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COMMENTS OF THE UTILITY REFORM NETWORK BEFORE THE LITTLE HOOVER COMMISSION ON THE GOVERNOR'S REORGANIZATION PLAN TO CREATE A DEPARTMENT OF ENERGY

The Utility Reform Network (TURN) welcomes this opportunity to present comments to the Little Hoover Commission to assist the Commission in its review of Governor Schwarzenegger's Reorganization Plan seeking to create a Department of Energy.

TURN is a statewide, nonprofit membership organization that has represented the interests of residential and small business customers of California's large, investor-owned gas, electric, and telephone utilities since 1973. TURN participates in nearly all major rate and policy proceedings before the California Public Utilities Commission (PUC). TURN is also very active on behalf of small consumers when energy policy and other utility issues are before the state legislature, the California Energy Commission (CEC) or the courts. Over the years TURN has earned a reputation for being a zealous advocate for our constituents that backs up its positions with well-researched and well-presented analysis.

The Commission has identified specific issues on which it seeks TURN's input. In the following sections, TURN first sets forth an overview of our position on the overarching energy policy and governmental organization issues that come into play under the Reorganization Plan. We then address the specific questions posed by the Commission, followed by a number of other factors that we believe the Commission should consider while evaluating this Reorganization Plan.

SUMMARY AND OVERVIEW OF TURN'S POSITION

- **The Reorganization Plan has the order of events reversed: First the state needs a clear and sustainable energy policy, then we can determine whether any reorganization or other administrative steps are necessary to implement that policy.**

The Reorganization Plan claims to address the need to have "state law and energy policies [that] clearly define the strategic directions and the rules under which electric power generation and siting of facilities will occur in California

as it moves away from the energy crisis.”¹ TURN fully supports the need for such clear definition of the overarching policies and rules for the energy industry in California. However, we fundamentally disagree with the notion that the establishment of such policies or rules should come from agency appointees, much less a newly-established Secretary of Energy serving at the pleasure of the Governor.

Instead, the policy should be the product of the legislative process, wherein the state’s elected officials craft an approach that garners majority support. The Legislature did its part last year when it delivered AB 2006 to the Governor’s desk. Unfortunately, the bill was vetoed. Where the legislative process breaks down, of course, California voters can enact legislation through the initiative process, and may have that opportunity on these issues in a special election later this year.

In this light, the current reorganization proposal seems to be an inappropriate attempt to replace the legislative process with decisions made by the Secretary of Energy.

- **At best, the Energy Reorganization Plan seems to be a solution in search of a problem.**

The focus on consolidating functions now performed by several agencies is ill-timed, given the relatively recent efforts to improve upon the coordination of those agencies’ work.

The allegations of a “fractured and overlapping set of agencies” are not supported by actual problems that are currently experienced under the existing structure. Rather than consider changes to address problems that existed in the past, the Commission should require a demonstration that the proposed changes are still warranted in light of existing practices, including recent efforts to improve inter-agency coordination and cooperation.

The allegation also ignores more recent developments that would suggest that concerns about an inability or unwillingness of the PUC and CEC to work in tandem toward a common goal may be things of the past. The Reorganization Plan makes no mention of the Energy Action Plan unveiled just over two years ago. To the extent there may have been valid concerns with regard to the working relationship of the CEC and PUC as agencies with primary responsibility over energy-related matters, the creation of the Energy Action

¹ “A Vision for California’s Energy Future,” p. 4.

Plan and the steps taken since May 2003 to jointly implement that plan would seem to mollify those concerns.

- **The Energy Reorganization Plan would promote “accountability” at the expense of meaningful checks and balances.**

The proponents of the Energy Reorganization Plan present as their first “strategy for energy reform” the creation of a “single point of accountability.”² As almost an afterthought, the last point of this strategies section promises that the Plan will also produce an appropriate “system of checks and balances.” From TURN’s perspective, the “accountability” that would be achieved through the Reorganization Plan is more akin to a consolidation of power that would come at the expense of the existing checks and balances. Such a shift would be troubling under any circumstances. With all due respect to the Commission, where, as here, the “check” embodied by the Legislature’s role in setting energy policy appears to fall victim to this quest for greater “accountability,” the Legislature should play a more prominent role in the development and approval of the reorganization.

Even if the Reorganization Plan were limited to re-assigning agency responsibility for implementing energy policy determined by elected state officials, it still rides roughshod over the checks and balances that exist between agencies in the current organization chart. The PUC and CEC play very different roles in implementing the State’s energy policy. The PUC has always placed a higher priority on considering the rate impacts of the various proposals put before it, not surprising given the statutory charge to only authorize reasonable rates. As a result, the PUC has developed a particular expertise in reviewing and considering the economic impacts of such proposals on retail customers of the utilities. The CEC, on the other hand, has traditionally served a role that focuses on other aspects of proposals to implement the State’s energy policies, and operates without any similar rate-impact mandate.

While these differing areas of expertise and emphasis may be viewed by some as an inefficiency, TURN suggests that the more appropriate way to view them is as an inter-agency check; by focusing on what they know best, each agency serves as a check on the actions of the other. For example, no matter how inexplicably enamored the CEC may become with a particular transmission line, the project should only be constructed if the PUC determines that the proposal would be cost-effective for the State’s consumers.

² “A Vision for California’s Energy Future,” p. 5.

The Reorganization Plan would achieve greater “accountability” largely by taking matters presently handled by the PUC and assigning them to the CEC. This will certainly make the Secretary of Energy and, to a lesser extent, the CEC more powerful. Whether or not it makes them more accountable is open to question. TURN urges the Commission to recognize that such “accountability” is coming at an undue cost to the existing checks and balances, despite the Plan’s claim to be augmenting those checks and balances.

- **The Energy Reorganization Plan would create unnecessary risk of substituting political decisions for decisions that today reflect ample economic and engineering analysis, and provide meaningful opportunities for public participation and input.**

California’s energy future is best served by the development and implementation of an integrated approach to energy resource decisions. In order to ensure that the state obtains necessary resources in a least-cost, best-fit manner, decisions must be based on rigorous economic and engineering analysis. Placing greater authority for these decisions in a single political appointee increases the likelihood that such decisions will be based more on political factors, with less (if any) regard for the economics or engineering concerns.

A case in point is the recent pronouncement of the Governor’s support for the “Frontier” multi-state transmission line. To TURN’s knowledge, this proposed line, and the associated very substantial cost to California citizens, was never vetted with the PUC, the state’s Independent System Operator (ISO) or with the Western Electricity Coordinating Council (WECC) before the announcement. If this is true, the most knowledgeable resources regarding transmission needs and capabilities were left out of the decision-making loop, at least up to this point. Nor does it appear that anyone performed an analysis of the cost impact on the state’s consumers. TURN is very concerned that such a data-free approach would be the hallmark of the revamped energy decision-making process under the Reorganization Plan.

COMMISSION-IDENTIFIED ISSUES

- **What are the State's greatest challenges in developing a cohesive energy policy? How does the State's organizational structure impede or enable the resolution of those challenges?**

Subsumed in this issue is “what would a cohesive energy policy look like?” In TURN’s view, a cohesive energy policy would aim to achieve long-term energy supplies that assure adequate reliability of service, attained at the least cost to consumers and the lowest practicable impact on the environment. One of the central elements of any such policy must be integrated resource planning, an approach that considers the full range of available options before committing to a particular option. In order to be successful, integrated resource planning must consider not only generation-related costs, but any associated transmission costs or constraints on transmission capacity or availability.

The greatest challenge to achieving long-term solutions is creating an environment that is predictable and stable enough to encourage long-term investments, either by regulated utilities or by unregulated companies willing to sell generation output under long-term contracts. In addition, there are substantial external challenges, such as responding to rising fossil fuel prices and the need to reduce carbon emissions, both of which can be achieved through increasing reliance on renewable generation resources and energy efficiency or conservation efforts.

At this point there is nothing inherent in the State’s organization structure that would impede the resolution of those challenges. However, to the extent that State officials continue to be plagued by what appears to be a policy schizophrenia, there is a real impediment to progress. The schizophrenia arises from the attempt to simultaneously promote long-term supply solutions and the revival of deregulated retail service. The impediment arises because deregulated retail service creates uncertainties that undermine the ability to achieve long-term commitments and, as a result, cripple future planning efforts. The plain truth of the matter is that the two paths are mutually exclusive, and only one would provide the long-term certainty that the State’s energy policy should promote. The ongoing attempt to pursue both paths simultaneously, or to at least maintain the possibility of returning to the deregulated retail service path, goes beyond presenting a “challenge” to the crafting of a cohesive energy policy; it renders such a policy impossible to attain.

- **Does the Governor's proposed reorganization plan solve these structural deficiencies? Does the plan create any new challenges for developing and implementing a cohesive energy policy?**

TURN disagrees with the premise that there are currently structural deficiencies that are impeding in any substantial way the State’s ability to implement a cohesive energy

policy. However, the proposed plan would create a number of substantial new and unnecessary challenges for developing and implementing a cohesive energy policy.

As noted above, integrated resource planning is a critical element of any cohesive energy policy. Under current practices, the PUC is primarily responsible for reviewing and approving the procurement strategies of the investor-owned electric utilities (PG&E, SCE and SDG&E). The PUC's broad role is critical in a number of ways. The evaluation of procurement options must, of necessity, include review of transmission options. The state could have access to a virtually no-cost generation resource and it would not do anyone any good if a lack of transmission resources prevents delivery of that generation to customer load. A generation resource that seems like a cost-effective investment for California consumers when viewed in isolation may no longer seem attractive once the necessary transmission upgrades are factored into the equation. These concerns are particularly acute when applied to renewable generation resources, which are likely to be even more location-specific and, as a result, have their successful development more closely tied to transmission availability.

This type of review is the very essence of an integrated approach to energy resource development. Instead of piecemeal consideration or review of a generation project in isolation from transmission resources or vice versa, the two co-dependent elements are analyzed together. Today, the PUC is primarily responsible for this analysis, although it has recently proposed to better harness the expertise of the CEC for load forecasting. The Reorganization Plan would remove the PUC's role on transmission and assign it to the new Department of Energy. Setting aside for now our concerns about the ability of the Department of Energy to seamlessly pick up where the PUC left off with regard to transmission economic analysis and the impact on the state's consumers, splitting the role would create a structural deficiency that does not exist today.

And there are concerns about having the PUC cede its role in analyzing cost-effectiveness to the Department of Energy. The notion that "any transmission is good transmission" fails to protect California consumers from expensive projects that might have been avoided had a more integrated review been performed. There needs to be an analysis of the costs and benefits of any proposed line. This is precisely the function the PUC performs when it is asked to issue a "certificate of public convenience and necessity" (CPCN). To TURN's knowledge, the current CEC has no institutional experience in performing such evaluations for transmission lines. We know from unhappy experience that the CEC has refused to perform a cost-effectiveness evaluation of proposed generation plants in its licensing process.³ Re-assigning transmission-related issues from the agency with a long track record of performing such reviews to an agency

³ In 2002 TURN actively participated in the CEC's review of the Los Esteros generation facility. TURN's prepared testimony addressing the cost-effectiveness (or lack thereof) of that proposed plant was deemed irrelevant to that review, and not allowed into the record.

with a lesser (if any) track record puts California consumers unnecessarily at risk of paying higher electric rates due to uneconomic investments. TURN would hope that the State's decision-makers recognize this as another structural deficiency that the Reorganization Plan would create.

In sum, the Reorganization Plan does not solve any structural deficiency that exists today, and appears likely to create a host of new structural deficiencies to the detriment of developing a sound energy policy and at the expense of California consumers.

- **What impact might the new organizational structure have on the price and reliability of energy in the state? How will the structure affect the ability of consumers to influence decision-making and understand their choices?"**

In today's political and economic environment, it would seem unlikely that anyone in Sacramento would challenge the notion that the State needs to cut costs wherever practicable, and work to reduce current electricity rates. It is nothing short of remarkable, then, to see an Energy Reorganization Proposal that does not even purport to reduce costs to the state, or to reduce rates. One would expect that such benefits, if they were anywhere to be found in the proposal, would be touted early, often and prominently. The stark absence of any mention of such benefits from the Reorganization Proposal suggests that Californians can hope at most for indifference. This again raises the question of "just what problem are we trying to solve here?"

The ability of consumers to influence decision-making will suffer under the Reorganization Proposal. The PUC administers an intervenor compensation program that enables financially-eligible intervenors to recover their costs of participating in agency proceedings if they can demonstrate that they made a substantial contribution to the PUC's decision. While TURN regularly seeks awards of intervenor compensation for our work before the proceeding, we do not raise this point out of self-interest, since we are rarely active in transmission siting proceedings. The parties who typically intervene in siting cases are often neighborhood groups that arise as an ad hoc response to a specific proposal.⁴ TURN's understanding is that these parties have no real hope of hiring experts and putting on a substantive case on technical transmission engineering or economic issues absent the ability to receive reimbursement of attorney and expert witness fees. But when they are able to bring those resources to bear on these issues, they have established an impressive track record of influencing the final agency outcome.

The CEC does not have an intervenor compensation program. Consumers seeking to influence the agency's decision-making would do so at their own expense, which would

⁴ One such example is Save Southwest Riverside County, a group of homeowners that was active in the PUC's review of the Valley-Rainbow transmission project.

seriously undermine any presentation of alternative views and thereby skew the decision-making process in favor of project applicants.

The Reorganization Plan does not meaningfully address its impact on public participation. Instead, it devotes a single sentence suggesting that the presence of the President of the CPUC and the President/CEO of the CAISO as non-voting members of the reconfigured Energy Commission would suffice for the purpose of “preserving well-established public and stakeholder participation.”⁵ The participation of other agency heads, particularly as non-voting members, does not substitute for meaningful public input to the agency’s decision-making process before it makes key decisions about the state’s energy future. The only reasonable conclusion to draw is that the ability of consumers to influence decision-making will suffer badly under the Reorganization Plan.

So we have a proposal that makes no claim to reduce costs to the state, nor to reduce electric rates, but would restrict rather than improve opportunities for public participation on these matters. What’s not to like?

OTHER ISSUES THE COMMISSION SHOULD CONSIDER IN ITS REVIEW OF THE REORGANIZATION PLAN

1. The Elimination or Scaling Back Of The PUC’s Role Representing California Consumers In FERC Proceedings Would Be Both Inexplicable and Inexcusable.

The Reorganization Plan proposes that the “Office of Energy Market Oversight” within the Department of Energy would “exclusively represent ratepayer interests before FERC.”⁶ Again, TURN has to ask what the problem is that this would purport to solve? Nothing in the material presented by the Plan’s proponents suggests that it is a common occurrence for more than one state agency to appear before FERC in the same proceeding. And nothing suggests that in those cases where duplication occurs, it works to the detriment of the State’s interest in the proceeding, or the interests of the State’s consumers.

Moreover, at times the PUC participates in FERC proceedings to defend its own decisions and support the applications of investor-owned utilities on matters pending concurrently at the state agency. Under the reorganization plan, a Department of Energy that disagrees with a PUC decision could choose not to defend the decision before FERC or even to take an opposing position on an issue already addressed by the PUC. Stripping the PUC of its ability to participate at FERC could therefore create additional inter-

⁵ “A Vision for California’s Energy Future,” p. 8.

⁶ “A Vision for California’s Energy Future,” p. 7.

agency conflict, encourage inconsistent state and federal policies, and allow the Secretary of Energy to frustrate implementation or enforcement of decisions resulting from an extensive evidentiary process at the PUC.

And how can it be a reasonable solution to so blithely abandon the very talented and very hard-working corps of PUC staffers who focus on FERC representation? The materials supporting the Reorganization Plan do not even allege, much less demonstrate, that there is any criticism to be raised against the PUC's efforts before FERC on matters affecting ratepayer interests. TURN believes that it would be nothing short of folly to remove the PUC from this arena absent a very compelling reason. The Reorganization Plan presents no reason whatsoever.

2. The Reorganization Plan Makes No Attempt To Explain Or Justify The Inclusion of Gas Facility Siting Review Among The Matters It Would Transfer Away From the PUC.

The Reorganization Plan purports to make its case for reorganization based on the state's experience with electric services markets and the various efforts to regulate and deregulate those markets. The claimed energy policy inconsistencies all seem to relate to electric power generation and siting of electric transmission facilities. Thus it comes as some surprise that the Plan proposes transferring not only electric transmission issues, but also "natural gas pipeline and storage infrastructure approvals" from the PUC to the CEC.⁷ Indeed, it seems that the natural gas infrastructure elements of the Plan were almost included as an afterthought. Whatever the explanation for the paucity of support for this element of the Reorganization Plan (even as compared to the generally sparse support for any element of the Plan), the Commission should conclude that the unsupported proposal should be omitted from the Plan.

3. Any Reorganization Plan Should, At The Very Least, Await The Outcome Of "The Repeal of Electricity Deregulation and Blackout Prevention Act."

The Reorganization Plan describes a need for the State's energy policies to "ensure vigorous, transparent, and competitive energy markets and procurement processes that provide adequate investment opportunities."⁸ It is safe to assume that the Plan's proponents have in mind further attempts at retail deregulation, the imposition of time-of-use meters on all consumers, and other steps that the Governor's staff have touted. "The Repeal of Electricity Deregulation and Blackout Prevention Act" currently pending qualification for the ballot for the next scheduled election would prohibit such further attempts to deregulate the retail electric service market. Rather than promote adoption and implementation of a Reorganization Plan that presumes a further deregulation even in

⁷ "A Vision for California's Energy Future," p. 5.

⁸ "A Vision for California's Energy Future," p. 5.

the face of a prohibition of such deregulation, the more prudent course would be to hold off on any further consideration of reorganization until after the fate of the ballot initiative is determined.

4. Consideration Of This Reorganization Plan Should At The Very Least Be Deferred To A Time When It Would Not Divert Scarce Resources From More Important Matters.

The Reorganization Plan has already had the deleterious effect of requiring entities with scarce resources to divert those resources away from more important near-term efforts to develop sensible and sustainable transmission, generation and market structure policies. If the Reorganization Plan goes forward, the implementation process would require the PUC and CEC to continue to focus a substantial amount of resources on the wrenching and distracting business of reorganization. It is hard to imagine that the transition from the current structure to the “Department of Energy” structure will happen so seamlessly that there are not serious disruptions to the existing staff, programs, and policy implementation efforts of the PUC and CEC. In TURN’s view, the Reorganization Plan does not promise any advances or improvements that would make further pursuit of the plan worth the very substantial risk of derailing ongoing efforts at this juncture.

5. The Secretary of Energy Position Raises Troubling Questions About A Lack Of Independence And The Potential Appearance Of A Conflict Of Interest.

Under existing law, a member of the PUC or the CEC is appointed for a term and, once confirmed by the Senate, cannot be removed from office in the absence of cause. The protection of a term appointment insulates those appointees from some of the political pressures that accompany an “at the pleasure of the Governor” appointment. While the positions of PUC president and CEC chairman are presently subject to appointment by the Governor, the risk is limited to loss of title and rank, not loss of membership on the agency. As a result, they are better-positioned to develop their own independent expertise on the underlying issues, and to exercise their independent judgment even if it may not comport precisely with the Governor’s agenda. Assuming that the Governor only appoints, and the Senate only confirms, well-qualified individuals who take seriously their charge to do what is best for the California public, such independence is a virtue rather than a drawback of the status quo. The Secretary of Energy would be a far more politically-charged position, with less opportunity for independent thinking or action.

There are also conflict of interest issues that, if not created by would certainly be exacerbated under the Reorganization Plan. For example, the Secretary of Energy would have ultimate responsibility for promoting the interests of the State’s consumers in certain energy-related matters, such as re-negotiating onerous contracts with energy service providers that are the hangover-that-won’t-go-away from the market-run-amok

