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Additional submitted attachment is included below.

CALIFORNIA ENERGY COMMISSION

In the matter of:

Docket No. 16-RGO-01

**REGIONAL GRID OPERATOR
AND GOVERNANCE**

**IMPERIAL IRRIGATION DISTRICT'S COMMENTS
ON REGIONAL GRID OPERATOR AND GOVERNANCE WORKSHOP**

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I. INTRODUCTION

A. ISO, PacifiCorp

The California Independent System Operator¹ (ISO), as a nonprofit public benefit corporation, was charged under law with the duty to ensure efficient and reliable operation of the California transmission grid while reducing overall economic cost to the state's consumers. Cal Pub Util. Code § 345.5

PacifiCorp is a for-profit electric utility company serving 1.8 million retail customers in Utah, Oregon, Wyoming, Washington, Idaho and California. PacifiCorp buys and sells electricity on the wholesale market. An indirect subsidiary of Berkshire Hathaway Energy Company ("BHE"), PacifiCorp is a holding company based in Des Moines, Iowa that owns subsidiaries principally engaged in energy businesses. BHE is a consolidated subsidiary of Berkshire Hathaway Inc. ("Berkshire Hathaway").

While utilities still own transmission assets, the ISO acts as a traffic controller by routing electrons, maximizing use of the transmission system and its generation resources and supervising maintenance of the lines. ISO operates a day-ahead market for all twenty-four hours of the next operating day, and a real-time market that enables resources to schedule in 15-minute intervals with 5-minute dispatching.

ISO also performs a settlement and clearing function by charging and collecting payments from users of these services and paying providers of such services. Cash held by the ISO on behalf of market participants is recorded in a

¹ The Independent System Operators were created following the 1992 passage of the Federal Energy Policy Act, which attempted to introduce competition to the wholesale side of the electricity business. The California ISO opened its northern and southern California control centers in 1998, when the state restructured its wholesale electricity industry.

restricted asset account with a corresponding liability due to market participants in the statements of net position.

ISO's market participant payments, wholesale volume, price per megawatt hour, and total electricity revenues for SCE, PG&E and SDG&E are set forth in the following table:

Year	ISO Market Participant Payments (000)	Total ISO Wholesale (000)	ISO MWh	Total IOUs (000)
2010	\$379,319	\$ 8,600,000	\$40	\$25,686,000
2011	\$316,615	\$ 8,200,000	\$36	\$27,562,000
2012	\$333,137	\$ 8,400,000	\$36	\$29,648,000
2013	\$511,962	\$10,700,000	\$46	\$31,135,000
2014	\$734,850	\$12,100,000	\$52	\$33,381,000
2015	\$811,545	\$ 8,300,000	\$37	\$31,376,000

In addition, transmission access charges (TAC) are assessed by the ISO on behalf of the Participating Transmission Owners (PTO), to parties who require access to the ISO grid. On 1 January 2016, ISO TAC rates were \$2,217,101,852.² Exactly how ISO and PacifiCorp would allocate the TAC in the Western market is unclear. PacifiCorp is executing an Energy Gateway Transmission Expansion Program to build 2,000 miles of new high-voltage transmission lines with an estimated cost exceeding \$6 billion, primarily in Wyoming, Utah, Idaho and Oregon. Whether and how the \$6 billion in transmission costs would be included in the TAC remains unclear.³

²https://www.caiso.com/Documents/HighVoltageAccessChargeRatesEffectiveJan1_2016.pdf

³https://www.berkshirehathawayenergyco.com/assets/upload/financial-filing/BHE%2012.31.15%20Form%2010-K_FINAL%20_with%20hyperlinks.pdf

The ISO is one of nine independent system operators in North America:



B. The Merger

PacifiCorp and the ISO are proposing “A new [Regional System Operator, or “RSO”] in the Western States combining the PacifiCorp operating companies in Utah, Wyoming and Idaho with the California utilities now in the CAISO.”⁴

Under the plan, the RSO will make greater use of the ISO’s Security-Constrained Economic Dispatch, or SCED. Under the merger, the ISO will operate as an independent regional body. The ISO will not maintain its current relationship with

⁴ http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211283_20160429T073623_Considerations_in_Establishing_a_Western_Regional_Grid_Operator.pdf

the State of California in which the Governor appoints the ISO board.⁵ The proposal is to join a nonprofit corporation (ISO) with a for-profit corporation (PacifiCorp).

ISO proposes to cede control over its sole activity to for-profit parties that have an independent economic interest in the same activity and have no obligation to put charitable purposes ahead of profit-making objectives. The nonprofit ISO cannot be assured that the partnerships will, in fact, be operated in furtherance of charitable purposes. Under these circumstances, the ISO could lose its tax exempt status should the merger be consummated. *Redlands Surgical Servs. v. Commissioner*, 113 T.C. 47, 78 (T.C. 1999).

The ISO reports it may seek a ruling from the Internal Revenue Service about the effect of proposed governance changes on its tax exempt status, and is working with outside tax counsel. ISO assets are irrevocably dedicated to a charity. Changes to governance could affect current exempt status. Before it can obtain a ruling from the IRS, a governance proposal would need to be complete and final.⁶

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⁵ http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211294_20160429T112227_Principles_And_Issues_For_A_Western_Regional_ISO.pdf

⁶ http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211375_20160505T141047_Revised_Presentation_by_Dan_Shonkwiler_5616.pdf

II. GOVERNOR BROWN⁷ RESURRECTS DEFUNCT PLAN TO MAKE ISO AN RTO

A. 1999 California SB 96

Senate Bill 96 was enacted in 1999. The bill provided for the ISO to evolve into a regional organization to promote the development of regional electricity transmission markets in the western states (RTO). It was part of the scheme to transfer California's electric generators to out-of-state monopoly utilities, trusting the monopolists would create a competitive wholesale energy market. When the gamble failed, making the ISO into an RTO went by the wayside.

Senate Bill 96 was enacted in the time cusp between the creation of the California competitive energy market and its collapse. In 1998, wholesale electricity costs were \$6 billion; in 1999, the costs were \$7.4 billion. By 2000, they had increased to \$27.1 billion. The economic carnage from the failure was staggering:

The restructuring of California's electrical utility markets, in effect since 1998, has had disastrous consequences. On June 14, 2000, Pacific Gas and Electric Company (PG&E) interrupted service to almost 100,000 of its customers in the San Francisco Bay Area for the first time in its history. This was just the beginning of California's electricity problems. In the summer of 2000, wholesale prices for electrical power in California increased **an average of 270 percent over the prices in place for the same period in 1999**. As a result of deregulation, PG&E and Southern California Edison (SCE) were unable to pass on these wholesale cost increases to their customers, bringing both companies to the brink of bankruptcy by December of 2000. As Governor Gray Davis put it, deregulation has been a "**colossal and dangerous failure**." Power and Utilities: The Horses Have Bolted, But Close the Barn Doors Anyway: Utilities Told Not to Sell Their Generation Assets After All, 33 McGeorge L. Rev. 355, 355-356.

Wholesale electricity costs in the ISO markets remain elevated and volatile. For example, in 2012 the ISO estimated total wholesale costs at \$8.4 billion, or just under \$36/MWh. Two years later in 2014, costs increased 50 percent to \$12.1 billion, or just over \$52/MWh. In 2015, ISO estimated total wholesale electricity costs went down to \$8.3 billion, or just under \$37/MWh.

B. The Governor's Push for Long-Dead Plan

There is no doubt Governor Brown resurrected the long-dead plan -- to make the ISO into an RTO -- that went down with the failed experiment in electricity deregulation. On 4 and 11 September 2015, the author of Senate Bill 350 acquiesced to the governor's requested amendment to Senate Bill 350, which included this addition, provided in pertinent part here:

The transformation of the Independent System Operator into a regional organization shall not alter its obligations to the state or to electricity consumers within the state or its obligations to comply with state laws. The Independent System Operator shall retain its obligations set forth in Section 345.5, shall maintain the standards for open meetings and public access to corporate records as set forth in Section 345.5, and shall facilitate effective tracking and reporting mechanisms in support of state enforcement of Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

*The voluntary transformation described in subdivision (a) shall occur through additional transmission owners **joining the Independent System Operator** with approval from their own state or local regulatory authorities, as applicable.*

*Modifications to the Independent System Operator governance structure, through changes to its bylaws or other corporate governance documents, would be needed to allow this transformation. The **Independent System Operator shall prepare the governance modifications** needed as described in subdivision (d), but they shall not become effective **until all of the following occur:***

The Independent System Operator conducts one or more studies of the impacts of a regional market enabled by the proposed governance modifications, including overall benefits to ratepayers, including the creation or retention of jobs and other benefits to the California economy, environmental impacts in California and elsewhere, impacts in disadvantaged communities, emissions of greenhouse gases and other air pollutants, and reliability and integration of renewable energy resources. The modeling, including all assumptions underlying the modeling, shall be made available for public review.

Allowing the merger to move forward based on one or more reports requisitioned by the ISO, a proponent of the merger, is not consistent with the due diligence standards used to evaluate proposed mergers. It is also insufficient to determine if such a gamble protects the California public interest.

The merger literature provides an analytical framework for determining if a merger is in the public interest. It begins by considering the purpose of merger control, which according to a paper presented to the International Competition Network,⁸ is to ensure that mergers do not jeopardize conditions for competition. The question that needs to be asked is: Will the producer interests of PacifiCorp (higher profits) or ISO (greater income) from their merger lead to outcomes that are at odds with consumer benefit (which can be expressed in terms of lower prices, greater use of renewables, enhanced reliability)?

These issues have not been addressed adequately. Missing so far is the judicial-like impartiality that recognizes an obligation for fairness not only to

⁸ The ICN (International Competition Network) provides competition authorities with a specialized yet informal venue for maintaining regular contacts and addressing practical competition concerns.

<http://www.internationalcompetitionnetwork.org/working-groups/current/merger.aspx>

management and owners of the ISO and PacifiCorp, but also to customers and the people of California.⁹

Senate Bill 350 continues, as provided in pertinent part here:

The commission, Energy Commission, and State Air Resources Board jointly hold at least one public workshop where the Independent System Operator presents the proposed governance modifications and the results of the studies described in paragraph (1). The related Independent System Operator documents shall be made public before the workshop.

The Independent System Operator submits to the Governor the studies described in paragraph (1) and revised bylaws or other corporate governance documents setting forth the proposed modifications to its governance structure.

The Governor transmits to the Legislature the studies described in paragraph (1) and revised bylaws or other corporate governance documents setting forth the proposed modifications to its governance structure, no later than December 31, 2017.

The Legislature enacts a statute implementing the revised governance changes. The Independent System Operator shall expeditiously adopt the modifications to its governance structure enacted by the Legislature pursuant to paragraph (5) of subdivision (e) so that the modifications become effective before new transmission owners from outside California complete the process of joining the Independent System Operator.

The revised governance structure shall not alter or withdraw from participation in the Independent System Operator. One year after the seating of the new, revised governing board of the Independent

⁹<https://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AU-00220.pdf>

System Operator pursuant to the modifications of its governance structure, and every two years thereafter, the Independent System Operator shall prepare a report to the states within the areas it serves documenting its furtherance of applicable state and federal laws and regulations affecting the electric industry. This article is repealed on January 1, 2019, if a statute implementing the governance modifications has not become effective on or before January 1, 2019.

On 6 May 2016, the governor's office hosted in Sacramento a workshop on considerations for the development of a governance structure for a regional grid. The purpose of the workshop was to provide a public discussion of modifications to the ISO governance needed to facilitate the transition to a regional organization. At the 6 May 2016 workshop Cliff Rechtschaffen, Senior Advisor, Governor Jerry Brown's Office told the audience:

[Other speakers] talked about some of the **real opportunities**, economic and environmental, we have with regionalization. It's been a a priority for Governor Brown and it's of great interest to stakeholders here and regulators and stakeholders throughout the west. This is a really big deal, and it's getting the attention that it deserves. Governance, we've heard over and over, is a critical issue in moving forward. **The Legislature here made it extremely clear** that it wants to see and approve any governance change before the current ISO is turned into a Regional ISO. And that's totally appropriate.

Legislative leaders have told the governor they are concerned about more than the governance issues. In February 2016, those leaders wrote the Governor:

At present, there remain significant unanswered questions to be resolved before the state proceeds with regionalization. We have outlined those issues below in the hope that your administration responds to each as it reports to the Legislature and proceeds with next steps. These issues need to be reviewed and responded to by **independent** outside parties in order to have credibility, and not simply by those who have a vested interest in the merger of the two control areas.

1. No preemption or weakening of California's clean energy and climate laws. **
2. Air and GHG pollution should be reduced. Expansion of the CAISO into a western regional grid would add states heavily invested in coal and other high GHG emitting resources. **
3. Protect California's Renewable Portfolio Standard. This past year, California's renewable portfolio standard (RPS) was carefully revised and extended to mandate that half of the state overall energy portfolio come from clean energy by the year 2030. **
4. Lower costs to California ratepayers. Any merger proposal should demonstrate that costs for capacity, energy, and transmission borne by California customers under the proposal would be less than costs California customers could reasonably be expected to pay, absent the merger. **
5. Maintain public transparency and access. Any regionalization proposal should ensure that open meetings, transparency, and public access to an expanded grid operator are maintained, with appropriate exceptions for grid security. **

Thus far, the ISO and Brown Administration officials have not addressed the Legislature's concerns that California's interests be safeguarded as outlined in the February 2016 letter. At the governor's 6 May 2016 workshop, the governor's representative deviated from the direction of the Legislature:

** This is a California meeting, but I don't think the focus is solely on California. We're going to hear **regional perspectives**. ** ** [W]e will end up having to land on a structure that **meets the needs, both of California and the other states**.

Just for a second to put this into context, this is part of a process that's been happening for a number of months. It's going to continue to happen until any legislative changes are enacted in California.

Starting as early as six months ago the Public Utilities Commissioners and other regulators from other states started meeting to talk about ideas for what regional governance should look like. **

Our office, the Governor's Office, has been meeting with other state governors' offices and other energy advisers to feel out the priorities and issues of concern to the other states that would be in a Regional ISO. And those meetings will continue. And as many of you know we had a big meeting yesterday. We've had an internal stakeholder process convened by the Legislature.

C. The Governor Repeats Prior Mistakes

There were two basic causes of the failure of the deregulation experiment: (1) over-optimistic projections of likely benefits from deregulation; and (2) the relinquishment of California regulatory control over the energy market players to the Federal Energy Regulatory Commission. The governor is repeating these same mistakes.

1. The Public Is Denied Information

First, the governor's amendment to Senate Bill 350 directs the ISO to conduct one or more studies of the impacts of a regional market. The mandate in the governor's amendment directs the studies to include "*overall benefits to ratepayers, including the creation or retention of jobs and other benefits to the California economy.*" The studies were also to focus on the "*integration of renewable energy resources.*" The governor's amendment promised all "*modeling, including all assumptions underlying the modeling, shall be made available for public review.*"

As a preliminary matter, the data and assumptions underlying the modeling are not available to the public. Only market participants, government authorities,

ISO customers, a developer, or a consumer or environmental not-for-profit who promised not to disclose the information to the public could receive it.¹⁰

2. ISO Is Advertising, Not Studying

ISO's press releases related to its SB 350 studies amount to false advertising. It is unlawful to induce the public to enter into any obligation (like those to be assumed under a regional RTO) based on statement(s) disseminated to the public in any newspaper or other publication or in any other manner or means whatever any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, Cal. Bus. & Prof. Code § 17500.

3. The October 2015 "Study"

On 14 April 2015, ISO and PacifiCorp announced they had signed a memorandum of understanding indicating PacifiCorp "will explore full participation in the ISO as a Participating Transmission Owner. The memorandum paves the way for performing a joint study on the feasibility and benefits of PacifiCorp joining the only competitive wholesale market in the West."

On 13 October 2015, the ISO issued an advertising press release heralding the benefits of a regional power marketplace formed by PacifiCorp and the ISO. The gist of the ISO's message to the public was the claim that a regional RTO could "reduce energy costs by billions of dollars and help states meeting their environmental goals, including California's 50 percent renewable energy mark." The study was commissioned by PacifiCorp and conducted by Energy and Environmental Economics (E3), not the ISO, as was required by the governor's legislative amendment to SB 350. ISO claimed in the release that the merger

¹⁰https://www.caiso.com/Documents/SB350StudiesNon_DisclosureAgreement.pdf

“could produce between \$3.4 billion and \$9.1 billion in shared cost reductions in the first 20 years.” ISO represented that a joint PacifiCorp and the ISO “is likely to reduce greenhouse gas emissions.” The report is more of a marketing advertising piece than a study. It includes the value judgment: “[T]he quantified benefits for both PacifiCorp and ISO customers are sufficient to support continued progress toward PacifiCorp and ISO integration.”

These projected savings from efficiencies assumed, but did not empirically show why, there would be operating cost savings due to lower fuel costs, renewable curtailment costs, and outage costs. Nor was the case made for the report’s conclusion there would be lower generation procurement and transmission costs due to better planning, and less expensive costs for regulatory compliance. The report satisfies none of the prerequisites for establishing efficiency claims. There was no (1) “clear and convincing evidence,” (2) in the form of “substantial cost savings resulting from the realization of scale economies, integration of production facilities, or multi-plant operations,” (3) that “are already enjoyed by one or more firms in the industry,” (4) where “equivalent results could not be achieved within a comparable period of time through internal expansion or a merger that threatened less competitive harm.”¹¹

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- ¹¹ <https://advance.lexis.com/document/?pdmfid=1000516&crd=4c61ffa5-5752-4ec2-87e9-1e608b9c7030&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A3X04-XSK0-00CV-8064-00000-00&pddocid=urn%3AcontentItem%3A3X04-XSK0-00CV-8064-00000-00&pdcontentcomponentid=153509&pdteaserkey=sr0&ecomp=bnLhk&earg=sr0&prid=c2f23438-6c88-4d02-b399-e15ee250c794>;
 - <https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf>;
 - http://www.wilmerhale.com/uploadedFiles/WilmerHale_Shared_Content/Files/Editorial/Publication/News_215243279180211082807001300.pdf

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D. ISO AND PACIFICORP GET NOSE UNDER THE TENT WITH THE ENERGY IMBALANCE MARKET

With questionable legal authority, the ISO with PacifiCorp created a new Energy Imbalance Market (EIM). ISO then delegated its authority to a new EIM governing body. The EIM Governing Body is a five-member body selected by a nominating committee comprised of participating transmission owners, marketers of energy providers, and out-of-state regulators. The current board includes:

Voting members	Sector
Sarah Edmonds, PacifiCorp Transmission	EIM Entities
Eric Little, Southern California Edison	Participating Transmission Owners
Mark Smith, Calpine Alternate: Will Mitchell, Recurrent Energy	Suppliers and Marketers of Generation, ESPs
Randy Howard, Northern California Power Agency	Publicly-Owned Utilities
Doug Little, Arizona Corporation Commission	The Body of State Regulators

California and other public regulators are relegated to advisory roles. State regulators are to learn about the EIM, EIM Governing Body, and related ISO developments that may be relevant to their jurisdictional responsibilities. The regulators will hold periodic meetings and may express a common position in the ISO stakeholder process or to the EIM Governing Body on EIM issues.¹²

¹²<http://www.caiso.com/informed/Pages/BoardCommittees/EnergyImbalanceMarketGoverningBody/Default.aspx>

Footnote continued on next page

The EIM regulatory advisers are:

EIM Governing Representative	State	E-mail
Doug Little	Arizona	dlittle@azcc.gov
Michael Picker	California	michael.picker@cpuc.ca.gov
Kristine Raper	Idaho	kristine.raper@puc.idaho.gov
Paul Thomsen	Nevada	paul@puc.nv.gov
John Savage	Oregon	john.f.savage@state.or.us
Thad LeVar	Utah	tlevar@utah.gov
Ann Rendahl	Washington	arendahl@utc.wa.gov
Bill Russell	Wyoming	bill.russell2@wyo.gov

The ISO and PacifiCorp claim that a study of the benefits from an Energy Imbalance Market for their balancing authority areas projected annual consumer benefits of up to \$129 million from economic efficiencies, improved renewable integration and increased reliability.

FERC rejected PacifiCorp's proposal to double-count its customers, finding it would result in a double charge to load located in PacifiCorp's area, and conflict with Cal ISO's proposal to use reciprocal transmission rates for the EIM.¹³

¹³ <https://www.ferc.gov/whats-new/comm-meet/2014/061914/E-5.pdf> (p. 18)

PacifiCorp and the ISO implemented an EIM in November 2014. The EIM expands the real-time component of the ISO to optimize and balance electricity supply and demand every five minutes across the entire PacifiCorp and ISO EIM footprint. EIM market participants submit bids to the ISO market operator before each hour for each generating resource they choose to be dispatched by the market. Each bid is comprised of a dispatchable operating range, ramp rate and price across the operating range.¹⁴

The ISO claims it uses technology to select the least-cost resources to meet demand and send simultaneous dispatch signals to every participating generator across the EIM footprint every five minutes. In addition to generation resource bids, the ISO market operator also receives continuous real-time updates of the transmission grid network, meteorological and load forecast information used to optimize dispatch instructions.¹⁵

1. PacifiCorp Market Rates Not “Just and Reasonable”

Just last week, on June 9, 2016, PacifiCorp was barred by the Federal Energy Regulatory Commission (FERC) from selling power at market rates and must instead set prices based on the cost of running its plants. More than a dozen Berkshire Hathaway power suppliers serving consumers in the West failed to prove they couldn’t exercise market power, and, according to FERC, continuation of market-based rate authority in several balancing authority areas “is not just and

¹⁴<http://www.caiso.com/informed/Pages/BoardCommittees/EnergyImbalanceMarketGoverningBody/Default.aspx>

¹⁵<http://www.caiso.com/informed/Pages/BoardCommittees/EnergyImbalanceMarketGoverningBody/Default.aspx>

reasonable.”¹⁶ The companies must revise rates from January 9, 2015, to April 9 and provide refunds within 30 days of the FERC order.

FERC required PacifiCorp to submit market power analyses to demonstrate it and other sellers did not have market power in the new ISO EIM. PacifiCorp and other sellers did not sufficiently follow FERC guidelines. FERC found that (1) PacifiCorp and its related sellers did not demonstrate that they lack market power in the ISO EIM; and (2) ISO’s market monitoring and mitigation is not sufficient to mitigate PacifiCorp’s and related EIM sellers’ potential market power in the ISO EIM.

These concerns further add to the case against moving forward with the ISO RTO. California made a mistake as to energy deregulation at the beginning of this century with catastrophic consequences. As in the earlier case, proponents of the western grid are overpromising the benefits and understating the risks.

Much of the controversy over RTOs centers on the use of markets to manage transmission line congestion and balance generation output against customer load (demand). When these markets were established, proponents argued that competition would increase in each region, and therefore prices would drop. In fact, the opposite has occurred because the markets are not competitive. Instead, complicated mechanisms have been put in place to encourage certain market behaviors, but these mechanisms have not achieved the promised results.¹⁷

An example of such behavior occurred when JP Morgan manipulated the prices at which electricity was sold from natural gas plants in Los Angeles to replace the power lost when San Onofre failed. JP Morgan “used multiple pricing

¹⁶ 155 FERC ¶ 61,249, Docket No. ER10-2475-006, *et al.*, ORDER ON RESPONSE TO SHOW CAUSE ORDER (Issued June 9, 2016)

¹⁷ <http://www.publicpower.org/files/PDFs/IssueBriefRTOs.pdf>

schemes to manipulate electricity payments to the power plants it controlled in California.”

In 2010, JPMVEC hired a new employee, John Bartholomew, who would become a key designer of its improper bidding strategies. Bartholomew was employed at Southern California Edison (SCE) when he applied for the job at JP Morgan. On his resume, Bartholomew stated that he had identified a “flaw in the market mechanism ... causing CAISO to misallocate millions of dollars.”

Bartholomew told JP Morgan it was possible to profit by gaming the system, rather than selling electricity at a profit at market rates. JP Morgan executives hired Bartholomew as soon as they could, and put him to work on the scheme beginning in July 2010. By October 2010, JPMVEC expected that the bidding strategy could produce profits of between \$1.5 and \$2 billion through 2018. FERC Enforcement found that JPMVEC engaged in 11 other manipulative bidding strategies from September 2010 through November 2012.

E. The Solar Snow Job

ISO, with the active support of the governor, is engaged in a campaign to convince the public to support the ISO-PacifiCorp merger by representing that it will help solar developers sell solar power when it is not needed in California. This solar contention is directly contradicted by the principles underlying the proposed merger. The Western Grid “principles” document for the proposed integration states its basic focus:

A regional ISO in the West will focus on the efficient operation and dispatch of the electric power system over a broad region of the Western states, thereby increasing efficiency in the **use of both renewable and traditional baseload resources in daily, hourly and sub-hourly markets**. This is achieved primarily through the greater use of Security-Constrained Economic Dispatch, or SCED, and the technology platform and services that the California ISO (CAISO) has developed over the past decade or two.

Section 1234 of Energy Policy Act (EPAct) of 2005 defines “Security-Constrained Economic Dispatch” (SCED) as “the operation of generation facilities to produce energy at the lowest cost to reliably serve consumers, recognizing any operation limits of generation and transmission facilities.” Actual practice at the California ISO shows renewables are a relatively small part of the ISO’s mix of dispatched generation. Natural gas and imports continued to be the largest sources of energy to meet ISO load in 2015.

In its 2015 market report, the ISO reported that about 19 percent of ISO load was met by non-hydro renewables in 2015—solar being about 7 percent, geothermal 5 percent, and wind 5 percent of the total dispatched by the ISO. Total import capability into the ISO system was about 11,000 MW; net imports averaged about 8,400 MW during the peak summer months.

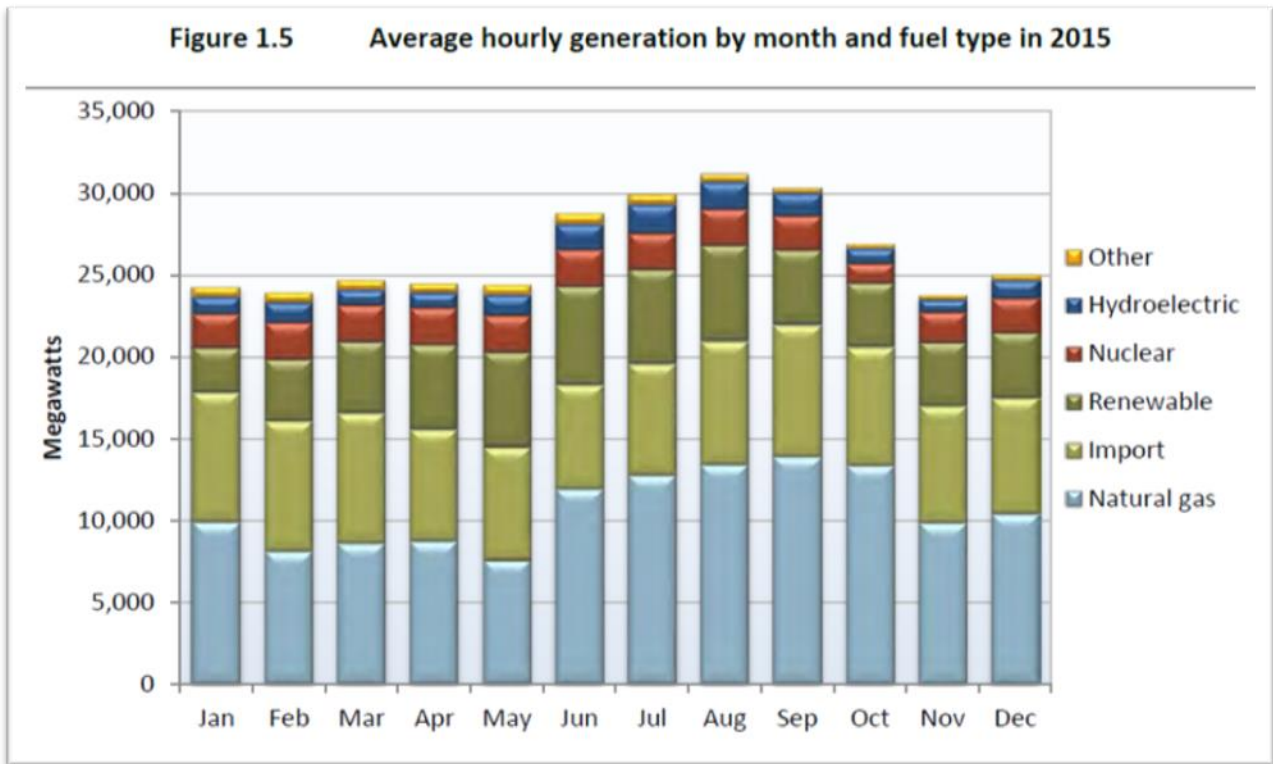
Load-serving entities are allowed to use imports to meet their system resource adequacy requirement(s). The ISO has not reported the exact resource breakdown of imports between renewable and traditional sources of power it dispatches, but it claims to have limited access to the sources of most imports, with the exception of imports from tie generators.

This diagram from the 2015 Market Issues and Performance report shows how little the ISO dispatches energy based on renewables sources:

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There is little likelihood Utah, Idaho, and Wyoming will be demanding renewables from California, especially if less expensive power is available. While California has 50 percent renewable portfolio standard (RPS), Utah, Idaho, and Wyoming have none.¹⁸

Despite the clear evidence that the proposed merger is not pursued to increase solar power distribution, the ISO has been remarkably successful in pushing the “solar snow job.” The following article, written by a highly regarded public broadcasting journalist, shows the effectiveness of the ISO false advertising campaign:

¹⁸ http://docketpublic.energy.ca.gov/PublicDocuments/16-RGO-01/TN211283_20160429T073623_Considerations_in_Establishing_a_Western_Regional_Grid_Operator.pdf

Solar energy records are falling left and right in California these days, as the state steams ahead toward its ambitious renewable energy goals. But the success of solar has brought about a hidden downside: on some perfectly sunny days, solar farms are being told to turn off. That's because in the spring and fall, when Californians aren't using much air conditioning and demand for electricity is low, the surge of midday solar power is more than the state can use. **It's becoming a growing concern for those running the grid at the California Independent System Operator.** At their Folsom headquarters, a team continually manages the power supply for most of the state, keeping the lights on for some 30 million people. "It's constantly solving a constant problem, meaning you're always trying to balance," says Nancy Traweek, who directs system operations for the grid.

**

Joining Grids Across the West

California's grid operator is developing a solution, one that is garnering controversy across state lines.

Right now, California's grid runs mostly on its own, like an island. But there are power lines reaching across the West.

"You're operating your little piece of the system," [the ISO's Keith] Casey says, "but if you can operate it as an integrated whole, you can just operate the system more efficiently."

So, Casey is proposing California join up with its neighbors. Instead of having lots of electric grids across the West, each doing their own thing, there would be a larger regional grid, sharing power across state lines.

When California has too much solar power, neighboring states would buy it, preventing California from having to switch off the solar farms.

"It's a win-win," Casey says. "We really think we need to seize the most efficient opportunities that are out there for integrating renewables."

This marriage of electric grids would start with PacifiCorp, a utility that runs its own grid in Oregon, Utah, Idaho and Wyoming.

The plan would allow the ISO to water down the use of renewables, much like free trade agreements reduce the wages of American workers. The new RSO would develop the rules it uses to administer the markets, decide which generators will run and at what levels, grant (or deny) the transmission services needed for transactions to occur, and run the billing systems for payments for power.¹⁹

F. PacifiCorp Western Grid Long Term Goal

As early as November 1995, PacifiCorp had suggested that control of transmission assets in the entire western interconnection be turned over to an ISO that would operate the western transmission grid on a regional basis and dispatch all generation. (November 1995 Testimony, William L. Massey, FERC Commission Before House Subcommittee on Energy) In August 1996, PacifiCorp was leading an effort among Northwestern investor-owned utilities to relinquish the operation of their transmission systems to an independent operator in order to end outages. (PR Newswire, 28 August 1996, Recent Power Outages Underscore Need for ISO) In September 2010, the California ISO and PacifiCorp began sharing real time transmission data between their two systems. (10 Sept 2010, Megawatt Daily)

On 12 February 2013, PacifiCorp and the ISO entered into a memorandum of understanding that committed the ISO and PacifiCorp to work toward creating a real-time energy imbalance market (EIM) by October of 2014. (13 February 2013, Benzinga.com) On 19 June 2014, PacifiCorp and the ISO won approval to start a regional EIM that allows utilities and generators within its territory to trade power in real time with those in PacifiCorp's network, which spans six states, from

¹⁹ <http://www.publicpower.org/files/PDFs/IssueBriefRTOs.pdf>

California to Wyoming. The ISO and PacifiCorp hailed it as the first step toward an organized market stretching across the entire western interconnection. (19 June 2014, Energy Monitor Worldwide) This occurred during the period PacifiCorp was found to have violated market-based rate rules under FERC.

III. CONTEXT OF THIS PROPOSAL

The timing of this proposal seems to ignore the broken state of the energy regulatory scheme in California. The California Public Utilities Commission is the subject of the Public Utilities Reform Act, a bill passed by the Assembly and now in the Senate, to reform the Public Utilities Code to modernize the CPUC, reassign regulation of industries unrelated to the CPUC's core functions to more appropriate state agencies, and provide greater accountability to Californians. The bill was introduced and has gained momentum because the people of California are deeply concerned by the CPUC's failures in recent years. That concern is justifiable after the San Francisco Bay Area pipeline explosion, the utter failure of San Onofre Nuclear Generating Station and now nuclear waste dump on the beaches shared by San Diego and Orange counties, and a major gas leak in Los Angeles. The Legislature has made several attempts to reform the commission in past years, but those advances were met by the governor's veto pen.

Both ISO and the CPUC meet in secret to set policy and address utility failures. There is no confidence in the system. While lip service is given to increase the renewable portfolio, the proposed ISO-PacifiCorp merger creates a system where dirty power could be shipped and renewables are not used in California. The discussion ignores geothermal renewables, bypassing Imperial County as it moves toward energy produced out of California.

The proposal for an RSO diverts attention from the California system so in need of reform. California needs to take care of itself, not merge with out-of state, for-profit companies whose core mission is not to serve a public benefit.

IV. CONCLUSION

The proposal to create a western grid was abandoned long ago in the wake of the California energy deregulation fiasco. The amendment placed by the governor into SB 350 is not a viable proposal. The ISO, CPUC, and other regulators cannot be trusted to vet the proposal, given their capture by the utilities like PacifiCorp.

Those engaged in planning to remove statewide jurisdiction over the ISO are out of touch with the present crisis faced by the electricity industry and their regulators in California. Voters may very well do away with the CPUC altogether. There is a need to focus on making the electricity system work in California; it is broken. Spreading California's dysfunctional system outside its borders is not the type of change needed.