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Comment Received From: Steven Kelly

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Comments of the Independent Energy Producers Association (IEP) on the California ISO Proposed Principles for Governance of a Regional ISO

Additional submitted attachment is included below.

July 7, 2016

California Energy Commission
Dockets Office, MS-4
Docket No. 16-RGO-01
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: Comments of the Independent Energy Producers Association (IEP) on the California ISO Proposed Principles for Governance of a Regional ISO (dated June 9, 2016)

The Independent Energy Producers Association (IEP) appreciates the opportunity to submit comments on the California Independent System Operator's Proposed Principles for Governance of a Regional ISO (Proposed Principles), dated June 9, 2016. IEP generally supports the concept of a regional transmission organization, but any independent system operator (ISO) or regional transmission operator (RTO) should be independent and capable of timely and efficient decision-making.

The Proposed Principles create two decision-making bodies within a single governance structure: namely, the Regional ISO Board and the Body of State Regulators. The Body of State Regulators is to govern matters affecting cost allocation of the Transmission Access Charge (TAC) and resource adequacy (RA). In addition, the Body of State Regulators will have authority over all matters currently regulated by the states, pursuant to the principle of "Preservation of State Authority," while the Regional ISO Board will be prevented from adopting any policy that would diminish or impair state or local authority. As regards matters of dispute related to state and federal authority, an affirmative vote of the majority of the Board of Regulators is required prior to the Regional ISO Board taking action. The majority vote of the Body of State Regulators is conditioned by the requirement that the majority must also represent a majority of the load in the ISO territory.

Currently, the ISO Board has clear, independent authority to direct the ISO staff to file changes to its tariff under Section 205 of the Federal Power Act. In contrast, the Proposed Principles establish a formal Body of State Regulators positioned to preempt the Regional ISO Board on matters deemed to be of state authority. Importantly, the Proposed Principles seemingly delegates to the Body of State Regulators the determination as to whether a matter

before the Regional ISO Board is a matter of state authority and, thus, properly under its own jurisdiction.

To be clear, IEP supports a forum for state regulators to voice their opinions and preferences directly to the Regional ISO Board. IEP notes that in other regions, an organization similar to the Body of State Regulators has been created, yet the ISO Board retained in all cases the right to direct its staff to file under Section 205 independently. Yet, under the Proposed Principles, in instances where matters of state authority are unclear, ambiguous, or even if a state regulatory prefers to assert a new “state authority,” Regional ISO Board decision-making is held in abeyance. As a result, the Proposed Principles risk creating a dual-entity governance structure in which one entity, i.e. the Body of State Regulators, is positioned to effectively determine the boundaries of decision-making for *both* entities. A governing structure such as this severely undermines the independence of the Regional ISO Board.

In light of the concerns that the Proposed Principles undermine the independence of regional ISO governance, IEP urges consideration of the following factors that may engender broader support among stakeholders and regional policy-makers.

First, provide a clear path to a permanent, independent Regional ISO Board. In proposing a “Transitional Board” as the initial organizational structure, the proposal essentially asks stakeholders to “buy-in” to a process for defining organizational decision-making where the choices and outcomes are opaque at best. We suggest putting forth a proposal for a permanent Regional ISO governing structure. The regional ISO governance structure must assure independence of the Regional ISO Board so that it can make decisions in a timely manner. Any such proposal should include well developed rules on voting/decision-making. While the proposal can and perhaps should include a forum/role for a Body of State Regulators, such a role need not and must not undermine the independence of the Regional ISO Board to act in a timely manner.

IEP notes that, state regulatory authorities currently retain immense control over their jurisdictional entities through their rules, regulations, etc. They use this authority to achieve preferred outcomes in matters of interest. The authority of state regulators over their jurisdictional entities has worked effectively in the past and will continue to work well in the future. A governance proposal need not and should not undermine these authorities going-forward. However, we also note that in matters of contested authority between state and federal

authorities, currently the means and tools for addressing and resolving disputes are time-tested and honored (e.g. the Federal Power Act). We see no need for undermining the current construct for resolving these matters of dispute, particularly when any new construct risks undermining the independence of the independent system operator.

Second, don't impose on policymakers of the future the preferred outcomes of policymakers of today. The Proposed Principles would include a provision in the Regional ISO Bylaws prohibiting the Regional ISO from proposing or endorsing at anytime in the future a centralized market for forward procurement of capacity of electric capacity products. This is misplaced and, by imposing these policy choices on future Regional ISO Boards, simply undermines any future Regional ISO Board's independence. Because individual states will retain their existing authority to grant (or not) their jurisdictional utilities the opportunity to participate in a capacity market, policy preferences and prohibitions such as this should not be "hard-wired" into the By-laws of a truly independent ISO.

Overall, the Proposed Principles comprise a significant and substantial change to the governance of the ISO, a FERC-regulated entity. We believe that any delegations of authority or modifications that affect or potentially affect the independence of the ISO will require proper review by the FERC and, where appropriate, become a part of the ISO tariff. While we appreciate the initial effort at defining what a regional governing organization may look like, we highlight the need for attaining a truly independent governing structure and creating an environment in which that independence may be exercised in a timely and effective manner. We believe the current set of principles head in the correct direction but fall short in a couple of very key respects. Accordingly, we look forward to working with the Commission, the CPUC, the CAISO and other stakeholders on this important endeavor.

Respectfully Submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Steven Kelly
Policy Director
IEP