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Utah Division of Public Utilities Comments on ISO Governance

Additional submitted attachment is included below.



State of Utah

Department of Commerce

Division of Public Utilities

FRANCINE GIANI
Executive Director

THOMAS BRADY
Deputy Director

CHRIS PARKER
Director, Division of Public Utilities

GARY HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

July 7, 2016

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

Introduction

The Utah Division of Public Utilities (Division) is an agency independent of the Public Service Commission of Utah (Utah Commission) that advocates for the public interest in utility regulation before the Utah Commission and other state and federal agencies. In any future PacifiCorp application to join a regional transmission organization (RTO), the Division will offer its opinion on the application based on the public interest standard defined in Utah law. The Division offers the following comments on the California Independent System Operator's (CAISO) Proposed Principles for Governance of a Regional ISO, dated June 9, 2016 (Governance Proposal).

Filled with recitations of platitudes and scant details, the Governance Proposal provides insufficient detail on many points for the Division to make definitive statements about the points' acceptability. Where detail is provided, such as in the structure and appointment of a transitional committee, the detail often provides insufficient protections for states other than California and it is clear such proposals are not in the public interest for Utah's public utility customers and others.

The Division's participation in various meetings, stakeholder groups, and public processes concerning the CAISO regionalization has generally been geared toward informing California policy makers eager to enact legislation by the end of the California Legislature's ongoing legislative session. This eagerness is not the Division's. Because exhaustive analysis of nascent proposals is impossible, the Division's comments are not intended to be binding positions. The Division merely seeks to inform CAISO and other interested entities. As more detailed proposals are made, studies released, and actions taken, the Division will evaluate them on their merits and provide appropriate advocacy in the appropriate venue. The Division reserves comment on some of the more specific provisions described in the Governing Proposal until they are embodied in more formal documents and language. Nevertheless, there are items in the Governance Proposal

that are not and cannot be in Utah's public interest. Those are clearly identified in the comments below.

Preservation of State Authority

The Governing Proposal notes that the governance structure to be created for CAISO will allow states authority over areas the states currently regulate. It is not clear how this is to be done or how much of that authority is capable of preservation under FERC authority. The Governing Proposal's declaration that "bylaws or other corporate governance documents that prevent[] the ISO from adopting any policy that would diminish or impair state or local authority" will protect the states becomes hollow if FERC determines that a state's action impairs an RTO's market. Recent cases and uncertainty in their wake heighten this concern. If FERC asserts broader claims of preemption than that vindicated in Hughes v. Talen Energy Marketing, 136 S.Ct. 993, states could easily lose many of the policy tools currently available outside of an RTO. Absent valid studies showing robust net benefits from joining CAISO or another RTO, assuming the risk of losing important state authority is not in the public interest.

Just as California would not tolerate being forced to abandon its renewable energy goals, other states might seek to enforce their own provisions preserving existing base load generation. When those aims collide and begin to distort market prices, it will be only through FERC's forbearance that each state's authority will be preserved. Still, that preservation will come at the expense of an open or free market of the type RTOs were designed to implement. When states within CAISO are unwilling to allow purchase of much of what is generated in the other states, the market becomes constrained and its benefits attenuated for one or more participants. Thus, even though the Governing Proposal purports to require unanimity between the board and a body of regulators to change state authority provisions, FERC will retain power to nullify those authorities when they conflict with FERC goals and policies.

Greenhouse Gas Accounting

The Governing Proposal rightly notes the need to track greenhouse gas emissions to comply with California's and other states' requirements. Such tracking may eventually be needed to monitor compliance with federal requirements. Currently, many of the states labor under no such tracking requirements. The proposal that CAISO develop methods for tracking and accounting for emissions attributable to load in California or outside of California is flawed because it appears to impose costs of complying with state-specific requirements across the CAISO's participants. Such costs should be borne by the load serving entities or others with compliance obligations, not all market participants. While the Division expects such costs would be small when blended with other expenses and charges, Utah will not pay for mechanisms created to meet California's or another state's greenhouse gas requirements.

Transmission Owner Withdrawal

The Division agrees that transmission owners should be allowed to withdraw from CAISO on their own initiative or as compelled by state regulators. Whether an actual proposal based on this principle is in the public interest will be determined when actual provisions are drafted. Key to

meaningful withdrawal rights is the process and expense of withdrawing. Withdrawal would be a drastic remedy in a well-functioning RTO. In a poorly functioning or changing RTO, withdrawal may be crucial to a company's or state's goals and mandates. If the cost of withdrawal is too high, a participating transmission owner or a state is forced to choose between the Scylla of a failing RTO and the Charybdis of an unfair departure payment. In any future regulatory proceeding the Division will likely seek protections for ratepayers against such an expensive choice.

Transitional Committee of Stakeholders

This proposal is untenable. While a transitional committee may be prudent, the Governing Proposal's delegation of the appointment power to the existing ISO board is not in the public interest for Utah. California appoints and dictates to the CAISO board. Drafting transitional documents and creating structures that will govern a regionalized CAISO is one of the most important steps in transitioning to a multi-state RTO. By allowing the existing board to appoint the transitional committee, the Governing Proposal imbues CAISO and California with too much power to dictate the results of the transitional work. The Division will oppose any proposal that gives California entities sole appointment authority or numerical superiority on boards, committees, and other groups with significant authority to determine CAISO policy. While the CAISO is, and ought to remain, a California-centric entity until its final regionalization date, the important work of the transition must be more balanced. Allowing the CAISO board to select the transitional committee is not balanced.

Initial Board and Transition Period

Proposing numerical superiority for California-appointed members illustrates that the combined California entities engaged in this effort either do not appreciate Utah's independence concerns raised over these many months or are operating under internal constraints, political or otherwise, that will make an RTO formed from CAISO impossible. No proposal continuing California's numerical superiority is in Utah's public interest. This is true regardless of the magnitude of projected net benefits. The Division will not recommend to the Utah Commission approval of any proposal dictating or making a *fait accompli* California's numerical superiority on an RTO's decision making bodies.

Composition of Regional ISO Board

The Division generally agrees that the board of an RTO must be independent. This principle is given voice in the Governing Proposal and is an important consideration at FERC. However, postponing the detail of how the board will be nominated and approved until establishment by the transitional committee is unacceptable because it adds unnecessary risk to the regionalization process.

As the Division has noted in various settings, the proposal that PacifiCorp join an RTO, particularly a regionalized CAISO, is accompanied by significant risk for Utah rate payers. This is so because benefits are projections based on assumptions that are yet to be broadly released or vetted and that may be changed in accordance with whatever governing structure guides the

entity. The ongoing discussions concerning regionalizing CAISO to include PacifiCorp as a participating entity are characterized by a distinct lack of analysis of the net benefits of regionalization on specific sets of rate payers. Apart from the assumptions necessary to any net benefits study of a hypothetical RTO, the Division will also need to consider the reality that projections nearly always fail in some respect. Even if the study's inputs are the best available, the future will not unfold as it is assumed. Given the disparity in current transmission rates between CAISO and PacifiCorp, the Division seeks to minimize other risks. An unacceptable method for selecting and seating board members presents one of those risks. The stakeholder input process, role for states, and prerequisites for board membership alluded to in the Governing Proposal must be clear and memorialized before states are asked to make final decisions on approving PacifiCorp's entry to the regionalized CAISO.

Establishment of a Body of State Regulators

A role for state authorities in an RTO might be desirable but the Division cannot fully evaluate a proposed mechanism for state input in isolation. Rather, the entire governance package must be viewed as a whole. The distribution of authority between the board and a body of state regulators, together with the mechanism for the group's decisions to be adopted or disregarded, are critical and cannot be assessed in the abstract. The Governing Proposal's language concerning the board, other committees, their appointment, and the body of state regulators' authority are simply not thorough enough for the Division to indicate support or opposition.

In evaluating such a defined proposal in the future, the Division will likely consider: 1) whether the body of state regulators allows too much political influence in the process for one or more states; 2) whether the body has a meaningful role in specific RTO decisions; 3) whether and how the RTO board can overrule decisions from the body of state regulators; 4) whether the body is limited to states or includes other, non-state, interests; 5) how the group's member selection and conduct of business fits with Utah's public meetings and other laws; 6) the voting procedures for the group; and 7) other relevant factors to be identified.

Stakeholder Processes and Stakeholder Participation

The Division supports robust and diverse stakeholder processes but is uncertain that a funding mechanism for participation is necessary or desirable. Utah has achieved broad participation in utility regulation through a combination of government agencies funded through government budgets and other interested parties. The Division fears a strong funding mechanism will result in added regulatory litigiousness as parties face little risk of expending their own resources for marginal or specious argument. Expending one's own resources to advocate one's favored interests is a safeguard against improper advocacy or motive.

Conclusion

In short, the Division finds much of the Governing Proposal to fail the public interest test governing the Division's review of utility business. Further, the effort at regionalizing CAISO by admitting PacifiCorp is characterized by an abundance of risk the Division will seek to mitigate

in actual governing language if the effort proceeds. The Division is also likely to seek regulatory mechanisms to reduce risk if PacifiCorp applies for permission to join CAISO.

Sincerely,

/s/Chris Parker
Chris Parker
Director