

Memorandum

To: ISO Board of Governors

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

Date: January 31, 2013

Re: Regulatory Update

This memorandum does not require Board action.

Highlights

- *FERC grants ISO's request for declaratory order that JP Morgan does not have a right to consent, under a separate tolling agreement between JPJP Morgan Morgan and AES, to the construction and operation of synchronous condensers at the AES Huntington Beach facility*
- *FERC accepts reliability must-run agreement filed jointly with AES Huntington Beach for synchronous condensers authorized by the Board at its September 13- 14 meeting*
- *FERC approves ISO's request for permission to provide a one-time opportunity for generator downsizing of generators in the interconnection queue*
- *CSOLAR files complaint against the ISO requesting FERC to find that the ISO does not have a right to terminate an interconnection agreement where a phase of a project is not constructed but an earlier phase of the project is already under construction or in operation*
- *FERC approves ISO's request for confidential information sharing with the CFTC*

Federal Energy Regulatory Commission and related Court of Appeals matters

Tariff amendments and orders

- Deutsche Bank Energy Trading, LLC (IN12-4)

On January 22, 2013, FERC approved a settlement between FERC's Office of Enforcement and Deutsche Bank Energy Trading LLC. Enforcement determined that from January 2010 through March 2010 Deutsche Bank manipulated the ISO's markets and submitted false information to the ISO. Specifically, Enforcement alleged that Deutsche Bank submitted physical transactions that were inconsistent with market fundamentals, and instead were submitted with the intent of benefiting Deutsche Bank's congestion revenue rights position. Many of those physical transactions, according to Enforcement, separately were predicated on false information. Although Deutsche Bank neither admitted nor denied that it violated FERC regulations, it agreed to pay FERC a civil penalty of \$1.5 million and disgorge unjust profits of \$172,645 (plus interest) to the ISO. The ISO will distribute the disgorged funds to market participants harmed by Deutsche Bank's conduct.

Responsible Attorney: David Zlotlow

- **Response to FERC request for additional information on alternative mode of real-time contingency dispatch (ER13-69)**

On January 16, 2013, the ISO submitted additional information requested by FERC on the ISO's October 10, 2012, proposed tariff revisions to implement an alternative mode of the real-time contingency dispatch in the ISO market, referred to as the real-time disturbance dispatch. On December 10, 2012, FERC staff issued a letter indicating that additional information is required by FERC to evaluate the ISO's submittal. The ISO requested that FERC accept the October 10 filing with the support of the additional information included in this response, effective March 18, 2013 – 61 days from the filing of its response.

Responsible Attorney: Sidney Davies

- **Payment rescission rules for Ancillary Services tariff amendment (ER13-707)**

On January 4, 2013, the ISO submitted proposed tariff provisions to rescind capacity payments associated with awarded or self-provided ancillary services capacity that the ISO determines is not available before real-time due to a resource constraint. Currently, the ISO disqualifies unavailable ancillary service capacity prior to the real-time market so that it can procure replacement ancillary services. Through this tariff amendment, the ISO proposes to modify the settlement treatment of this capacity when the ISO determines such capacity will not be available in real-time because of a resource constraint. This rule will apply equally to all resources providing ancillary services capacity. The ISO requests an order four months in advance of the effective date of this tariff amendment so that the ISO and market participants will have sufficient time to test upgrades to market systems and validate changes to the settlement charge codes before the ISO places the proposed rule changes into production. The ISO anticipates implementing this in the fall. No party protested the ISO's tariff amendment.

Responsible Attorney: Andrew Ulmer

- **Reliability Must-Run Agreement for Huntington Beach Units 3 and 4 (ER13-351)**

On January 4, 2013, FERC conditionally accepted a reliability must-run agreement to be effective January 9, 2013, filed jointly by the ISO and AES Huntington Beach on November 9, 2012, for units 3 and 4 at FERC. During the summer of 2012, Huntington Beach units 3 and 4 were brought out of retirement to meet local reliability needs in light of the unavailability of the SONGS nuclear facility. The units lost their air permits on October 21, 2012. The agreement provides for the conversion of the existing generating units 3 and 4 into synchronous condensers to be available for the summer of 2013 to provide voltage support in anticipation of the continued unavailability of SONGS. The ISO, AES Huntington Beach and the responsibility utilities, Southern California Edison and San Diego Gas & Electric, agreed on all rates, terms and conditions. The agreement, however, reflects conditions precedent that must be satisfied before it can become effective. One of the conditions precedent concerns JP Morgan's consent rights under a separate tolling agreement between JP Morgan and AES. FERC accepted the agreement, effective January 9, 2013 rather than January 1, 2013, as requested by the ISO and AES. FERC also directed the ISO to submit informational reports every 90 days following completion of the project on the hours of operation of the synchronous condensers, as discussed further in the order.

Responsible Attorney: Sidney Davies

- **Request for declaratory order concerning JP Morgan (EL13-21)**

On January 4, 2013, FERC granted the petition filed by the ISO on November 19, 2012, for declaratory order requesting that FERC find that certain agreements between AES Huntington Beach LLC and BE CA LLC, a subsidiary of JP Morgan Ventures Energy Corporation (collectively, JP Morgan), do not provide JP Morgan with consent rights that cover a synchronous condenser project at Huntington Beach Units 3 and 4, and that JP Morgan's consent is not required for the reliability must-run agreement between the ISO and AES to become effective. As noted above, the ISO filed a reliability must-run contract with AES that includes a condition precedent that requires resolution of JP Morgan's purported consent rights. JP Morgan had not consented, waived its right to consent or acknowledged that it has no right to consent. Because JP Morgan has informed AES that it intends to seek rehearing and appellate review of the order, AES has determined that the order does not satisfy the condition precedent.

Responsible Attorneys: Burt Gross and Sidney Davies

- **Blackstart and system restoration plan tariff amendment (ER13-699)**

On January 3, 2013, the ISO filed a tariff amendment proposing to align its determination of the location and amount of blackstart needs with the requirements of a revised North

American Electric Reliability Corporation emergency and preparedness operations reliability standard, scheduled to take effect on July 1, 2013. The ISO requested an effective date for these tariff revisions of April 3, 2013 to ensure resources providing blackstart services have sufficient time to amend their interim blackstart agreements with the ISO. No party protested the ISO's tariff amendment.

Responsible Attorney: Andrew Ulmer

- **Amendment to allow recovery of greenhouse gas compliance costs (ER13-19)**

On December 20, 2012, FERC conditionally accepted in part and rejected in part the ISO's October 29 proposed tariff amendment to include greenhouse gas compliance costs in the calculations set forth in the tariff for determining certain costs. FERC found that in general, the ISO's proposal to incorporate the costs of the greenhouse gas allowances into the calculation of generating units' variable costs is just and reasonable. However, FERC rejected the ISO's proposal to set forth in the Business Practice Manual an alternative methodology for calculating the price at any time that a greenhouse gas allowance price index is unavailable. The ISO submitted a compliance filing on January 4, 2013.

Responsible Attorney: Sidney Davies

- **Generator project downsizing tariff amendment (ER13-218)**

On December 20, 2012, FERC conditionally accepted the ISO's October 29, 2012, tariff amendment to provide a one-time opportunity for certain customers in ISO's interconnection queue to downsize their project size, in order to facilitate completion and achieve commercial operation of projects that would be viable but for an inability to construct the full megawatt generating capacity originally requested. A downsizing generator must pay for certain administrative costs in addition to the costs of any increase in network upgrades to itself or an interconnected customer that is affected by the downsizing. On November 19, two parties submitted limited protests to the proposed tariff amendment, to which the ISO responded on November 30, indicating that: (1) cost caps are appropriate because transmission owners will also benefit through the downsizing proposal approach of addressing network upgrade downsizing all at one time, rather than via multiple requests that could come at any time; and (2) the ISO agreed with one protest that cost coverage under the proposal should extend coverage of any downsizing costs that might affect a utility distribution interconnection customer. In response to a party's request for an alternative downsizing option, the ISO responded that this matter was beyond the scope of the present proceeding which considers the tariff proposal only. FERC approved the effective date of January 1 subject to a modest compliance filing, which was submitted on January 22, 2013.

Responsible Attorney: Bill Di Capo

- **Request for Rehearing of FERC's November 19 Order on tariff modifications to allow the ISO to procure resource adequacy maintenance outage backstop capacity as a new form of backstop procurement (ER12-2669)**

On December 19, 2012, the ISO submitted a request for rehearing of FERC's November 19, 2012 order solely with regard to FERC's rejection of proposed tariff modifications to allow the ISO to procure resource adequacy maintenance outage backstop capacity as a new form of backstop procurement. In the November 19 Order, rather than accepting the proposed backstop provisions, FERC directed the ISO to use its existing capacity procurement mechanism authority to issue a significant event designation to procure the capacity needed to address a load serving entity's failure to meet its replacement requirement. The ISO argued that this would not be just and reasonable. As FERC would have the ISO apply the capacity procurement mechanism significant event authority in this instance, the cost allocation of the designation would not follow cost causation principles and would not provide the appropriate incentives to load serving entities that have a replacement requirement. In addition, to the extent that existing capacity procurement mechanism authority provides a basis for the ISO to procure the capacity needed to address a load serving entity's failure to meet its replacement requirement, that authority is more appropriately found in the ISO's authority to address an insufficiency in a load-serving entity's monthly resource adequacy plan through a capacity procurement mechanism designation under section 43.1.2(3) of the tariff. The ISO requested that FERC grant rehearing of the November 19 Order and either revise the cost allocation for the capacity procurement mechanism significant event designation to allocate the costs of the designation to the responsible load serving entity in the case of a failure to meet resource adequacy replacement requirements, or direct the ISO to treat a failure to meet a replacement requirement as equivalent to an insufficiency in a load-serving entity's monthly resource adequacy.

Responsible Attorney: Beth Ann Burns

- **Tariff amendment regarding confidential information requests from the CFTC (ER13-404)**

On January 29, 2013, FERC accepted a tariff amendment that the ISO filed on November 16, 2012, to allow the ISO to provide confidential or commercially sensitive data to the Commodity Futures Trading Commission on the same basis that it currently provides such data to FERC. This tariff amendment, which was approved by the Board on November 1, was necessary to obtain an exemption from the CFTC's regulatory oversight. Specifically, the CFTC has proposed to exempt RTOs and ISOs from its regulatory oversight on the condition that, among other things, the ISO or RTO tariffs may not require notice to affected market participants when the ISO or RTO provides information to the CFTC in response to a subpoena or other information request. The ISO tariff has long authorized the ISO to provide information to FERC without notifying affected market participants. The proposed amendment expanded the relevant tariff section to encompass requests from the CFTC and its staff as well. No party protested the ISO's tariff amendment.

Responsible Attorney: Dan Shonkwiler

- **Tariff amendment regarding tax-exempt generation (ER13-174)**

On December 19, 2012, FERC issued a delegated order accepting an ISO tariff amendment that creates an exception to the ISO's central counterparty structure for certain self-schedules by publicly-owned utilities. The order will alleviate concerns that the ISO's new structure as a central counterparty to market transactions might jeopardize the tax-exempt status of their debt. No party protested the ISO's tariff amendment.

Responsible Attorney: Dan Shonkwiler

- **Tariff amendment to implement credit and finance enhancements (ER13-471)**

By letter order dated January 29, 2013, FERC accepted the ISO's tariff amendment to 1) modify the progressive discipline for late invoice payments to reflect the ISO's move from semi-monthly to weekly invoicing; 2) clarify terminology associated with receipt and remittance of payments; 3) eliminate unsecured credit limits for market participants with speculative-grade credit ratings; 4) eliminate certain forms of financial security that encumber the ISO's ability to call on credit support expeditiously in the event of a non-payment; and 5) add a new option for payments to and from the ISO – the Automated Clearing House (ACH) payment service. No party protested the ISO's tariff amendment.

Responsible Attorneys: Sidney Davies and Virginia Ryan

- **Motion for extension regarding compliance filing on FERC's November 16 Order on the ISO's tariff amendment to implement a process for allocating deliverability status to distributed generation (ER12-2643)**

On December 17, 2012, the ISO filed a motion seeking an extension of time to February 14 to comply with FERC's November 16, 2012 order that conditionally accepted the ISO's proposed tariff amendment. FERC granted the extension of time on January 16, 2013. The tariff amendment implements a process for allocating deliverability status to distributed generation resources. FERC's order accepting the tariff amendment also required the ISO to modify its proposal to apportion distributed generation deliverability to load-serving entities rather than to local regulatory authorities, and to reflect that FERC-jurisdictional load-serving entities must assign distributed generation deliverability through a "first-come, first-served process." While FERC had directed the ISO to make a compliance filing reflecting these modifications within 30 days of the November 16 order, *i.e.*, December 16, 2012, compliance with FERC's order requires additional consideration and stakeholder involvement to determine how best to comply with FERC's directives, while still preserving the intended benefits of the accepted proposal components. The ISO sought the extension because of the complexity of these issues, the need to fully evaluate the options and to engage with its stakeholders. Accordingly, the ISO requested 60 days additional time to make the required

compliance filing, *i.e.* to February 14, 2013. The ISO's extension request also advised FERC that some of the options the ISO has identified as potential approaches might require changes to the filed tariff amendment that go beyond the specific changes FERC ordered on compliance.

Responsible Attorneys: Bill DiCapo and Beth Ann Burns

- **Flexible capacity and local reliability resource retention amendment (ER13-550)**

On December 12, 2012, the ISO filed a tariff amendment seeking approval of its flexible capacity and local reliability resource retention mechanism to provide an incentive for a resource that is uneconomic and at risk of retirement to remain available because it will be needed for flexible capacity or local reliability at some time during the following two to five-year period, but not in the next year. If the ISO, through a transparent stakeholder process, determines that the resource is required during that period, the ISO will provide the unit with a flexible capacity and local reliability resource retention designation. The resource will receive compensation that supplements any revenues it receives from capacity contracts and participation in ISO markets such that the resource is provided recovery of its annual going-forward costs as calculated by the independent evaluator and approved by FERC. The proposed amendment allocates the costs of these payments, made to the designated resource, to load-serving entities in the TAC area or areas affected by the designated need, based on load ratio share. This proposal is an interim measure. It is intended to prevent the retirement of resources that are necessary for reliability while the ISO works with the California Public Utilities Commission, other local regulatory authorities, and stakeholders toward the implementation of multi-year forward capacity procurement obligations for flexible and local resources for all load serving entities within the ISO balancing authority area. Accordingly, the proposal includes a sunset provision keyed to the earlier of the implementation of such obligations or five years. The ISO proposes an effective date of April 1, 2013 for the amendments proposed in this filing.

Responsible Attorneys: Beth Ann Burns and Anthony Ivancovich

- **Petition for distribution of forfeited funds collected in processing generator interconnection process requests (ER13-547)**

On December 11, 2012, the ISO filed a petition with FERC seeking approval to distribute certain forfeited funds that had been collected under the ISO's generator interconnection process from interconnection customers that withdrew during calendar year 2011. Under this process, each interconnection customer must submit deposits that cover: 1) interconnection study costs; and 2) if they continue through the process, financial security to cover the customer's cost responsibility for its interconnection network upgrades. A portion of the study deposit is forfeited if the customer withdraws its request from the interconnection queue before the first interconnection study phase is completed. At a later point in the process, part of the financial security deposit is forfeited if the customer

withdraws before actual construction of the network upgrades. The generator interconnection process provides that forfeited funds are distributed to scheduling coordinators in largely the same manner as the ISO distributes the penalties collected under the tariff. The ISO's filing reflects the proposed distribution of \$6,325,179, and any market interest that will be accrued through the date of actual distribution. The ISO's filing is unopposed, and an order is expected on or about February 11, 2013.

Responsible Attorney: Bill DiCapo

Regulatory Agreements

- **First amended Operating Agreement between PacifiCorp and the ISO (ER13-794)**

On January 24, 2013, the ISO submitted for filing and acceptance the First Amended Operating Agreement between the ISO and PacifiCorp. The ISO and PacifiCorp originally filed the Operating Agreement as part of a November 2007 settlement among several parties, including PacifiCorp and the ISO, in a separate proceeding. The Amended Operating Agreement provides for PacifiCorp and its customers to receive "option" congestion revenue rights for transactions scheduled at a specific ISO scheduling point as the sink. The option congestion revenue rights will provide compensation based on the difference between the prices at the sink and the source locations. This treatment contrasts with the current approach, where the ISO honors existing transmission ownership rights by reversing all the congestion charges for their transactions (a process called the "perfect hedge"). Pursuant to the Amended Operating Agreement, this election will be entirely voluntary, *i.e.*, PacifiCorp and its customers may choose to continue to receive the perfect hedge, and all other aspects of the Settlement will remain in full force and effect. The ISO requested that FERC accept the Amended Operating Agreement effective as of April 1, 2013.

Responsible Attorney: John Anders

- **Second Amendment to Valley Electric Transition Agreement (ER13-586)**

On December 18, 2012, the ISO submitted for filing and acceptance the Second Amendment to the Transition Agreement between the ISO and Valley Electric Association, Inc. ("Valley Electric"). The purpose of the Second Amendment is to include the scheduling points on Valley Electric's system in the ISO's congestion revenue rights auction, as soon as feasible after Valley Electric becomes an ISO load serving entity, such that Valley Electric and other market participants would be able to bid for congestion revenue rights at those points. All other terms and conditions of the Transition Agreement will remain in effect and in full force, except where expressly modified by the Second Amendment. FERC accepted the amendment by letter order dated January 17, 2013.

Responsible Attorney: John Anders

Reports filed

- **Market disruption reports (ER06-615)**

A market disruption is an action or event that causes a failure of an ISO market, related to system operation issues or system emergencies. The ISO reports these market disruptions to FERC on a monthly basis. On December 17, the ISO submitted its monthly report of market disruptions that occurred from October 16 through November 15. On January 15, 2013, the ISO submitted its monthly report of market disruptions that occurred from November 16 through December 14, 2012.

Responsible Attorney: Anna McKenna

- **Exceptional dispatch reports (ER08-1178)**

The ISO submits two types of monthly exceptional dispatch reports to FERC. On December 14, 2012 and January 15, 2013, the ISO submitted transactional data including incremental and decremental megawatt volume, duration and location for exceptional dispatches occurring during the month of October and November 2012, respectively. On December 30, 2012 and January 30, 2013, the ISO submitted megawatt hour data and cost data for exceptional dispatches occurring during the months of September and October 2012, respectively. An exceptional dispatch is a dispatch or a commitment issued by the ISO to a resource outside the operation of the ISO market to address operational needs that cannot be addressed by the ISO market.

Responsible Attorney: Sidney Davies

Other FERC matters

- **CSOLAR Complaint (EL13-37)**

On January 3, 2013, CSOLAR, a group of generating facility project ownership entities, filed a complaint with FERC contending that the ISO's interpretation of its rights under the generator interconnection process and Large Generator Interconnection Agreement (LGIA) is unjust and unreasonable. The complaint asks FERC to direct the ISO that it is not permitted to terminate an LGIA as to all phases of a generating facility (i.e. "terminate the LGIA in its entirety") where one phase of the project is constructed and operating and where a later phase is not constructed when the interconnection customer "has made commitments that will ensure other generators are not adversely affected." CSOLAR argued that the ISO's interpretation could result in unjust and unreasonable terminations of interconnection requests and/or LGIAs for new projects that have already required substantial investments, to the detriment not only of interconnection customers, but also purchasers and consumers that are relying on such projects.

On January 23, the ISO filed its answer to the CSOLAR complaint, arguing that the complaint should be dismissed on the following grounds: 1) The complaint fails to state a claim for relief that is ripe for FERC adjudication, because the ISO has never exercised the “right” to terminate the CSOLAR LGIA or any other LGIA under the circumstances that CSOLAR poses, as the circumstances are an unspecified possible future event; 2) CSOLAR’s requested relief would write a new provision into the ISO tariff and LGIA permitting generators to “downsize” projects at virtually any time in the interconnection process, resulting in serious implications to the ISO’s generator interconnection process, and potentially adverse impacts on other interconnection customers and ratepayers; and 3) CSOLAR was effectively asking FERC to “renegotiate” the terms of the non-conforming LGIA which had already included partial termination provisions to address the risk that CSOLAR complains of.

Responsible Attorneys: Roger Collanton, Sidney Davies and Bill DiCapo

California Public Utilities Commission matters

- **Long Term Procurement Process - CPUC Docket R.12-03-014**

On December 21, 2012 Administrative Law Judge Gamson issued a proposed decision in Track 1 of the CPUC long term procurement proceeding on the local capacity area needs for Southern California Edison’s LA Basin/Big Creek Ventura local capacity areas, which was considered in Track 1 of the proceeding. The ISO participated actively in Track 1 and presented the results of its once-through cooling studies. In its testimony and brief, the ISO recommended that the CPUC authorize procurement in a range for 2400-3800 MW in western LA and 430 MW in Big Creek/ Ventura (depending on electrical location), based on the trajectory renewable portfolio scenario.

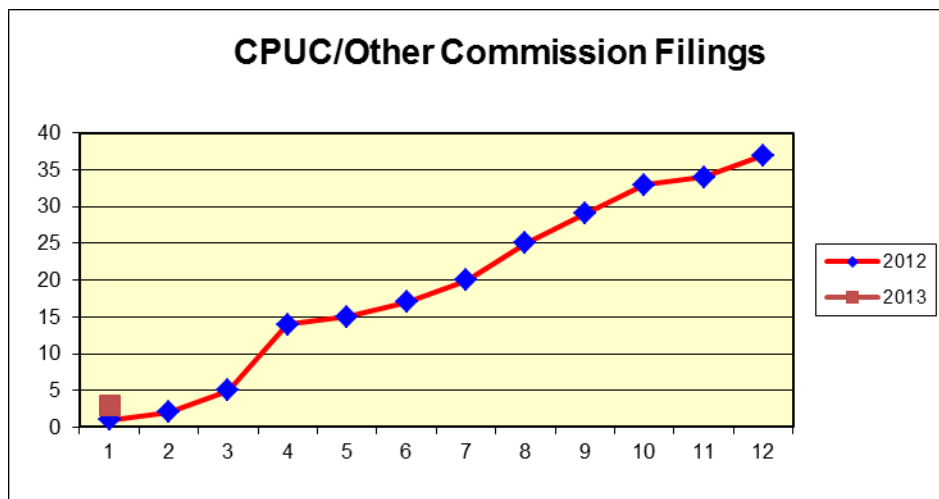
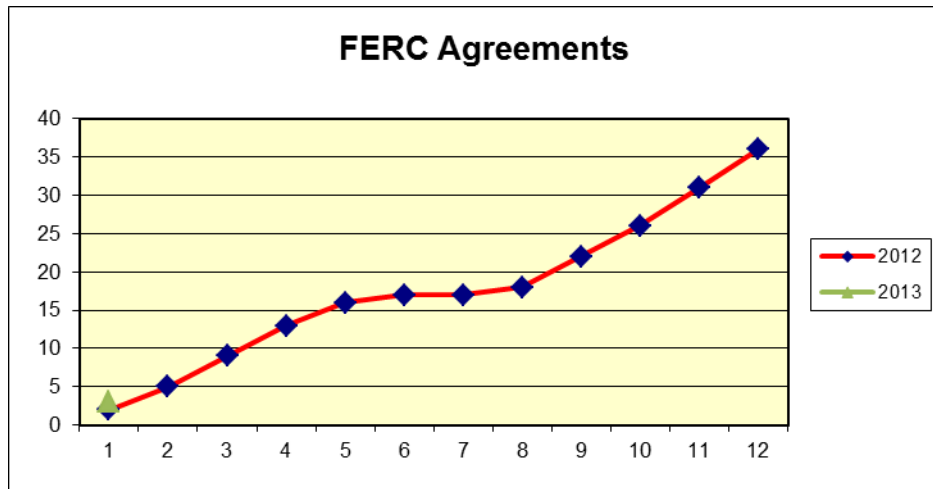
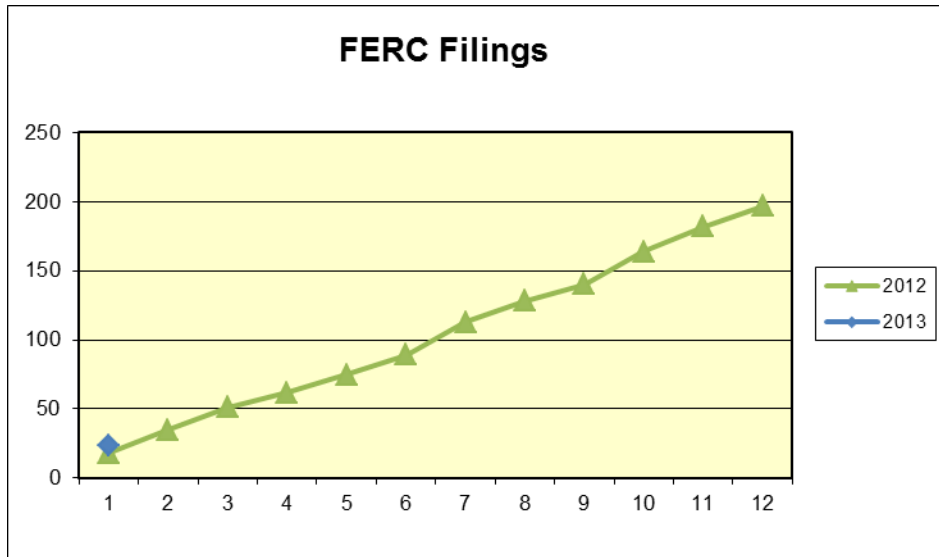
Although the proposed decision agreed with the ISO on many issues concerning the once-through cooling studies, it made adjustments to the ISO’s study results and recommendations, based on the environmentally-constrained study scenario and a sensitivity study also conducted by the ISO. With these adjustments, it also recommended that Southern California Edison be authorized to procure a minimum of 1050 MW and up to 1500 MW in western LA Basin. Thermal generation can make up no more than 1000-1200 MW and Southern California Edison must procure 50 MW of energy storage. Southern California Edison was authorized to procure 215-290 MW in the Big Creek/Ventura local capacity area.

On January 14, 2013, the ISO submitted comments on the proposed decision, suggesting that Southern California Edison be given authorization to procure up to 2400 MW in the LA Basin and 430 MW in Big Creek/Ventura, with a requirement that Southern California Edison (in coordination with the ISO) must show a need for resources procured above the 1500 MW level adopted in the proposed decision. The ISO argued that this approach was

supported by the uncertainties surrounding preferred resource development and the SONGS outage. Furthermore, the ISO will work with Southern California Edison to develop operational characteristics needed for preferred resources to participate in the resource solicitation process.

Responsible Attorney: Judi Sanders

Regulatory Filings Through January 2013



Regulatory Filings Through January 2013

