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ORA's Comments regarding May 6, 2016 Regional Grid Operator and Governance Workshop

Additional submitted attachment is included below.

I. INTRODUCTION

The Office of Ratepayer Advocates (ORA) is the independent consumer advocate within the California Public Utilities Commission (CPUC), with a statutory mandate to obtain the lowest possible rates for utility services consistent with reliable and safe service levels.¹ ORA also advocates for consumer protection related to utility service and for cost-effective approaches to achieving California's environmental goals. ORA appreciates the opportunity to comment on the May 6, 2016 Regional Grid Operator and Governance Workshop (Governance Workshop). The Governance Workshop included presentations on many of the complex legal and policy issues that must be resolved if the California Independent System Operator Corporation (CAISO) transforms from a single state independent system operator to a regional transmission operator (RTO), which may initially include five states in addition to California.²

The CAISO is currently governed by a five-member board appointed by California's governor,³ but there is no dispute that the current governance model must change if the CAISO expands.⁴ Similarly, stakeholders recognize the importance of striving to achieve a governance model that allows the new RTO to maximize the benefits of an expanded geographic footprint, while at the same time respecting the different policies of the individual states that may join the new RTO. Striking the optimum balance for the governance structure of the new RTO is the necessary foundation before moving forward with other important policies that may change in the new RTO. States and stakeholder are unlikely to agree to changes to important policies relating to matters traditionally under state jurisdiction (e.g. the Transmission Access Charge (TAC) and Resource Adequacy (RA) requirements) in advance of knowing how the governance structure of a new RTO will consider and protect their interests.

¹ Public Utilities Code Section 309.5

² Those states are one with customers served by PacifiCorp, and include Oregon, Washington, Utah, Wyoming, and Idaho.

³ Public Utilities Code Section 337.

⁴ Public Utilities Code Section 359; *Governance of a Regional ISO: Suggestions for Addressing the Political Dilemma*, Commissioner Michel Florio (Florio Comments), pp. 1-2 available at http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211293_20160429T105407_Governance_of_a_Regional_ISO.pdf; *Principles and Issues for a Western Regional ISO*, p. 1, available at http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211294_20160429T112227_Principles_And_Issues_For_A_Western_Regional_ISO.pdf

ORA supports the following high level principles regarding the governance of a new RTO, and anticipates that given the complexity and importance of these issues, that stakeholders will have the opportunity to provide more detailed comments going forward.

- Any governance structure should include a significant role for individual participating states.
- The foundational governance documents should include provisions that condition each state’s authorization for its jurisdictional utilities to participate in the RTO on leaving resource adequacy and capacity procurement to the states, and on the RTO’s express commitment not to establish a centralized capacity market.
- Any governance structure should include a meaningful role for consumer advocates.
- In the unlikely event that participating transmission owners (PTO) wish to leave the new RTO, the governance structure should include an off ramp - that fairly allocates the costs to the departing PTO.

II. DISCUSSION

A. Any governance structure should include a role for individual participating states.

Many stakeholders recognize the importance of providing an active and significant role for the states that choose to join a new RTO. Public Power stakeholders “support a strong role for the states on key market design issues” especially ones that relate to traditional areas of jurisdiction reserved to the states, including RA and the allocation of transmission access charges.⁵ Commissioner Florio observed that “a governance structure in which each state is assured of retaining its traditional control over resource planning, resource mix, and retail rates” is critical to the success of the endeavor to form the new RTO.⁶

The Governance Workshop and available materials presented options for achieving the proper level of state participation. One is to include an organized body of state regulators as part of the overall governance structure. For example, the Southwest Power Pool has a Regional State Committee (RSC) that has primary responsibility for certain issues related to transmission costs.⁷ The Mid-Continent Independent Systems Operator (MISO) has an Organization of MISO

⁵ *Public Power Statement of Principles on CAISO Market Expansion*, March 2016, p. 4, available at http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211284_20160429T074605_Public_Power_Statement_of_Principles_CAISO_Market_Expansion.pdf.

⁶ Florio Comments, p. 2.

⁷ *Table of Stakeholder Committees of other ISOs and RTOs*, p.55, available at <http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO->

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States (OMS) that plays a role in transmission planning, RA and transmission cost allocation.⁸ Each of these working models deserves further investigation so that the features most appropriate for a new RTO can be considered for incorporation in the governance model.

One of the options proposed at the Governance Workshop was to give the committee of state regulators “Section 205 filing rights,” which would require the new RTO to agree to consider the recommendations of the committee of state regulators before seeking tariff amendments pursuant to Section 205 of the Federal Power Act(FPA),⁹ and in the event the committee of state regulators disagrees with the ISO’s decision, that the committee of state regulators’ alternative proposal be included in the RTO’s Section 205 filing. An agreement giving states “Section 205 filing rights” could be incorporated by reference into the RTO tariff, subject to FERC approval.

A question posed at the Governance Workshop was whether FERC would approve such an agreement, given that section 205 permits *utilities* to amend their tariffs, subject to FERC approval? (RTOs are utilities under the FPA). ORA supports that goal of assuring that state regulators have a voice in important changes to the RTO tariff, but notes that even if the FERC approves a Section 205 filing rights agreement, such an agreement cannot guarantee that tariff changes that the states oppose will never be implemented.

ORA agrees with Commissioner Florio that FERC would, as a matter of policy, be inclined to allow the western states some leeway to craft a solution, especially one that facilitates consensus building between the RTO and state regulators. FERC’s discretion and flexibility to accommodate regional differences is bounded by the FPA and applicable regulations. At the workshop, the CAISO briefly reviewed the applicable law as follows: Section 205 of the FPA permits utilities (including RTOs and ISOs) to change rates and terms of services subject to FERC’s approval. Other parties may object to proposed changes before they go into effect by filing a protest in a Section 205 proceeding. If a rate has already gone into effect, parties may challenge it as unjust and unreasonable by filing a complaint under Section 206. Thus far, tariff change proposals under Section 205 have been filed only by utilities. One court upheld held a

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⁸ *Table of Stakeholder Committees of other ISOs and RTOs*, p.16.

⁹ 16 U.S.C. section 824d

FERC order rejecting a Section 205 filing by a utility because the utility had been ordered by its state regulator to file the tariff change request.¹⁰

Thus, it is unclear how far FERC would go in allowing a body representing state regulators to exercise Section 205 filing rights. An educated guess is that FERC would likely approve an advisory role for a committee of state regulators, and possibly allow alternative proposals submitted by the expanded RTO on its behalf, but it is uncertain that FERC would allow state regulators the equivalent of veto power over Section 205 tariff change proposals.

The expanded RTO would have a statutory right to seek to amend its own tariffs pursuant to Section 205 of the FPA. The implementing regulations require an RTO to have exclusive and independent control over its Section 205 filings.¹¹ FERC can require a tariff change in response to a complaint or on its own motion, pursuant to Section 206, even if it is not sought by the RTO. Nevertheless, Section 205 filing rights would likely provide the committee of state regulators more leverage in negotiating with the expanded RTO. Moreover, FERC has been willing to be flexible and to defer to state preferences in certain areas. Notably, FERC has “deferred” to state approaches to resource adequacy where they appear to be working,¹² in California and also in MISO.¹³

B. Any governance structure should include a role for consumer advocates.

Consumer advocates such as California’s ORA and The Utilities Reform Network (TURN), and similar advocates in other states, represent the interests of the customers that the expanded RTO would serve. Those customers would pay the costs of the expanded RTO, including the cost of expanding the transmission infrastructure, and therefore must have a role in

¹⁰ See *Massachusetts Dept. of Utilities v. FERC* (1st Cir. 1984) 729 F.2d 886; see also 18 CFR 34.35, Subsection (j) (1) (describing the requirements for an RTO).

¹¹ 18 CFR 34.35, Subsection (j) (1) (iii).

¹² *Midwest Independent Transmission System Operator, Inc.*, 122 F.E.R.C. P61,283; 2008 FERC LEXIS 592, P 10 (“[w]e believe that federal and state jurisdiction over various aspects of resource adequacy can be harmonized, and can result in an effective resource adequacy program that benefits all states and all stakeholders.”)

¹³ Another proposed protection for state policies is the use of bylaws that prohibit the RTO from proposing through its tariffs or rules changes that usurp areas of traditional state jurisdiction, including state policy preferences regarding the best mix of electric resources. While such provisions would clearly reflect the expectations of the states whose PTO’s joined the expanded RTO, such bylaws could not limit FERC’s jurisdiction under the FPA to oversee wholesale markets and to ensure that rates are just and reasonable, and nondiscriminatory

the expanded RTO and in decisions affecting them. Currently, the CAISO stakeholder processes allow consumer advocates such as ORA and TURN to participate, but an expanded RTO would make it difficult for consumer advocates who currently advocate on a statewide basis to participate effectively in meetings and proceedings that are distant from the ratepayers they represent, especially in FERC proceedings.¹⁴ One proposal recommends a role for consumer advocates on an advisory committee, the Regional Consumer Organization, which would advise the RTO on behalf of consumer advocates throughout the footprint of the RTO and proposes a funding mechanism that would be included as a line item in budget of the state's advisory board.¹⁵ The process for developing the RTO should allow for further comments and consideration of the most effective ways to allow consumer participation in an expanded RTO.

C. The governance structure should include an off ramp for PTOs seeking to leave that fairly allocates appropriate costs to the departing PTO.

In the unlikely event that a PTO, possibly at the behest of its state regulator, seeks to leave an expanded RTO, it would be prudent to specify in advance the terms and conditions that would apply. This precaution should operate to decrease the risk of protracted and expensive litigation. Among the provisions that should be considered for inclusion in such an off ramp are adequate advance notification by the PTO seeking to leave the expanded RTO¹⁶, and a method for addressing cost allocation. These suggestions are a starting point for specifying exit provisions that are fair to all who are affected and would require further discussion and consideration.

¹⁴ See e.g. May 3, 2016 letter from Chris Parker, Director of Utah's Division of Public Utilities to Utah State Senator David Hinkins, expressing concern about the Division of Public Utilities' ability to influence matters important to Utah ratepayers if PacifiCorp joins the proposed new RTO,

¹⁵ Binz Report, pp. draft, pp. 19-21.

¹⁶ Currently a two-year requirement for CAISO members must provide two years notice if they wish to leave.