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**SDG&E's Comments on the June 16, 2016 and June 20, 2016 Regional Grid Operator and Governance Workshops.**

*Additional submitted attachment is included below.*



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Re: Docket 16-RGO-01: San Diego Gas and Electric Company Comments on the June 16, 2016 and June 20, 2016 Regional Grid Operator and Governance Workshops.

San Diego Gas and Electric Company (SDG&E) appreciates the opportunity to comment on the California Independent System Operator's ("CAISO") *Proposed Principles for Governance of a Regional ISO* ("Proposed Regional Governance Principles" or "Proposal") posted on June 9, 2016. The Proposed Regional Governance Principles for an expanded regional independent system operator ("ISO") were the focus of Regional Grid Operator and Governance Workshops (16-RGO-01), convened June 16, 2016 and June 20, 2016, and hosted jointly by the California Energy Commission ("CEC") and the California's Governor's Office.

### **Preservation of State Authority**

The CAISO's proposal provides that "[t]he ISO's new governing structure will include binding provisions to protect and preserve state authority over matters currently regulated by the states themselves, including procurement policy, resource planning and [Certificate of Public Convenience and Necessity] approvals for utilities within their jurisdiction, and resource or transmission siting within their state." (Proposal at 2). SDG&E, along with other stakeholders, supports the principle that those matters constitutionally and historically reserved to the states, should remain the province of the states in an expanded ISO.

The CAISO’s proposal contemplates “bylaws or other corporate governing documents” that, among other things, “prohibit[] the ISO from proposing or endorsing any centralized market or forward procurement of electric capacity products.” (*Id.*) SDG&E objects to this provision because it appears to go beyond what has been constitutionally and historically reserved to the states. Indeed, there are functioning centralized capacity markets in other ISOs. At this point in time, there does not appear to be any imminent shortages of dependable capacity within the Western Interconnection—at least at the system level—so the need for a centralized capacity market is not pressing. However, as the Independent Energy Producers and other suppliers have pointed out, there is no obvious benefit in legally precluding the expanded ISO from proposing and implementing such a market in the future if the benefits of doing so are determined to outweigh the risks.

### **Greenhouse Gas Accounting**

CAISO’s proposed Regional Governance Principles request stakeholders to comment on how any short term greenhouse gas emission increases that could occur in 2020 could be mitigated. The CAISO’s proposed Regional Governance Principles also state that the expanded ISO will need to develop a transparent methodology for tracking and accounting for greenhouse gas emissions. (*Id.* at 3)

SDG&E does not believe that greenhouse gas accounting should be included in the proposed Regional Governance Principles. Discussion of methodologies to account for greenhouse gas emissions attributable to California loads should be the focus of a separate stakeholder proceeding that includes the California Air Resources Board. In the interim, SDG&E believes the expanded ISO should use a day-ahead greenhouse gas accounting methodology which parallels the methodology CAISO currently uses in its Energy Imbalance Market (“EIM”). This methodology provides a transparent platform upon which accounting systems can be devised to associate brown and green electrons with California loads.

### **Transmission Owner Withdrawal**

The Proposed Regional Governance Principles include a provision that would ensure the right of participating transmission owners to withdraw from the ISO, either voluntarily or in light of an order by their state regulator. (*Id.*)

As a threshold matter, SDG&E questions whether a state regulator has the authority to order a participating transmission owner to withdraw from an expanded ISO. Notwithstanding this question, SDG&E supports the CAISO’s proposal to include a provision that would enable a participating transmission owner to withdraw from the expanded ISO. Any such proposal would need to be consistent with the policy of the Federal Energy Regulatory Commission (“FERC”). SDG&E agrees with many stakeholders, however, that the ability to withdraw from the expanded ISO will not be, quick, easy or cost-free.

## **Transitional Committee of Stakeholders**

SDG&E supports the Proposal to establish a Transitional Committee to implement the governance design of the expanded ISO. (*Id.*). However, SDG&E has concerns with the provision that (i) “the committee [ ]be appointed by the [current CA]ISO Board” (*Id.*) and (ii) the “[current CA]ISO Board” would have to “accept the proposal” before the Transitional Committee could begin drafting the corporate documents that would implement the proposal (*Id.*) It is clear from the comments of non-California stakeholders that a CAISO-appointed Transitional Committee is unacceptable and that the CAISO cannot have approval authority over the Transitional Committee’s proposal for implementing the governance design.

SDG&E believes the most promising path forward requires changing the governance focus from political geography to participant expertise. By all accounts, the EIM Transitional Committee was a success and that committee was comprised of sector, not individual state, representatives.

The EIM Transitional Committee initially consisted of eleven members. Any entity that fit within any of the following seven stakeholder sector descriptions was eligible to participate in the sector nomination and ranking process for identifying candidates to serve on the EIM Transitional Committee. Each sector determined its own method for nominating and ranking candidates to serve on the EIM Transitional Committee.

1. Investor owned utilities
2. Publicly owned utilities
3. Generators and marketers
4. Alternative energy providers
5. EIM participants
6. Government agencies
7. Public interest entities

From the ranked lists provided by each of the sectors, nine members were selected by the ISO Board to sit on the EIM Transitional Committee. Although not required, the ISO Board selected at least one member from each of the seven categories. Two additional members nominated by the first two entities to execute an EIM implementation agreement (PacifiCorp and NV Energy) were also appointed to sit on the EIM Transitional Committee.

SDG&E recommends that the members of the expanded ISO Transitional Committee be selected through a sector-ranking process similar to the selection process for the EIM Transitional Committee. However, rather than have the existing CAISO Board make the selections, the top-ranked individuals from each of the seven sectors would become initial members of the expanded ISO Transitional Committee. These seven individuals would then choose two additional members from the remaining ranked individuals. Additionally, any new entities committing to join an expanded ISO during the pendency of the expanded ISO Transitional Committee’s activities, would each appoint their own member. The minimum term of service for a member of the Transitional Committee would be one year.

Once formed, the expanded ISO Transitional Committee would develop a nomination and approval process that will be used to select members of the board of the expanded ISO. With assistance from an executive search firm, the expanded ISO Transitional Committee would identify qualified candidates without regard to their place of residence (members of the current CAISO Board would be eligible for consideration). The expanded ISO Transitional Committee would then select the best qualified candidates to fill the seats on the expanded ISO Board.

Consistent with the CAISO's current FERC-approved qualification requirements for board membership, SDG&E believes qualified candidates should represent as many of the following qualifications as possible: (1) electric industry expertise, (2) market expertise, (3) general corporate/legal/financial expertise, and (4) public interest expertise.

Also, consistent with FERC-approved policy for CAISO Board membership, SDG&E believes qualified candidates for the expanded ISO Board cannot be employed by, or provide consulting services to, any person or entity that is engaged in the generation, transmission, marketing, trading or distribution of electricity within the geographic area of the Western Electricity Coordinating Council or affiliated with any actual or potential participant in any market administered by the expanded ISO. Additionally, qualified candidates cannot hold any financial interest that would be prohibited by 18 C.F.R. section 35.34(j)(1)(i); or have another actual or perceived conflict of interest that would be prohibited by the Code of Conduct & Ethical Principles and that could not be resolved before the candidate becomes a member of the expanded ISO Board.

### **Initial Board and Transition Period**

The CAISO's governance proposal contemplates formation of an "Initial Board" whose membership would be comprised of the five current CAISO Board members and four members "selected by the other states within the expanded regional footprint through a process endorsed by those states." (*Id.*) As noted above, stakeholders from non-California states do not support a California-dominated board.

SDG&E believes that geography should not play a deciding role in the composition of the expanded ISO Board. The mission of the expanded ISO Board is to oversee the development and management of short-term markets (day-ahead and real-time) and longer-term transmission planning processes that provide efficient and open-access to the transmission system under the control of the expanded ISO. This mission has little to do with geography and everything to do with independence, vision and expertise. Accordingly, SDG&E does not support the

establishment of an “Initial Board” for the expanded ISO. Instead, there should be a “hard cut-over” from the existing CAISO Board to the expanded ISO Board as determined and selected by the expanded ISO Transitional Committee.<sup>1</sup>

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

SDG&E agrees with CAISO’s proposal to establish a stand-alone committee of state regulators, *i.e.*, the Body of State Regulators, consisting of members from regulatory and other state agencies representing all of the states within the footprint of the expanded ISO. However, except for those matters constitutionally and historically reserved to the states, such as long-term resource adequacy and supply procurement,<sup>2</sup> SDG&E does not support providing the Body of State Regulators with “primary authority over regional ISO policy initiatives” (*Id.* at 4).

According to the CAISO proposal “primary authority means the body will play the lead role for its defined areas of authority in directing policy for the regional ISO, and policy approval by the regulators body would be a prerequisite to any ISO Section 205 filing with FERC.” (*Id.*)

This prerequisite is over-reaching and contradictory to established law and policy. Section 201 of the Federal Power Act (“FPA”)<sup>3</sup> grants FERC, not the states, comprehensive and exclusive jurisdiction over the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce, with limited exceptions. FPA Section 205<sup>4</sup> grants filing rights to public utilities, not to state agencies or commissions. In fact, the court and the FERC have determined that unilaterally granting Section 205 filing authority over any body other than the public utility would “allow a state to do what FERC itself cannot, namely, to change an interstate rate practice that FERC has not found unreasonable.”<sup>5</sup> The FERC has

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<sup>1</sup> Several stakeholders have suggested that the Body of State Regulators should constitute the expanded ISO Board. The basis for this suggestion is that the Body of State Regulators is responsive to the states’ political processes and thereby well-situated to implement state policy objectives. SDG&E does not support this suggestion. While the expanded ISO Board must discharge its duties in accordance with applicable laws and regulations, it is not a policy-making institution; energy policy needs to be developed in other fora and implemented through existing legal and regulatory channels. In addition, SDG&E sees the potential for governing paralysis where different states hold different views on which energy policies should be pursued.

<sup>2</sup> As noted elsewhere in these comments, SDG&E does not see the benefit of permanently precluding the expanded ISO from developing and implementing a centralized capacity market.

<sup>3</sup> Federal Power Act, 16 U.S.C. §§824(a)-(b).

<sup>4</sup> 16 U.S.C. §824d.

<sup>5</sup> *Massachusetts, Dep’t of Public Utilities v. United States*, 729 F.2d, 886, 888 (1st Cir. 1984)(cited by *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶61,283 at P 66 (2008)(“MISO”).

expressly noted that it has only permitted the sharing of Section 205 filing authority in a multi-state context when the affected parties have so consented.<sup>6</sup> As discussed more fully below, SDG&E does not consent to the prerequisite proposal.

SDG&E objects to any governance proposal which confers the Body of State Regulators with Section 205 filing rights concerning the expanded ISO's transmission planning process and associated transmission cost allocation among the sub-regions of the expanded ISO. FERC already has authority over the CAISO's transmission planning process and has exclusive authority over transmission cost allocation.

To be clear, however, while SDG&E has concerns with the authority the CAISO's proposal confers on the Body of State Regulators regarding the exercise of Section 205 rights, SDG&E's concerns should not be misinterpreted as opposing direct and active participation by the Body of State Regulators in the expanded ISO. Constructive participation by the Body of State Regulators in the expanded ISO is essential, in SDG&E's opinion, and all parties need to be at the table.

The Body of State Regulators should not be controlled or directed by expanded ISO management, the expanded ISO Board of Directors, or expanded ISO Members. The purpose of this Body of State Regulators is to advise the expanded ISO with respect to any matter of interest to regulators and state agencies representing the states in the expanded ISO.

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

Except for adding limited financial support (travel and incidental expenses) for qualified public interest entities, SDG&E does not believe that changes to CAISO's existing stakeholder process are warranted at this time. However, SDG&E supports the CAISO's recommendation to have

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<sup>6</sup> In *MISO*, the FERC, among other things, denied the request to grant Section 205 filing rights to the Organization of MISO States. The FERC distinguished its decision in *MISO* (PP 64-68) with its decision in *Southwest Power Pool, Inc.* ("SPP"), 108 FERC ¶61,003. Among other things, the FERC stated:

[T]he provision to require SPP to make certain section 205 filings on behalf of its Regional State Committee was a consensual agreement of SPP, its transmission owners and its state commissions. There is no evidence of such agreement here....without any concrete proposal before us, we are unsure whether the OMS'[Organization of MISO States] ability to compel Midwest ISO filings could conflict with the Midwest ISO's independent rights and responsibilities under section 205 of the FPA, by allowing the OMS (or individual states) to dictate what filings the Midwest ISO will make with the Commission. (*Id.* at P 67)



the expanded ISO Transitional Committee review the CAISO's existing stakeholder process to determine if any changes are needed to ensure the stakeholder process for the expanded ISO is effective.

Respectfully submitted,

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