CLF Comments on the Governors' Infrastructure Initiative Presentation by NESCOE - NEPOOL Participants Committee, March 7, 2014

Thank you Mr. Chair for the opportunity to be heard on these important public welfare issues. These comments are not intended to diminish the need to address the current reliability challenge we are facing, and the adverse effects, including economic and environmental; nor to minimize the important role of the states in addressing it.

Three issues CLF would like to bring to the floor today w/r/t the Governors infrastructure initiative.

First with respect to electricity infrastructure: We respectfully request that the parties advancing this procurement initiative address the extent to which the proposed actions are consistent with the Federal Power Act, and more specifically standard market design principles as embodied in various FERC orders including Order 2000, and in numerous FERC decisions addressing resource adequacy. Fundamental to these FPA-grounded orders is that resource adequacy is to be determined through market mechanisms integrated into the wholesale market design and tariff. At the foundation of SMD is the dominant role of the "price signal" reflecting the temporal and locational value of energy and capacity. The price signal is the primary tool for decisions about consumption and new investment in generation, demand response and transmission.

Of course, there is also a critical role for reliability and transmission planning. The issue here is that pursuant to FERC orders and precedent under the FPA, planning and infrastructure deployment no longer rests within the dominion of the region's Governors. There was a time when it did; when the power planning committee of the NEGC was a primary forum for decisions to invest capital backed by ratepayer obligations. We can argue over the extent to which that construct provided for efficient and beneficial infrastructure investment, but that is largely irrelevant. Infrastructure investment decisions are no longer in the direct providence of the Governors, other than through the important effect of their police powers manifested through regulations to effectuate duly adopted policies.

CLF respectfully requests that the Chair and members consider requesting NEPOOL counsel to undertake and provide legal analysis for the members of the extent to which the Governors infrastructure initiative is or is not consistent with the FPA as it is embodied in SMD and FERC precedent; and likewise the role envisioned for ISO-NE is consistent with the Participants Agreement between all of us individually and ISO-NE.

Just briefly on the gas side: while CLF has similar concerns about the propriety and legality of the Governors actions to directly influence, if not interfere with the orderly operation of the gas markets, we want to raise a more practical consideration: our analysis and research suggests that in the long run, completely eliminating the basis through massive costly publicly funded investment as proposed in the NESCOE letter will not serve the ultimate interests of ratepayers. It is clear that we have a basis problem, and that new gas pipeline infrastructure, properly sized and appropriately conditioned, is needed. The market is well on its way to financing and deploying that new infrastructure in response to very clear and compelling price signals. It is also providing signals and means to use existing infrastructure more effectively and efficiently. We would respectfully suggest that NESCOE and Governors defer to the market as it calls for and achieves new gas supplies including through the comprehensive planning undertaken by the region's LDCs. The LDCs, as the primary holders and resellers of capacity, are required to act in the interest of ratepayers, who benefit from their being a vibrant secondary market for transportation capacity. Be wary of the law of unintended consequences from overinvesting in gas infrastructure and destroying the basis, which was at its core, a significant contributor to the California energy and reliability crisis.

Finally, it is highly probable that the resources and infrastructure which would be procured through the Governors infrastructure initiative will be uneconomic before fully depreciated, if not before deployed in the first instance. Many in the financing community, including Morgan Stanley and Bloomberg, have concluded that new renewable energy, distributed generation, intelligent energy management and storage technologies amount to a disruptive impetus to the grid as it is currently configured. Several large generators and utilities agree. Locking in additional multibillion dollar commitments of capital backed by ratepayer obligations would ignore the inexorability of these technologies and their transformative impact to the markets and the grid, which is already being felt.

More likely than not, full implementation of the Governors' initiative will create the stranded costs of the 2020's and 30's.

CLF is not opposed to new infrastructure and we recognize that the region is in the midst of a major problem. On countless occasions in the past year, we have proposed implementable solutions to increase gas supplies and availability. Our comment pertains to the scope of, and nature of the tools being pursued by the Governors to address it.

Mr. Chair, CLF thanks you for the opportunity to be heard and looks forward to receiving information from the primary actors that are responsive to these comments. And we defer to the Chair with regard to the process for acting on our request for analysis by NEPOOL counsel.