

## DOCKETED

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*Comment Received From: Dr. Laura Nelson*

*Submitted On: 7/6/2016*

*Docket Number: 16-RGO-01*

## **Utah Comments on Proposed Principles for Governance of a Regional ISO**

*Additional submitted attachment is included below.*



Governor  
GARY R. HERBERT

Lieutenant Governor  
SPENCER J. COX

## Office of the Governor

DR. LAURA NELSON, Ph.D.  
*Energy Advisor*  
*Executive Director*

July 6, 2016

California Energy Commission

Re: Docket #: 16-RGO-01 (Regional Grid Operator and Governance)

In his March 2<sup>nd</sup> letter to Governor Brown, Governor Herbert stated that governance is one of the most critical issues concerning a western regional ISO. Generally, the governance structure should result in formation of a truly independent regional entity that is not unduly weighted by interests of particular states or market participants. Utah maintains that achieving an acceptable governance proposal requires inclusion of states directly in its creation. The resulting provisions must provide states with assurance that rate payers and other crucial state interests will be protected. (Please find attached Utah's comments on governance, previously submitted to the California Energy Commission.) While Utah appreciates the Proposed Principles and the importance of the issues they address, the State cannot at this time endorse many of the specific provisions. The State, however, offers some comments on selected points below.

### **Preservation of State Authority**

The list of guaranteed state authorities is welcome, but it is not clear what those guarantees will mean in practice. For example, the proposal promises to preserve a state's procurement policy, but a single, day-ahead market is one of the fundamental functions of a regional ISO. While state authority may not be explicitly curtailed, the fact remains that states will be overseeing rate recovery for a different energy portfolio – with different procurement costs– than would otherwise have been the case. One state's procurement decisions might have significant effects throughout the market.

There is long-term risk that state policy choices might be circumscribed by either the ISO or the Federal Energy Regulatory Commission. To reduce that risk, governance provisions protecting state sovereignty over energy policy should be defined at the outset, and incorporated as part of operational provisions for the ISO and its Board. Moreover, meaningful long-term, multi-state engagement must be firmly established to mitigate risk of adverse impacts to individual state authorities.



## Greenhouse Gas Accounting

Utah recognizes that greenhouse gas accounting is important to California and other states, and supports that capability through the ISO, (although the issue seems to relate more to operation than to governance). Nevertheless, states must be permitted to choose and implement their own greenhouse gas policies. If the governance statute ultimately addresses greenhouse gas tracking and accounting, the statute also should ensure that costs associated with tracking and meeting state targets will not be imposed in any way on states that have not adopted those targets.

## Transmission Owner Withdrawal

Ensuring the right of a participating transmission owner to withdraw from the ISO is of no value without an accompanying assurance that the withdrawal can occur without excessive financial penalty. Utah agrees that that capability should be established prior to and independently of any subsequent actions by a Transitional Committee.

## Transitional Committee of Stakeholders

The Transitional Committee, (appointed by the ISO Board), would generate a proposal to implement a governance design previously approved by the ISO Board. After the ISO Board accepted the proposal, the Transitional Committee would oversee drafting of documents to implement the proposal. This central role for the existing ISO Board is understandable, but does nothing to assuage concern that interests of other states will be subordinated to those of California in the design and implementation of a new governance structure. It should also be noted that the current ISO Board consists entirely of members from California, rather than from the larger western region.

Because the transitional period would be formative, setting policy for many years into the future, the governance statute should identify with specificity both the size of the committee and the sectors that would be represented. Representation of state agency consumer advocates is essential. Private entity consumer advocates could be considered as an addition to, but not as a replacement for, state agency consumer advocates.

## Initial Board and Transition Period

It is unclear how the five new states would choose four new representatives, or why the number should be limited to four. Moreover, the proposed composition of the Initial Board is only transitory, with no guarantee that the Regional Board ultimately selected by the unknown “nomination and approval structure” after the Initial Board would include any representation at all from outside California. For these and other reasons, an Initial Board is problematic and could potentially be rejected by FERC. The Regional Board must, instead, be fully independent from the outset of regional expansion activity, including at the time of creation of a Transitional Committee of stakeholders. Otherwise regional trust and consensus seem unlikely or even impossible.



### **Composition of Regional ISO Board**

Utah does not support deferring critical governance issues to a Transitional Committee that will “develop a new nomination and approval process” for the Regional ISO Board. Utah does not support entrusting that pivotal responsibility to a future committee with a vague mandate and uncertain composition. Moreover, what does inclusion of a “role for states in the nomination or approval process” mean?

The minimal condition that the Regional ISO Board be composed of nine members meeting FERC requirements provides inadequate assurance to Utah and other states of adequate representation. Independence is critical but no more critical than the assurance that the ISO’s direction does not become dominated by any one state’s interests.

### **Establishment of a Body of State Regulators**

Utah does not concur that a Body of State Regulators is an appropriate or sufficient counterbalance to the Regional ISO Board. Among other concerns raised by this proposal is that of conflict of interest. It is not clear how a state regulator, serving state interests on a state commission, could simultaneously serve regional interests on a regional Body of State Regulators. Expanding the responsibilities of state regulators to also encompass regional obligations might even require legislative changes in some states. If a Body of State Regulators is formed, it should be composed of state representatives, rather than limited to “regulators,” a term that is narrow, undefined, and with a different meaning in each state. States must have flexibility to choose representatives through a transparent process that ensures accountability for each state representative.

This proposal gives the Body of State regulators “primary authority over regional ISO policy initiatives on topics within the general subject areas of transmission cost allocation and aspects of resource adequacy.” Even then, the ISO might file initiatives at FERC without approval of the Body of State Regulators if the Board determined that reliability was “imminently threatened.” Providing slightly more detail, the TAC Revised Straw Proposal assigns “Decisions to build and cost allocation for new regional economic and policy-driven facilities” to the Body of State regulators. Issues of such central importance as transmission cost allocation cannot be deferred to uncertain resolution at some future time by the Body of State Regulators. The principle that costs of policy-driven transmission projects will be allocated to states with those policies should be fundamental, rather than subject to future determination.

### **Stakeholder Processes and Stakeholder Participation**

Given the importance of state agency consumer advocacy, that perspective should be incorporated into any Transitional Committee, (rather than merely relegated to uncertain representation on a possible subsequent stakeholder committee).



Overall, the Proposed Principles for Governance invite states to trust that the outlined process will unfold equitably, ultimately leading to satisfactory governance arrangements. There is, however, no guarantee of that result. Given the far-reaching and potentially irreversible implications of an expanded ISO, Utah cannot endorse a process with such an uncertain outcome.

Sincerely,



Laura Nelson  
Energy Advisor





GARY R. HERBERT  
*Governor*

SPENCER J. COX  
*Lieutenant Governor*

Office of the Governor

CODY B. STEWART  
*Energy Advisor*

DR. LAURA NELSON, Ph.D.  
*Executive Director, Office of Energy Development*

May 20, 2016

California Energy Commission

Re: Docket #: 16-RGO-01 (Regional Grid Operator and Governance)

Utah recognizes the potential for benefits to be realized through participation in a Regional Transmission Organization (RTO). Some of these potential benefits, (as highlighted in the October 2015 *Regional Coordination in the West* benefits study), include increased access to reduced-cost generation, diversification of generation type, and increased reliability through geographical diversity. Nevertheless, these are only potential benefits. Utah will need to be confident that those benefits are real, sustainable, and exceeding any accompanying costs before being able to support integration into a larger RTO, no matter how well-crafted a new governance structure may be.

Participation in an expanded ISO may result in many changes, including:

- Potential changes in utility cost allocation;
- Changes in regulatory authority over approving new transmission assets away from state authority;
- Limitations on state regulatory authority over utility cost recovery and rates.

Utah understands that many of these issues must be addressed prior to each state making a final determination on whether regional transmission operations are in the best interest of its citizens. However, consensus on any of the multitude of technical considerations will be fleeting in the absence of a satisfactory governance system that preserves agreements. The importance of governance was highlighted in a March 3 letter from Governor Gary R. Herbert to Governor Edmund G. Brown Jr., (attached). As Governor Herbert stated,

“[...] I encourage you and your agencies to prioritize appropriate governance above all other considerations.”





Specific governance issues raised within Utah include the following.

- The existing CAISO structure should be evaluated to address governance issues embedded throughout the current organization.
- There should be processes to retain each state's traditional authority over retail rates, resource mix, resource planning, granting Certificates of Public Convenience and Necessity, and other specific functions. Some of these could conflict with the type of open markets FERC rules contemplate.
- California and the CAISO should recognize the potential role that Utah's Governor, Legislature, and regulatory bodies would play in the approval of any governance system.
- A western RTO should provide the option of free exit for participating transmission owners.
- A new governance structure should include appropriate limitations on the ability of the legislature of California, (or any other participating state), to unilaterally modify the governance system or control its operation.
- It may be beneficial to preclude specific elements, (e.g., a capacity market), from a new RTO.
- A voting scheme may recognize the legitimately greater voice of larger participants, but must not inordinately disempower smaller participants.
- Establishing a western RTO may require a transition process from the current ISO, (e.g., from a board of political appointees to a board of non-political appointees).

As part of Utah's ongoing engagement with other states, and with the CAISO, Utah submitted formal comments on the February 10, 2016 Transmission Access Charges (TAC) Straw Proposal and March 9 Benefits Assessment Methodology Workshop. A portion of those comments, submitted on March 23, 2016, are recapitulated below.

- Utah does not oppose the proposed definitions of "existing facilities" and "new facilities." However, Utah recognizes and is concerned that the definitions are inherently ambiguous and incomplete.
- Utah generally supports the allocations of Transmission Revenue Requirements (TRRs) of each sub-region's existing facilities to that sub-region. Utah is opposed to allocating any portion of the TRR of existing facilities to other sub-regions.
- Utah generally supports the concept of allocating costs based on benefits received so long as those benefits are quantifiable, verifiable and cost-of-service based. However, without additional detail, including the role of Utah in future decision making, Utah cannot adequately evaluate the impact of this approach on its customers and other state interests.

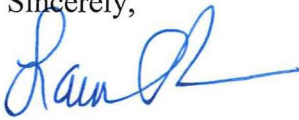




- Although Utah is not opposed to using power flow analysis for assessing reliability projects and production cost modeling for economic project types, costs for policy-driven projects must be allocated directly to the state or sub-region that enacts the policy (or causes the cost).

Utah recognizes that all aspects of the proposed western RTO continue to evolve, including governance, TAC, and Resource Adequacy (RA). New straw proposals on TAC and RA are expected very soon. We anticipate that Utah will file various additional formal comments, but resolving governance issues will remain the underlying imperative. Thus, at any point in the process Utah might need to revisit TAC and RA proposals for adjustment to accommodate other factors.

Sincerely,



Dr. Laura Nelson





# STATE OF UTAH

OFFICE OF THE GOVERNOR  
SALT LAKE CITY, UTAH  
84114-2220


GARY R. HERBERT  
GOVERNOR

SPENCER J. COX  
LIEUTENANT GOVERNOR

March 2, 2016

The Honorable Edmund G. Brown, Jr.  
Governor  
Office of the Governor  
State Capitol, First Floor  
Sacramento, CA 95814

RE: CAISO Expansion

Dear Governor ~~Brown~~, 

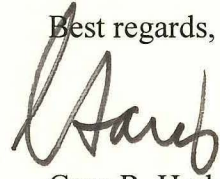
Following the passage of California's *Clean Energy & Pollution Reduction Act* (S.B. 350) late last year, I have monitored discussions regarding the expansion of the California Independent System Operator (CAISO) across the Western grid. While it is clear that California's energy agencies and the CAISO are ambitiously pursuing a path for PacifiCorp's participation in a new regional transmission organization, it is not clear whether such a development would be in Utah's best interest.

I understand that recently you received a letter from leaders in the California Legislature expressing their concerns about the expansion, most of which focused on maintaining California's sovereignty and preserving the integrity of its various energy policies. As I contemplate the prospective expansion of CAISO regionally, I have similar concerns with respect to Utah's sovereignty, policies, competitive power rates and system reliability. While we do not seek to unnecessarily impede California's goals, it is my duty to protect the interests of Utah's families and businesses.

My early assessment of this proposal is that, at least for Utahns, the costs of such an arrangement are likely to outweigh the benefits. That being said, I will continue to follow the regional stakeholder process and the associated studies. As you seek to build consensus around

this expansion, I encourage you and your agencies to prioritize appropriate governance above all other considerations. For Utah, any move in the direction of a regional transmission organization lacking fair and transparent governance is untenable.

Best regards,

A handwritten signature in black ink, appearing to read "Gary R. Herbert". The signature is fluid and cursive, with the first name "Gary" being the most prominent part.

Gary R. Herbert  
Governor

Cc: Michael Picker  
Robert B. Weisenmiller, Ph.D.  
Stephen Berberich