

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Legal Division

San Francisco, California

Date: February 18, 1999

Resolution No. L-276

RESOLUTION

RESOLUTION AUTHORIZING INTERAGENCY MEMORANDUM OF UNDERSTANDING CONCERNING RESPONSIBILITIES RELATED TO THE ELECTRICITY INDUSTRY BETWEEN THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE CALIFORNIA ELECTRICITY OVERSIGHT BOARD

BACKGROUND

1. In 1996, Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854), which created a new structure for the electric industry in California, was enacted into law. AB 1890 authorized the creation of the California Electricity Oversight Board ("EOB"), and anticipated active roles for both the EOB and the California Public Utilities Commission ("Commission").
2. Assembly Bill (AB) 1656 (Stats. 1998, Ch. 324), passed by the California Legislature and approved by the Governor on August 21, 1998, adopts the state budget for Fiscal Year 1998-99, and states in part:

In order to ensure that California's interests are represented clearly and consistently before the Federal Energy Regulatory Commission (FERC), the California Public Utilities Commission (CPUC) and the Electricity Oversight Board (EOB) shall, under the Governor's direction, enter into a Memorandum of Understanding (MOU) that sets forth their respective responsibilities in the electricity area.

3. Pending the negotiation of the MOU, the EOB and the Commission have been coordinating their actions in representing California before the FERC on electric dockets.

4. On December 18, 1998, Resolution No. L-276 was noticed for public comment on the Commission's Daily Calendar and also was served upon the official service list for Electric Restructuring in R.94-04-031/I.94-04-0432. Comments were due on January 8, 1999. Comments were submitted by three parties: 1) The Energy Resources Conservation and Development Commission ("CEC"); 2) The Center for Energy Efficiency and Renewable Technologies ("CEERT"); and 3) Pacific Gas and Electric Company ("PG&E"). On January 14, 1999, after receipt of the comments, Staff negotiators on behalf of the CPUC and the EOB reviewed all of the comments submitted and met and conferred regarding whether there was any need for changes to the MOU.

DISCUSSION:

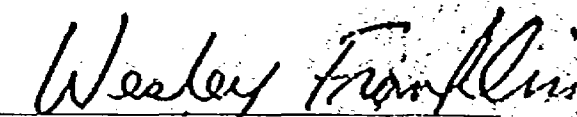
1. In compliance with the Budget Control directive in AB 1656, representatives of the Commission and the EOB have negotiated the attached Memorandum of Understanding (MOU), to ensure that California's interests are represented clearly and consistently before the Federal Energy Regulatory Commission.
2. The attached MOU between the EOB and the Commission describes the responsibilities of each agency in relation to the electric industry, and contains mechanisms for coordinating those responsibilities. The MOU addresses representation of California's interests before the FERC, including determination of lead agency responsibility, and establishes a method for identification and classification of FERC proceedings. Furthermore, the MOU allows for pooling of agency resources and sets forth procedures for coordinating the positions of the EOB and Commission. The MOU is designed to be flexible and practical, and provides for resolution of substantive policy disagreements, meetings concerning interpretation of the MOU, and a means to propose modifications to the MOU.
3. Under the MOU, the Commission's responsibilities in the restructured electricity industry include but are not limited to regulation of retail rates and services of state-regulated investor-owned electric utilities (IOUs), retail distribution system operation and distribution system reliability, investor-owned utility mergers; consumer protection and consumer education programs regarding retail electricity services, retail direct access programs, administration of IOU contracts with qualifying facilities, and examination of market behavior of IOUs and their affiliate transactions.

4. Under the MOU, the EOB's responsibilities in the restructured electricity industry include but are not limited to monitoring, evaluating and representing state interests concerning the operation and reliability of the interconnected electric transmission system and the markets for generation and bulk energy including the California Independent System Operator (ISO) and the California Power Exchange (PX) and similar entities and proceedings, and rules and policies affecting such entities.
5. Both the CEC and CEERT raise issues concerning the impact of the MOU on other state agencies. The CEC was invited to participate in the MOU negotiations between the CPUC and the EOB, and counsel for the CEC did attend many of the negotiations and received copies of drafts of the MOU throughout the negotiations. While the MOU is an agreement between the CPUC and the EOB, there are mechanisms within the MOU that address coordination with other state agencies having energy related responsibilities, including interagency pooling of resources and mutual support and that also address procedures to resolve substantive policy disagreements between state agencies. We believe that the MOU requires no changes in this regard. Furthermore, we welcome on-going input from the CEC regarding the scope or specific provisions in the MOU, and we encourage the CEC and any other state agency to coordinate directly with our Staff with respect to any of the issues addressed in the MOU.
6. PG&E has commented on a variety of issues, including, but not limited to jurisdictional issues, state law public notice and public record requirements, and due process requirements. We have reviewed PG&E's comments and find that the MOU requires no changes in response to PG&E's comments. The MOU describes responsibilities of the CPUC and the EOB in relation to the electricity industry and mechanisms for coordinating the exercise of these responsibilities. Nothing in the MOU confers jurisdiction that does not exist, nor does it negate existing statutory responsibilities. In addition, as state agencies, the CPUC and EOB are subject to existing state law requirements which are not affected by this MOU.
7. Having reviewed the comments, no substantive changes have been made to the MOU. As a result of the January 14, 1999, meet and confer session between the Staff negotiators on behalf of the CPUC and the EOB, a few minor editorial changes to the MOU have been made.
8. The Commission should enter into the attached MOU between the EOB and the Commission.

ORDER

1. The Commission's Executive Director is authorized to sign, on behalf of the Commission, the attached MOU.
2. This Resolution is effective today, and the MOU will take effect upon adoption by the EOB and signatures of the two agencies.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of February 18, 1999. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

**INTERAGENCY MEMORANDUM OF UNDERSTANDING CONCERNING
RESPONSIBILITIES RELATED TO THE ELECTRICITY INDUSTRY
BETWEEN THE
CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE
CALIFORNIA ELECTRICITY OVERSIGHT BOARD**

I. PURPOSE

Pursuant to Legislative directive, this document describes responsibilities of the California Public Utilities Commission (CPUC) and the California Electricity Oversight Board (EOB) in relation to the electricity industry, and mechanisms for coordinating the exercise of these responsibilities.

The CPUC's responsibilities in the restructured electricity industry include but are not limited to regulation of retail rates and services of state-regulated investor-owned electric utilities (IOUs), retail distribution system operation and distribution system reliability, investor-owned utility mergers; consumer protection and consumer education programs regarding retail electricity services, retail direct access programs, administration of IOU contracts with qualifying facilities, examination of market behavior of IOUs and their affiliate transactions.

The EOB's responsibilities in the restructured electricity industry include but are not limited to monitoring, evaluating and representing state interests concerning the operation and reliability of the interconnected electric transmission system and the markets for generation and bulk energy including the California Independent System Operator (ISO) and the California Power Exchange (PX) and similar entities and proceedings, and rules and policies affecting such entities.

II. REPRESENTATION OF STATE INTERESTS BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

In order to provide clear and consistent representation before the Federal Energy Regulatory Commission (FERC), this memorandum delineates agency responsibilities by subject area subsequent to restructuring of the electricity industry. Based on the particular subject area or proceeding, a single agency will be designated as "lead agency" having principal authority and responsibility for representing California's interests and policies. In some cases, lead agency designation will be divided, providing lead agency

status to each agency with respect to certain defined issues within a particular proceeding. It is also the intent of this agreement to establish mechanisms that allow for the use of resources and expertise of the State from other state agencies to contribute to the representation of California's interests in a manner that achieves the most effective representation practicable under the direction of the lead agency.

In representations before the FERC, the following division of lead agency responsibilities shall apply: The EOB shall have principal authority and shall be considered lead agency on matters concerning the ISO and the PX and policies, rules and proceedings affecting these and similar entities, the operation or reliability of the interconnected transmission system, transmission system adequacy and planning, and the generation and bulk energy markets. The CPUC shall have principal authority and shall be considered lead agency on electricity matters concerning retail distribution service, reliability of the distribution system, regulation of retail providers, the administration of investor-owned utility contracts with qualifying facilities, and retail elements of direct access, but not including FERC approved costs that may be passed through to consumers. The CPUC shall have lead responsibility for representing the State in investor-owned utility merger cases.

Two categories of proceedings before the FERC in which each agency is recognized to have subjects of lead agency responsibility are IOU transmission rate cases and Reliability-Must-Run (RMR) contract rate cases. In these proceedings the following lead responsibilities are recognized: The CPUC shall be lead agency with respect to determinations of the applicant's costs of providing service and cost-based return on equity, the internal structure of cost-based rates to account for costs and attribute them to specific rate components, and auditing of costs. The EOB shall be lead agency concerning transmission system operation and reliability, ratesetting policy and rate methodology, operational aspects of RMR services, and the impact of issues in these proceedings on bulk-energy and generation markets. In addition to the provisions of this paragraph, each agency shall have lead authority concerning the subjects for which it is designated lead in the preceding paragraphs to the extent that they arise in investor-owned utility transmission rate cases and RMR contract rate cases. Where both agencies

have lead responsibility for one or more subjects in the same proceeding, the agencies shall coordinate their representation to avoid conflicts and each agency shall conduct its representation so as not to conflict with the other agency on matters for which the other agency has lead authority.

It is understood that each agency will monitor the segments of the market for which they have principal responsibility consistent with the lead agency designations recognized in this document, to detect undesirable market circumstances such as the abusive exercise of market power. It is also recognized that there are some issues which are interrelated across segments of the market for which the agencies will each be responsible for certain segments. An example of such an issue is the development of demand response mechanisms: the EOB has responsibility concerning demand response mechanisms in the bulk markets and the CPUC has responsibility for mechanisms to allow effective consumer demand response through rate structures. It is agreed that the agencies will coordinate on such issues to achieve efficient and effective protection of public interests.

As described below, the CPUC and EOB shall coordinate their participation in other forums. Where such forums concern entities that may themselves advocate positions before or make recommendations to the FERC, the lead agency for a particular subject shall have the authority to authorize or to disapprove the advocacy of any position on that subject before such bodies. The CPUC and EOB shall each endeavor to provide clear descriptions of the agencies' responsibilities as set forth in this document to the FERC and to relevant regional and national bodies to clearly set forth the roles of the agencies.

III. IDENTIFICATION AND CLASSIFICATION OF PROCEEDINGS; FILING OF INTERVENTIONS

The EOB and the CPUC agree to institute a uniform mechanism to track proceedings before the FERC. This should take the form of a jointly utilized tracking list that identifies FERC dockets in which the State is a party. This tracking list will be

continuously updated and will include information about the status of each proceeding, including identification of the lead agency.

Where the subject matter of a FERC filing or notice is initially clear, it is anticipated that the lead agency for that subject will promptly intervene in that docket if it appears the proceeding may affect a significant state interest. It is anticipated that the non-lead agency may wish to intervene for the purpose of monitoring developments in proceedings where it is not lead. It is agreed that such interventions are not inconsistent with the delineation of agency responsibilities set forth herein so long as they are carried out in a way that does not create confusion as to agency responsibilities. Monitoring interventions should state that the purpose of the intervening agency is to track the proceeding so as to contribute to the effectiveness of the representation of the state's interests by the lead agency. It may also be the case that dockets will arise before the FERC in which it is not initially clear what subjects may be addressed in the proceeding. In such cases, it is expected that the agencies may make "placeholder" interventions for the purpose of monitoring such proceedings to determine whether issues affecting responsibilities of that agency arise.

It is anticipated that agreement on lead agency designation in particular proceedings will be reached during the coordination meetings described below. Should there be disagreement concerning lead responsibility for a proceeding or issue that the agencies are unable to resolve between themselves, the agencies may request the Governor's office arbitrate a resolution consistent with the terms of this agreement.

IV. INTERAGENCY POOLING OF RESOURCES AND MUTUAL SUPPORT

An agency may request assistance from another state agency or may propose a contribution of resources to support an effort for which another agency is lead. Such sharing of resources may include witnesses, legal support, or other resources. An agency that provides resources to support a lead agency may request inclusion of an acknowledgment of the contribution in related filings. Any such acknowledgement shall be approved by the contributing agency prior to filing or publication. A contributing

agency may also specify that no acknowledgement of its contribution be made in filings. When agencies contribute resources to the lead agency, they shall be permitted, subject to the requirements to ensure confidentiality of privileged materials set forth below, to review proposed filings and provide comments and suggestions to the lead agency except where the time permitted to file such a submission makes review and comment impracticable. When review and comment is not possible prior to filing, the submission shall be provided after filing to allow comment that may affect future filings.

V. COORDINATION PROCEDURES

In order to ensure a clear and consistent articulation of State policies, and to ensure that the EOB and the CPUC consistently coordinate with respect to positions taken in FERC electric proceedings as well as in other forums, the following coordination procedures shall be followed:

The staff of the EOB and the CPUC shall coordinate regularly on a weekly or biweekly basis, or more frequently, as required. These coordination meetings may be conducted either in person, by conference call, or in any other manner deemed acceptable by the two agencies. In these coordination meetings, the staff of the EOB and the CPUC shall meet and confer with respect to California's representation before the FERC with respect to interventions, substantive filings, matters of policy, and legal issues such as statutory interpretation and use of judicial and administrative precedents and each agency's objectives and missions. To facilitate such coordination, both agencies shall promptly inform the other of new FERC filings, notices and applications, and upon request, promptly transmit to the lead agency filings or notices that it may receive for FERC proceedings in which it is not the lead agency.

This MOU recognizes that California's interests are best served by making full use of the expertise and input of both agencies and by both agencies keeping informed of ongoing issues related to electric restructuring in FERC proceedings. This MOU further recognizes that there are interrelationships between state and

federal electric restructuring issues. If an agency desires to have a position represented in an area in which it is not lead agency, the agency shall inform the lead agency for that subject of the proposed position and the lead agency shall consider and incorporate as appropriate on a timely basis such positions into its filings on behalf of California. Additionally where a lead agency determines it to be in California's interest, it may authorize another agency to participate in a proceeding for which it has lead authority. Therefore, a lead agency may authorize another agency to intervene as a party and monitor the proceeding to which the lead agency is making California's substantive filings. In addition, where both the EOB and the CPUC have interests and expertise, the lead agency may authorize the other agency to jointly represent California in a proceeding, with each agency taking responsibility for handling specific issues. Finally, where either the EOB or the CPUC or another state agency has an interest and expertise in a subject area, the lead agency may delegate wholly, or in part, California's representation to the other agency or to a third agency.

To further the goal of both agencies staying well-informed with respect to electric industry issues, it is recognized that it is appropriate for each agency to attend meetings and forums within the state to the extent each agency finds beneficial to carrying out its responsibilities provided that such participation shall recognize and not conflict with the delineation of responsibilities otherwise set forth herein.

VI. SUBSTANTIVE POLICY DISAGREEMENTS

This MOU recognizes that under most circumstances, it is important for California to speak with one voice. The purpose of coordination procedures is to minimize disagreements. In the event of substantive disagreements, the EOB and the CPUC will make a good faith attempt to resolve any differences on a timely basis. The EOB and the CPUC will also consider policy concerns if raised by other state agencies. The EOB and the CPUC agree to the following procedures:

If, in the course of coordination, it becomes clear that there is a substantive difference of opinion with respect to California's position on any issue, the non-lead agency shall have three options:

1. The non-lead agency may decide that after providing its differing view on the particular issue that it will defer to the lead agency's decision on the issue.
2. The non-lead agency may prepare a written analysis of the issue, advocating for its position and documenting the disagreement. Under this scenario, the substantive difference will be documented, but the lead agency will still make the decision on California's position.
3. If the substantive disagreement raises serious questions over fundamental policy issues or statutory construction, or if it may result in a significant impact on the welfare of the state's citizens, the EOB, the CPUC and, if applicable, another non-lead agency with concerns of this magnitude, may seek to have the issue resolved in the Governor's office after all efforts to reach consensus have been deemed unsuccessful. However, this option should be viewed as the option of last resort and should not be used for minor differences of opinion, but should be used only for issues of great significance.

VII. CONFIDENTIALITY

It is recognized that it is in the public interest for certain proprietary or sensitive information to remain confidential. The agency parties to this agreement will enter into a confidentiality agreement to preserve the confidential status of information entitled to confidential treatment under state law and of materials subject to privilege under state law and for which the public interest would be harmed by disclosure.

VIII. REPRESENTATION OF THE STATE IN EXTERNAL FORUMS OTHER THAN THE FERC

Representation of state interests in forums outside the state other than the FERC should also be conducted in a manner consistent with the principal responsibilities of the agencies so as to avoid conflict and duplication. To achieve this, the following shall apply:

Where a forum in which an agency might participate concerns entities that may themselves advocate positions before or make recommendations to the FERC, the agency's participation shall be conducted consistently with the delineation of lead agency responsibilities regarding proceedings before the FERC. The lead agency for a particular subject will generally be responsible for representation of state interests regarding that subject. Additionally, the lead agency for a particular subject shall have the authority to authorize or to disapprove the advocacy of any position on that subject before such forums.

In forums or proceedings not covered by the paragraph above, the agencies may appear and participate as each finds necessary to effectively carry out its responsibilities on behalf of the state provided that such participation shall recognize and not interfere with the other agency's responsibilities. To avoid conflicting positions or detracting from undermining another agency's effectiveness, each agency should generally defer to the other agency on matters for which the other agency would have a lead role in a regulatory proceeding.

IX. TERM AND LIMIT OF SCOPE

This memorandum of understanding does not address mechanisms for representing the State's interests concerning gas matters but recognizes that the CPUC will continue to represent the State before the FERC in gas proceedings. Additionally, this memorandum of understanding does not address roles and responsibilities concerning environmental review and licensing of any electricity facilities. This memorandum shall

remain in effect until superceded. Either agency may request to meet and confer concerning interpretation of this document or may request negotiations to propose modifications to this document as may be required.

Dated:

WESLEY M. FRANKLIN
Executive Director

California Public
Utilities Commission

GARY C. HEATH
Executive Director

California Electricity
Oversight Board