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California ISO Governance Comments

Additional submitted attachment is included below.



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California Energy Commission
Regional Grid Operator and Governance
Docket Number 16-RGO-01
Re: Comments of the
Wyoming Office of Consumer Advocate

July 7, 2016

The Wyoming Office of Consumer Advocate (WOCA) is an independent consumer advocate agency established by the Wyoming Legislature to advocate for the best interests of Wyoming utility ratepayers and all citizens of the state in matters involving public utilities. The WOCA represents the interests of all classes of ratepayers. It is the duty of the WOCA to advocate positions and policies that result in just, reasonable and affordable rates for utility services that are safe, adequate and reliable for Wyoming citizens. The WOCA previously filed comments in this docket in response to the Governance Forum held in Sacramento, California on May 6, 2016. The WOCA is pleased to provide further comment, as invited by the Commission, regarding the Proposed Principles for Governance of a Regional ISO (strawman), issued June 9, 2016. Our comments here also reflect observations from the California Energy Commission and Governor's Office Regional Grid Operation and Governance Workshop held in Denver, Colorado on June 20, 2016.

Our comments are organized to match the outline of the strawman. In the following pages we will provide our observations, concerns and criticisms of each of the governance principles outlined in the strawman. We will conclude with some general observations regarding the governance process. Our comments here are intended to be complementary to our earlier comments. In those comments we advised the Commission that the issues of governance and net benefit quantification are paramount to all other initiatives being undertaken by the California Independent System Operator (CAISO). We also advocated that the development of a governance proposal should be a collaborative effort among all interested stakeholders in the expanded CAISO footprint and that sufficient time should be taken in its development to ensure that the final proposed governance model reflects stakeholder consensus across the expanded footprint. We continue to support those general principles while offering further comment on the specific principles outlined in the strawman.

Preservation of State Authority

The strawman indicates that states would retain their traditional authority over resource planning and procurement, and CPCN, among other things. This is consistent with the admonition of

many commenters that states should retain their traditional regulatory rights and authorities to the greatest extent possible and that the RSO should not operate a forward capacity market. The strawman also provides that states should retain their traditional siting authority for transmission and generation resources. It is unclear to us how this seemingly overlapping jurisdiction with regard to the prudence and siting of transmission facilities will be harmonized. If individual states are to have veto power over regional transmission projects through the application of their traditional powers, would this leave the ISO in a weak position regarding its ability to remedy reliability or economic problems within its footprint? It would be instructive to investigate how other ISOs have addressed this issue as well as what may be required by FERC rule. At any rate, it seems that individual states might retain a right to veto projects of regional significance (and benefit) through the CPCN process.

The strawman provides that the governing principles can only be changed with a unanimous vote of the ISO Board and approval of the Body of State Regulators (BSR). It is unclear in the strawman whether or not the BSR vote would need to be unanimous as well. If BSR approval is not contemplated as a unanimous vote, then what voting structure would be used when changes to the governing principles are advanced?

With regard to the preservation of state authority, we are also concerned about how the various initiatives currently being undertaken by the CAISO will be consistent with and give effect to the principles enunciated in the strawman. For example, is it possible that the RSO might be able to trump state procurement authority under the RA protocol since the RSO would be able to acquire resources on behalf of states who are either unwilling or unable to meet the RA requirements.

Greenhouse Gas Accounting

Wyoming does not have a greenhouse gas emission standard like AB32 in California, nor does Wyoming have an RPS standard. There is no requirement in Wyoming for tracking greenhouse gas emissions. There is also no requirement in Wyoming law or policy, so far as we are aware, regarding mitigation of greenhouse gas emissions. With the EPA's Clean Power Plan (CPP) rule currently stayed, there is also no federal requirement in place to measure or mitigate greenhouse gas emissions.

Devising a policy and method for accounting for greenhouse gas emissions would serve no useful purpose in achieving energy policy goals in Wyoming. Rather, imposing a greenhouse accounting protocol, and its associated costs, at the RSO level would only serve to achieve California environmental policies and those of other states with similar environmental policies. It would also drive up costs for states which derive no discernable benefit from such an imposition. Extending this California policy prerogative to the PAC states would essentially amount to imposing California policy on the PAC states. To that end, the greenhouse gas accounting principle identified in the straw proposal could be viewed as impinging on the very state sovereignty and authority that the straw proposal claims to preserve.

Additionally, we are unclear as to how greenhouse gas accounting and mitigation is relevant to a discussion of the principles that will govern the operation of the RSO, a view seemingly shared by Chairman Weisenmiller at the Denver Workshop. It would seem that greenhouse gas accounting and mitigation would be an appropriate topic to be studied in a CAISO initiative similar to the TAC, RA and other operational issues. Further, any costs associated with greenhouse gas accounting and mitigation should be borne by those states who either require or accept such an accounting.

Transmission Owner Withdrawal

We agree that the right of PTOs to withdraw from the ISO is critically important. Such a withdrawal could be triggered by a utility filing with an individual state or a state commission acting on its own motion. In either case a PTO's withdrawal would have to be approved by the state commission.

However, the straw proposal is bereft of any detail as to how such a withdrawal might be effected. Although we acknowledge that specific language related to withdrawal is best left to negotiation among stakeholders, still, we believe the general outlines of a withdrawal provision should be included in any principles document that serves as a starting point for regional dialog on governance structure. The right to withdraw from the ISO, for any reason, should not be burdened by unreasonable terms or notice periods, and should be free of withdrawal penalties. Moreover, it is unclear how the right of free exit from the ISO would work if a PTO chooses to withdraw after new regional transmission is constructed and the requisite costs allocated. What would become of the exiting PTO's cost recovery obligation in that circumstance? Further, it is unclear what impact a PAC state choosing to exit the RSO would have on the ability of the remaining PAC states to continue to be included in the RSO. Since PAC's transmission system is already operated on a regional basis, it appears to us that all of the PAC states would have to either be in or out of the RSO.

Transitional Committee of Stakeholders

We do not oppose the establishment of a stakeholder committee to draft a governance proposal. As we indicated in our earlier comments, we believe that to be successful and durable an RSO should be developed organically upon the initiative of the participating states and stakeholders. However, it is not clear in the strawman what exact form this committee would have and how decision making would be accomplished. Would the committee need a formal voting structure in order to agree upon governance principles or would the committee operate on consensus?

Additionally, it is not clear to us from the strawman why it is necessary to limit the stakeholder committee to only those representatives selected by the current ISO Board. We favor a stakeholder process which is robust, transparent and inclusive. Such a process should include any stakeholder with a demonstrable interest in the outcome of the RSO initiative. We do not believe it would be appropriate to limit the ability of interested stakeholders to participate in the

development of an RSO governance structure, particularly if those limitations are imposed by a body (the current CAISO board) that remains accountable to California interests.

At the same time, we understand that the stakeholder process needs to be workable and capable of producing decisions in a timely manner. We are not suggesting an amorphous stakeholder group without any kind of structure. Rather, we are suggesting a process in which all interested stakeholders can meaningfully participate. To that end, while we have no particular stakeholder process in mind, we believe the stakeholder process adopted by WECC could be instructive. Under the WECC process, interested stakeholders are divided by sector (i.e. transmission owners, large customers, public interest groups, etc.) with each sector contributing to a defined voting structure.

Since this is where the real substance of governance will be debated and presumably resolved, we see ample opportunity for disagreement among the different stakeholders. Ultimately whatever comes out of this process would have to be acceptable to all states in order for PAC to win approval of its subsequent applications in each of the various states. Unless regional differences can be successfully resolved through the stakeholder process the RSO proposal will face long odds of approval in each of the various PAC states from which PAC must gain approval.

Initial Board and Transition Period

The initial board and transition period is perhaps the most troubling aspect of the strawman, in our view. We have serious concerns about the composition of the initial board as contemplated in the straw proposal. It appears that, based on the sequencing of activities outlined in the strawman that the five current members of the ISO Board would remain accountable to the California Governor during the entire and unspecified transition period under existing California law. This is an intolerable proposition for interests outside of California and runs counter to the principle of preserving state sovereignty highlighted above.

We also have serious concerns regarding the proposal that current ISO Board members would constitute a majority of the nine member initial board throughout the unspecified transition period. Such a provision would effectively give California veto power over the PAC states during a transition period in which potentially many important elements (i.e. TAC and RA) of the new RSO will be determined.

Further, we are concerned that there is no specificity regarding the selection of the other four board members or how that process would be endorsed by the PAC states. Excluding California, PAC serves five states. Allocating only four positions on the initial board to those five states, notwithstanding the fact that California would have five votes for itself, would presumably exclude one of those five states and appears to be an invitation for immediate division among the PAC states. We favor a governance structure in which all six of the states are fairly and independently represented on the board from the outset. If the initial board is to be made up of

state representatives, selected either by the BSR or the stakeholder committee, then perhaps there are alternatives that could achieve greater acceptance among the various constituencies. For instance, the initial board could be comprised of one member from each of the states (six in total) and a member at large selected by the other six initial board members. The initial board could be expanded to nine members selected through a nomination and approval process at the end of the transition period.

An even better solution, in our view, would be to seat an entirely independent board before work on the other initiatives (i.e. TAC, RA, etc.) resumes. This would guarantee actual and not apparent independence in the development of the RSO governance structure as well as the operational parameters of the new RSO. This independence would in turn lend legitimacy to the process and engender greater acceptance among stakeholders.

Finally, we believe it is important to establish an upfront limit to the transition period. Whether the initial board is a representative board or an independent board, without a defined time period for the transition (and corresponding milestones) the final composition of the RSO and its market operations could languish indefinitely. Alternatively, a defined transition period would provide the impetus for stakeholders to engage in productive dialog and good faith negotiations.

Composition of Regional ISO Board

We have no specific criticisms of the straw proposal which contemplates a nine member independent board. However, it is unclear exactly how these board members would be selected. Would the initial board confirm new nominees at the end of the transition period? Would they be confirmed by a majority vote of participating stakeholders? Or, would confirmation be up to the newly created body of state regulators?

Although we understand that the strawman is intended to convey high level governance principles and further, that the definitive details of a governance structure should rightfully be within the purview of an independent board and its associated advisory bodies, still stakeholders will need enough detail around the proposal to have a basis upon which to consider further engagement. Developing sufficient detail around the strawman may take some time. However, as indicated by Commissioner Bill Russell at the Denver Workshop, we would rather the proposal be right than fast.

Establishment of a Body of State Regulators

We generally agree that the states in the RSO footprint, in order to maintain the greatest measure of state sovereignty and protect legitimate state interests, should have a prominent and responsible role in the operation, management and strategic direction of the RSO. The states in the PAC footprint have experience with a regional collaborative process in the form of PAC's Multi-State Protocol cost allocation process. Our experience in that venue informs our cautious support for a strong Body of State Regulators. While it is critical for the states, individually and collectively, to have a strong voice in the ongoing operations of the RSO, our experience tells us

that such a body is not a panacea. States, based on their own self-interest, often disagree. To the extent that such disagreement among the states participating in the Body of State Regulators leads to indecision in important areas of RSO operations, some method of resolving such stalemates would need to be developed.

We recognize that the proposal contained in the strawman is to give the RSO board the authority to act unilaterally under circumstances in which reliability is eminently threatened, however, we posit that this may not be fully adequate. There could be situations (i.e. cost allocation among others) in which reliability is not eminently threatened but in which the inability of the BSR to make a decision would nevertheless undermine the operation of the RSO. That is not to say that we support a governance structure in which one state or an alliance of likeminded states could essentially run rough shod over the other states and that is why the proposed voting rule in the strawman gives us great pause.

The PAC footprint is composed of both states with large load centers and states with relatively small and widely dispersed loads; Wyoming is in the latter category. Of course, none of the PAC states, individually, have a load that is even close to on par with that of California. Additionally, half of the states in the PAC footprint have energy policy objectives that naturally align with each other; these are also the states with the largest loads. We are wary of any proposed voting rule that may disadvantage Wyoming interests and those of other states that are similarly situated. We are skeptical that a WIRAB like voting rule would serve the best interests of the citizens of the state of Wyoming.

Additionally, we need to better understand the prospective interface between FERC and state jurisdiction should PAC be granted the authority to participate in the proposed RSO. How would FERC jurisdiction over the RSO affect the right of individual states to self-determination and their ability to protect the interests of their citizens? How would the BSR fit into such an arrangement? Would the new venue for individual states to resolve disputes and redress grievances be solely at FERC? Would state chartered consumer advocates such as the WOCA be afforded the opportunity, and the resources, to meaningfully participate in FERC proceedings? These are just some of the questions with regard to jurisdiction that must be addressed prior to PAC filing for approval in each of its states.

Stakeholder Processes and Stakeholder Participation

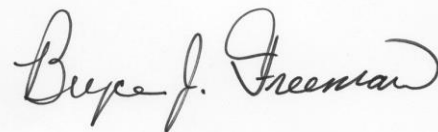
We strongly support a robust stakeholder process that assures interested stakeholders a voice in the operation of the RSO. We also strongly believe that without appropriate funding interested stakeholders will be unable to meaningfully participate in the RSO which will weaken the RSO and expose the RSO to greater contest. We support adequate funding for stakeholder participation and believe that the funding model should be established up front before PAC applies for approval to join the RSO in its various states. We do not support a stakeholder process and funding model in which state chartered consumer advocates are lumped together with so called public interest groups which may include environmental interest groups, large

customers or associations thereof, or other organizations that have fundamentally different missions than state chartered consumer advocate organizations. We are not expressing an opinion here regarding the efficacy of funding these other organizations, although we reserve the right to do so in the future. Rather, we are simply stating that the issue of funding for state chartered consumer advocates should be considered separately from the funding of other interveners.

General Observations

The WOCA is obligated to advocate the best interests of the ratepayers and citizens of the state of Wyoming. Even if PAC is allowed to join a new RSO as proposed, the WOCA will still be obligated to advocate for the interests of its constituents. And, we intend to fully and forcefully fulfill that obligation in whatever venue is available to us. Currently, the WOCA is afforded due process rights by virtue of the public utility statutes in the state of Wyoming. Absent the due process rights afforded under Wyoming law, the WOCA is unable to support any RSO governance structure that does not categorically and specifically define how the WOCA and other consumer advocates in the affected states would be able to give voice to the concerns of the utility ratepayers they represent. It is, therefore, of critical importance that these concerns be resolved in advance of PAC filings in the various states where it is subject to regulatory jurisdiction. Indeed, all matters concerning governance and the rights and responsibilities of the RSO, the states, the BSR and consumer advocates must be resolved prior to PAC seeking approval to join the RSO in each of its states.

Finally, as we indicated in our earlier comments, and as we have enunciated in these comments, we believe that to be successful and durable the new RSO will need to be developed organically on the initiative of interested stakeholders throughout the expanded RSO footprint. The newly established RSO cannot continue to be a creature of California statute. In fact, successful development of the RSO depends in large part on the rescission of current authority by California and, ideally, the seating of an independent board as quickly as possible. To that end, the California Legislature should immediately set about the work of removing all statutory references to the CAISO from the applicable laws and regulations of the State of California.



Bryce J. Freeman, Administrator
Wyoming Office of Consumer Advocate

