STATE OF CALIFORNIA E DMUND G. BROWN JR, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

VIA ELECTRONIC POSTING

April 8, 2011

Kimberly Bose
Office of the Secretary
Docket Room
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A, East
Washington, D.C. 20002

Re: ***Smart Grid Interoperability Standards*, Docket No. RM11-2**
Comments of the Public Utilities Commission of the State of California Regarding Smart Grid Interoperability Standards

Dear Ms. Bose:

Attached for filing in the above-docketed case, please find an electronic version of the above-referenced document.

Thank you for your cooperation in this matter and please do not hesitate to contact me at the phone number or e-mail address below if you have any questions or concerns regarding the foregoing.

Sincerely,

/s/ Elizabeth Dorman

Principal Counsel
Phone: (415) 703-1415
E-Mail: Elizabeth.dorman@cpuc.ca.gov

EDD:ice

Enclosure

448409

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Smart Grid Interoperability Standards	Docket No. RM11-2-000

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA REGARDING SMART GRID INTEROPERABILITY STANDARDS

FRANK R. LINDH
MARY F. MCKENZIE
ELIZABETH D. DORMAN

505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1415

Attorneys for the Public
Utilities Commission of the State of
California

April 8, 2011

448409

SB_GT&S_0491275

I. INTRODUCTION

In the Energy Independence and Security Act of 2007 (EISA), the Congress directed the Federal Energy Regulatory Commission (FERC) to institute a rulemaking to adopt Smart Grid interoperability standards after the FERC has determined that "sufficient consensus" by stakeholders has been reached on such standards in a review process led by the National Institute of Standards and Technology (NIST).[1] The California Public Utilities Commission (CPUC) hereby responds to FERC's request for comments on the January 31, 2011 technical conference on the first five families of standards sent to them by NIST, and the FERC Staff's Supplemental Request for Comments, issued on February 16th, 2011.

II. COMMENTS

A. The CPUC Supports the Overarching Goal of the NIST/FERC Effort.

The CPUC supports the overarching goal of the NIST effort to seek consensus regarding smart grid interoperability standards. The NIST has developed a collaborative process that attempts to engage Smart Grid stakeholders in identifying prospective interoperability standards and evaluating these specifications against selected criteria, which include considerations such as stakeholder consensus, domains of applicability, and especially cyber-security. The CPUC supports the development of clear, high-level, consensus standards for the Smart Grid in order to avoid a mismatched national patchwork of standards that could hinder interoperability, innovation, and the reliability of interstate transmission of electricity and wholesale electricity markets. Such consensus standards should also avoid unnecessary or inappropriate interference with state Smart Grid development and authority over retail customers, distribution grid, and distribution-level markets, operations and service providers.

[1] EISA § 1305, subd. (d), Public Law No. 110-140, 121 Stats. 1492, 1788 (2007).

SB_GT&S_0491276

The CPUC has high regard for the work and process that the NIST has initiated and its continued guidance in this very important task. The NIST has made significant progress in developing an analysis of potential Smart Grid interoperability standards in a novel, fast-moving field. While the CPUC has suggestions about ways in which the FERC and the NIST processes may provide additional benefits to this important national discussion, such input should not be construed as criticism of the NIST's work on this subject or its processes and efforts in general. The CPUC understands that there are fundamental differences between regulatory agencies such as the FERC and the Local Regulatory Authorities in comparison to independent agencies such as the NIST, both in roles and processes. The CPUC expects that the benefits provided by both types of entities will enhance the analysis of the complex subjects at hand. Accordingly, the FERC should focus primarily on its core responsibilities as defined in the Federal Power Act, such as grid reliability and security.

In response to FERC Staff's Supplemental Notice Requesting Comments (Supplemental Questions), issued on February 16th in the instant docket, the CPUC believes that the FERC's prior interpretation of the Federal Power Act and the EISA text provide proper guidance on whether any standards adopted by the FERC should be made enforceable, presumably by the FERC.[2] Thus, any standards and protocols eventually adopted by the FERC should provide stakeholders and regulators direction on implementation and should function as guidelines rather than necessarily being subject to FERC enforcement authority. Due to the nascent stage of Smart Grid deployment and development at the retail and distribution level, local regulatory authorities may benefit by voluntary standards in the form of actionable requirements adopted by

[2] Supplemental Questions at ¶ 2.

SB_GT&S_0491277

the FERC. Such "model standards" would be consistent with the language of the EISA[3] as well as concerns expressed by Technical Conference panel members regarding the difficulties of development and maintenance of regulations that keep pace with technological developments.

B. There is not Sufficient Consensus on the Five Sets of Smart Grid Standards to Adopt Them as Proposed.

The CPUC recognizes and supports the opinions expressed by the majority of the panelists at the FERC Technical Conference that there is not sufficient consensus on the proposed standards. Specifically, the CPUC is concerned that the proposed standards have not sufficiently met appropriate functionality, interoperability and cyber-security criteria. This observation should not be interpreted as a criticism of the NIST's processes in general or the work it has produced on the instant subject thus far within a relatively short timeframe. The CPUC appreciates that various relevant NIST sub-groups have made considerable progress, consistent with the text of the EISA. The FERC, however, should not proceed towards actively considering the adoption of the proposed Smart Grid standards until there is sufficient consensus on those standards. Rather, the CPUC suggests the FERC solicit the NIST to continue to work with stakeholders and other relevant grid reliability organizations such as the North American Electric Reliability Corporation (NERC) and or the Western Electricity Coordinating Council (WECC) towards developing consensus positions using certain improvements to the stakeholder process. Panelists at the FERC's Technical Conference on the instant subject discussed several areas in which the proposed standards could be improved. Likewise, the CPUC believes that the proposed standards could benefit from additional thorough review by a broad variety of experts representing diverse interests to assure that any proposed standards reflect not only existing grid infrastructure, but a wide variety of potential additions to that infrastructure, and the effects of

[3] *Ibid.* and see EISA § 1305, subd. (d), Public Law No. 110-140, 121 Stats. 1492, 1788 (2007).

SB_GT&S_0491278

such additions on core concerns such as grid reliability, safety, as well as cyber and physical security.

Should the FERC determine that there is sufficient consensus regarding the proposed standards, the CPUC believes that the FERC's ordinary legal practices and procedures require full evidentiary, policy and legal analysis of the proposed standards and their analytical bases prior to either adoption of voluntary standards or implementation of any potential mandatory standards. In other words, FERC may not rely solely on the results of the NIST process to determine whether there is sufficient consensus regarding the proposed standards, nor whether those standards have been the subject of sufficient public vetting consistent with their ultimate use, but rather should launch its own independent inquiry into these topics.

Again, the need for such analysis by the FERC should not be interpreted as a criticism of the NIST, its processes in general or its products in this docket. Rather, the distinct roles and duties of the NIST and the FERC call for different types of processes and products which do not necessarily translate in an "apples to apples" manner. Fundamentally, both due process and common sense dictate that standards that must be enforced and are subject to penalty may require different analytical and legal procedures than standards that provide mere recommendations and/or guidance and are essentially voluntary. Therefore, the FERC should conduct an independent analysis to determine whether the proposed standards ultimately should be adopted in whole, in part, or with modifications, in accord with its ordinary practices. Further, the level of scrutiny included in such analysis should expressly relate to whether such standards shall be enforced by the FERC or merely voluntary.

Additionally, the CPUC suggests that the FERC should take a more active role in the development of standards in the NIST process. As the agency tasked with adopting standards,

SB_GT&S_0491279

FERC has a direct interest in ensuring that the standards that are delivered to them by the NIST are consistent with the directions of the EISA, and can ensure that stakeholders have an adequate voice in the process.

C. Any Standards Adopted by the FERC Should Be Developed Through Transparent, Public, Inclusive and Collaborative Processes.

The CPUC has become an active participating member of the Smart Grid Interoperability Panel since it began in November 2009 and has monitored and participated in the NIST and Smart Grid Interoperability Panel activities as fully as possible, given the limitations of available resources. As discussed above, the CPUC believes that the goal of developing Smart Grid standards that facilitate reliable grid operations will benefit from the input of a wide variety of entities, including regulatory agencies such as the FERC and state agencies, non-regulatory government agencies such as the NIST, regional and national electric reliability organizations, electric utilities and business developers to name just a few. NIST and/or FERC processes for Smart Grid standards development should allow all relevant entities to access, participate and provide input on the development of the standards which may become important elements in short and long-term electricity reliability and procurement. The CPUC would suggest the process for review of the initial five standards did not follow the process as explained to the CPUC or envisioned by the CPUC. Specifically, the stakeholder process developed by the NIST, via the Smart Grid Interoperability Panel (SGIP), did not provide an adequate review of the standards sent to FERC.

The process for review of standards at the NIST has been somewhat unclear. Although some NIST sub-groups were able to review the proposed standards, the CPUC understands that recommended changes were not addressed before the proposed standards were forwarded to the

SB_GT&S_0491280

FERC. Further, it is not clear from the record at hand to what extent the NIST and its various relevant sub-groups have complied with the Federal Advisory Committee Act (FACA) and/or any other relevant federal statutes with respect to the processes used to develop the proposed standards.[4] The CPUC Staff understands that the FERC must comply with the FACA when adopting input from non-governmental entities and/or agents such as the various non-government members of the NIST sub-groups. The FACA should provide some minimal standards for inclusiveness of relevant interests in the development of consensus standards contemplated by the EISA.

The CPUC recommends that the FERC should direct these five families of standards be sent back to the NIST for a more thorough review and achievement of consensus approval of a wide variety of relevant technical and interested entities, such as regulatory authorities, through that process. Such processes should include response and potential modification of the proposed standards based upon sub-group input before the standards are sent to the FERC.

More fundamentally, there seems to be confusion within and among the relevant agencies and stakeholders regarding whether or how the Smart Grid *framework* of standards developed by NIST will (or will not) translate in the *standards* discussed in the EISA and the instant FERC proceeding. Unless and until such confusion and disconnect are addressed, this process could lead to attempts to make a square peg fill a round hole. The CPUC therefore requests that the

[4] Federal Advisory Committee Act (FACA), 5 U.S.C. Title 5, was enacted to ensure that advice by various non-governmental advisory committees to government agencies is objective and accessible to the public. The Act formalizes a process for establishing, operating, overseeing, and terminating these advisory bodies. See http://www.gsa.gov/graphics/ogp/with_annotations_R2G-b4T_0Z5RDZ-i34K-pR.doc and http://www.gsa.gov/portal/content/104514.

5 U.S.C. App. See, Charter, U.S. Department of Commerce, NIST Smart Grid Advisory Committee (available at *www.**nist**.gov/smartgrid/upload/charter.pdf)*; see also, SGIPGB and SGIP Charter (available at http://collaborate.nist.gov/twiki-sggrid/pub/SmartGrid/SGIP/SGIP_and_GB_Charter.doc).

SB_GT&S_0491281

FERC and/or FERC Staff address this question so that parties may more cogently respond to the materials presented to them.

The CPUC suggests that regulators and utilities, as entities responsible for implementing the Smart Grid, need a greater voice in the consideration of standards in the SGIP process. As the regulatory agency responsible for approving Smart Grid investments for the State of California, and adopting standards for the utilities that are regulated by the CPUC, the CPUC appreciates the efforts of the NIST to allow access to the standards that are under consideration so that state agencies can review the standards without needing to pay for them. Nevertheless, it is currently unclear to what extent the CPUC may be able to publicly discuss the proposed standards in any future CPUC proceedings to consider adoption of Smart Grid standards as directed by California Senate Bill 17.[5] Such hindrances to participation in NIST and/or FERC Smart Grid standards development should be minimized and/or eliminated in order to produce a functional, high quality product worthy of strong consensus support.

The names and addresses of persons to whom communications should be addressed are:

Elizabeth Dorman
Public Utilities Commission of the
State of California
505 Van Ness Avenue
San Francisco, California 94102
(415) 703-1415
edd@cpuc.ca.gov

Wendy al-Mukdad
Public Utilities Commission of the
State of California
505 Van Ness Avenue
San Francisco, California 94102
(415) 703-2211
wmp@cpuc.ca.gov

Christopher Villarreal
Public Utilities Commission of the
State of California
505 Van Ness Avenue
San Francisco, California 94102
(415) 703-1566
crv@cpuc.ca.gov

[5] Senate Bill 17 (Padilla), Chapter 327, Statutes of 2009, available at http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_17_bill_20091011_chaptered.html.

SB_GT&S_0491282

III. CONCLUSION

For the foregoing reasons, the CPUC respectfully requests the FERC consider the comments discussed above.

Respectfully submitted,

FRANK R. LINDH
MARY F. MCKENZIE
ELIZABETH DORMAN

By: /s/ *Elizabeth Dorman*

ELIZABETH DORMAN

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1415

Attorneys for the California Public Utilities Commission

April 8, 2011

SB_GT&S_0491283

CERTIFICATE OF SERVICE

I hereby certify that I have this day, caused a copy of the foregoing document to be served electronically upon all parties of record in this proceeding, in accordance with Rule 385.2010(f) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure.

Dated at San Francisco, California, this 8th day of April 2011.

/s/ Imelda Eusebio

Imelda Eusebio

448409