requirements for the 2014 resource adequacy compliance year are necessary. The CPUC has undertaken an effort to finalize and adopt a framework for filling flexible capacity by or near the end of 2012. They will coordinate their efforts in the 2014 proceeding with efforts in the long-term procurement process proceeding to provide a method for contracting for multi-year local capacity needs. We expect the Commission to open the 2014 resource adequacy proceeding in approximately October 2012 and make a decision by June 2013.

### **Cap-and-Trade:**

The implementation of the cap-and-trade provisions is near with the first auction scheduled for mid-November of this year, and full implementation on January 1, 2013. The ISO is working with the California Air Resources Board on these issues that may affect ISO transactions, especially imports, and to make appropriate modifications in software and/or procedures to accommodate the program and address any identified concerns. The four issues of greatest importance are:

- That the definition of electricity importer not include the ISO;

- The lack of clarity around the term “resource shuffling”;
- Finalizing the details of the “qualified exports exemption”; and
- The impact of restrictions on publicly-owned utilities’ use of allowances.

## **FEDERAL AFFAIRS**

### **Congress**

#### **Renewable Energy Development:**

Members of the Senate Finance Committee have been meeting during June to consider the impact of tax reform on domestic energy policy and evaluate the extension of various temporary tax provisions. The Production Tax Credit sought by the wind industry continues to have a good deal of bipartisan support, but there is no consensus yet about how to pay for the program and how to move legislation forward. The next significant vehicle for the extenders is likely to be next year’s comprehensive overhaul of the U.S. tax code, but Finance Committee Chairman Max Baucus (D-MT) has stated that he would like to move the energy tax provisions forward as a clean bill rather than add them to an omnibus measure. Extension of the Production Tax Credit received a key endorsement from House Majority Whip Kevin McCarthy (R-22<sup>nd</sup> District – Bakersfield) on June 20.

Senators Chris Coons (D-DE) and Jerry Moran (R-KS) have introduced legislation (S. 3275) that would allow investors in renewable energy and biomass projects to use the “master limited partnership” tax structure that is currently only available to investors in fossil energy and pipeline projects. The partnership structure would allow companies to divide income, taxes and tax credits among investors, who could then trade ownership interests the same way as they would trade corporate stocks on public exchanges. Proponents argue that the structure could reduce the cost of financing renewable energy projects. Congressman Mike Thompson (D-1st District – Napa) has committed to introduce a companion to the Coons-Moran bill in the House.

#### **Resolving Environmental and Reliability Conflicts:**

On June 20, the House Energy and Commerce Committee unanimously approved by voice vote the “Resolving Environmental and Grid Reliability Conflicts Act of 2012” (H.R. 4273). The proposal would amend Section 202(c) of the Federal Power Act to shield electricity generators from lawsuits or penalties if they violate state or federal environmental regulations when directed by the Department of Energy to operate during an electric reliability emergency. During the Committee markup, members approved revisions suggested by Congressman Henry Waxman (D-30<sup>th</sup> District – Los Angeles)

providing that the Department of Energy must consult with appropriate environmental regulators 90 days after issuing an emergency order if the facility is in violation of standards. The department would have final say about whether a plant would be forced to continue operating. Floor consideration of the bill has not yet been scheduled.

**Cybersecurity:**

The Senate continues to work toward a compromise on cybersecurity legislation. Senators Sheldon Whitehouse (D-RI) and Jon Kyl (R-AZ) have now drafted a compromise bill that would provide incentives -- such as liability protection, increased access to federal funds, and technical assistance -- to companies that voluntarily meet "baseline performance goals" for cybersecurity systems rather than the mandatory goal requirements contained in earlier Senate bills. On June 7, a group of former military, intelligence, and security leaders from prior Republican and Democratic administrations sent a letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) emphasizing the need for Congress to act quickly on a cybersecurity bill that includes critical infrastructure protections. At this writing, however, the Senate schedule is uncertain. The House passed its version of the bill without mandatory requirements on April 26.

**Administration****NRC Transition:**

Nuclear Regulatory Commission Chairman Gregory Jaczko announced on May 21 that he would retire as Chairman effective upon confirmation of a successor. On May 24, Allison Macfarlane was nominated to replace him and current Commissioner Kristine Svinicki, a Republican, was re-nominated to a second term. The Senate Environment and Public Works committee held a joint confirmation hearing on June 13 and voted to approve the nominations on June 21. The working deadline for a vote by the full Senate is June 30, when Ms. Svinicki's term expires.

**FERC Commissioners:**

On May 24, the Senate confirmed the nomination of Tony Clark, Chairman of the North Dakota Public Service Commission, and the re-nomination of John Norris as Commissioners at the Federal Energy Regulatory Commission. The two were sworn in during the week of June 15. Clark, a Republican, was appointed to fill the term vacated by the resignation of Marc Spitzer, which expires on June 30, 2016. Norris, a Democrat, was approved for a full five-year term ending June 30, 2017. The appointments return FERC to its full five-member complement.

**WAPA Stakeholder Initiative:**

On May 30, Department of Energy Secretary Steven Chu announced that the Department will embark on an initiative to gain stakeholder input on how the federal Power Marketing Administrations can lead in transforming the nation's electric grid. The Department will initially hold six stakeholder meetings focused on the Western Area Power Administration to obtain input on steps needed to enhance overall system operations and planning. A meeting in Folsom is scheduled for July 26.

**Bonneville Transition:**

Bonneville Power Administrator Steve Wright announced on June 19 that he will retire in January, 2013. Mr. Wright has been the chief executive of Bonneville since 2000.