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Comments of the California Municipal Utilities Association

Additional submitted attachment is included below.

In the Matter of:)	Docket No. 16-RGO-01
)	
Regional Grid Operator and Governance)	NOTICE OF WORKSHOPS RE:
)	Regional Grid Operator and
)	Governance

**COMMENTS
OF THE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION**

The California Municipal Utilities Association (“CMUA”) respectfully submits the following comments on the Proposed Principles for Governance of a Regional ISO, dated June 9, 2016 (“Proposed Principles”).

CMUA has proposed specific details on several key governance matters, but silence on other matters contained in the Proposed Principles should not be construed as complete agreement on those items.

CMUA also supports the Public Power Comments on the California ISO’s Proposed Principles for Governance of a Regional ISO Following the June 2016 California Energy Commission Workshops, being filed contemporaneously with these Comments.

General Comments

CMUA and its member agencies have emphasized our concern that the process to consider integration of the PacifiCorp Balancing Authority Areas into the CAISO has proceeded too quickly, and with inadequate attention to the need for a comprehensive package of policy issues to be developed and considered as a whole. Our own California history suggests that with respect to significant changes in the structure and governance of wholesale electricity markets, rushing to a pre-ordained conclusion is ill-advised. Given the high stakes and the many critical issues still under development (Governance, Transmission Access Charge, Regional Resource Adequacy) or on which stakeholder consideration has yet to commence (carbon policy implications, Grid Management Charge application, Transmission Planning Process Reforms, transitional agreements), CMUA does not support moving forward with California legislation this year to put California on an inalterable glide-path toward regionalization. CMUA and its members pledge to work in good faith and earnestly toward resolution of key issues, and present detailed suggestions on governance herein as evidence of that intent.

Specific Items in the Proposed Principles

CMUA has commented upon the Proposed Principles in order of the subject matter therein.

Preservation of State Authority

As CMUA has noted in earlier comments and oral presentations at the governance workshops, this Principle is certainly one we support. With that stated, it is important to understand the practical and legal implications of “Day Two” market designs on the execution of state policy prerogatives. For example, it is hard to ascertain what is meant by the phrase that there would be a provision in the ISO “bylaws or other corporate documents that prevents the ISO from adopting any policy that would diminish or impair state or local authorities in those areas,” which by reference is transmission and generation siting, procurement policy, and resource planning. Specific examples are needed.

Transmission Siting. While the CAISO makes needs determinations pursuant to their Transmission Planning Process (“TPP”), those needs determinations do not substitute for required findings under California state law. The California Public Utilities Commission must make its own findings of need when granting a Certificate of Public Convenience and Necessity. This process has, for example, resulted in the applicant withdrawing its application to site and build facilities that were already approved by the CAISO in its TPP. It has also resulted in proposals to scale down projects already approved at a large size and greater expense under the CAISO TPP. The practical result is that while the record at the CAISO may inform the CPUC, there is no legal requirement that the findings of the CAISO be adopted. Thus, there is no reason to conclude that any regional grid planning process must preempt state authority in this area.

Procurement. ISO rules will affect procurement. To expect that ISO rules will not “diminish or impair” state or local authority is not reasonable. Promises in governance documents should not be illusory. For example, currently the ISO sets local and flexible capacity obligations within its BAA. It is contemplated to do so under the current Regional RA proposal. These matters are included in the ISO Tariff, and therefore are exclusively within the jurisdiction of the Federal Energy Regulatory Commission. If a Scheduling Coordinator falls short and there is an aggregate shortfall of a relevant product, the ISO procures the shortfall and allocates the cost to the Scheduling Coordinators that were short. Similarly, the ISO has reliability backstop procurement authorities that can, in limited instances, trigger procurement and cost responsibilities for Scheduling Coordinators. These actions can result in procurement or cost allocations that are different than those directed or contemplated in resource plans by state regulators.

CMUA’s experience is that there is a constant tension between the responsibilities of the ISO and the areas of traditional state authority. This should be recognized, rather than artificially legislated through governance documents. Similarly, CMUA urges restraint when relying upon the external enforceability of the internal corporate documents of a public utility subject to federal jurisdiction, to achieve electric policy goals.

Greenhouse Gas Accounting

CMUA members are already subject to cap-and-trade obligations as covered entities, and support California's climate change objectives. As such we have no objection to and indeed support transparent tracking and accounting. However, we do not believe such a Principle should be included in the discussion on governance. The issues surrounding how to balance state carbon policy differences within a single co-optimized dispatch are complex; the resolution of how carbon costs will be attributed and how that will affect the investments made by California consumers in the existing thermal fleet will be hard. This issue deserves considerable attention as part of the comprehensive discussion on the package of policy proposals necessary to accomplish grid regionalization fairly. This should be done soon, but not in the context of governance.

For the above-stated reasons, CMUA also has no comments on how PacifiCorp or other potential new Participating Transmission Owners ("PTO") should mitigate any increased carbon emissions. These discussions should take place in a specific initiative on carbon policy implications of CAISO expansion.

Transmission Owner Withdrawal

CMUA believes that provisions in the Transmission Control Agreement ("TCA"), that provide withdrawal upon two years notice and after all applicable regulatory approvals, are adequate. As CMUA has noted, withdrawal of a significant PTO from an RTO-like structure is not to be taken lightly and has numerous consequences on the commercial arrangements of market participants made in reliance on a set of market rules and market footprint. Also implicated may be the contracts between the RTO and the PTO that, for example, may dictate operating procedures, address use of existing contracts for transmission on the PTO system, or clarify responsibility for compliance with reliability standards.

CMUA also notes that the ability of states to direct PTO withdrawal may be constrained. Section 205(a) of PURPA provides:

The Commission may, on its own motion, and shall, on application of any person or governmental entity, after public notice and notice to the Governor of the affected States and after affording an opportunity for public hearing, exempt electric utilities, in whole or in part, from any provision of State law, or from any State rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities, including any agreement for central dispatch, if the Commission determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources in any area.

Section 205 contains two exceptions: The Commission may not grant an exemption if it finds that the relevant provision of state law, rule, or regulation is either:

- (1) required by any authority of Federal law; or
- (2) designed to protect public health, safety, or welfare, or the environment or conserve

energy or is designed to mitigate the effects of emergencies resulting from fuel shortages.

The Commission has invoked PURPA Section 205 in the context of RTO expansion. See *The New PJM Companies, et al.*, 107 FERC ¶ 61,271 (2004).

Transitional Committee of Stakeholders

A CMUA representative served on the Energy Imbalance Market Transitional Committee (“TC”) and believes that process was constructive, productive, and that it produced a consensus governance proposal that had unique elements as compared to governance provisions of other organized markets. That said, the CAISO expansion into numerous other states and incorporation of PacifiCorp as a PTO has greater implications.

If this process is going to utilize a similar Transitional Committee to consider and put forth a governance proposal, CMUA makes the following suggestions:

- The scope of the TC’s responsibility should be clear and limited strictly to governance. The scope of the TC’s work should not encompass policy matters, but only the mechanics of governance including composition and selection of the Board, development of a Market Advisory Committee, the role of the Body of State Regulators, and other matters that deal with issues of governance.
- The composition of the TC should be specified in advance. While the composition of the EIM TC may provide some guidance, there are likely going to be some differences that should be addressed. The EIM TC had specific representation for EIM Entities, and that appears inappropriate for RTO governance. CMUA also suggests that while stakeholder representatives from inside the proposed RTO footprint (CAISO and PacifiCorp’s combined BAAs) should predominate, given the Westwide market implications of the expansion, a role for Neighboring Balancing Authorities on the TC be provided. This is similar to the composition of the Regional Issues Forum sector liaisons that was included in the EIM TC proposal.

Initial Board and Transition Period

A considerable portion of the discussion in both the Sacramento and Denver workshops centered around the hybrid Board and a transitional period between a new Board and the existing Board. Much of the criticism of the Proposed Principles centered around the ability of California-appointed members to form a voting majority for the entirety of any transitional period.

CMUA is concerned that transitional proposals become very complex, and the mere complexity can be a challenge to good governance. The Proposed Principles, for example, leave out one PacifiCorp state in order to maintain a California voting majority. CMUA does believe there is a need for continuity as between the current Board and a permanent Board. That can be accomplished by keeping some number of the current Board members for a period of time. Looking forward, proper governance structures with a strong Body of State regulators and Market Advisory Committee will provide protections for state and consumer interests.

Establishment of a Body of State Regulators

CMUA's comments with regard to the Body of State Regulators are limited solely to the issue of the role of public power. We seek changes to the Proposed Principles. We also note that our positions on the role of public power on a Body of State Regulators are inextricably linked to the establishment of a strong Market Advisory Committee.

A strong role for public power on the Body of State Regulators is essential. First, within the Western Interconnection there are no states over which the state utility commission exercises ratemaking jurisdiction over municipal public power agencies. Thus, these state commissions, while having broad jurisdictional charges to ensure public welfare, do not have the same legal standing for public power consumers as they do for investor-owned utilities and their consumers. Second, municipal public power agencies serve over 7 million customer accounts within the Western Interconnection, and over 20% of the load, not including customers of cooperative utilities. These agencies serve approximately 5.5 million customers within the California ISO and PacifiCorp states alone. Public power serves over half the customers in Washington, a state in which PacifiCorp also serves. Third, municipal public power agencies serve in most of the major metropolitan areas in the West, including Los Angeles, Phoenix, Sacramento, Seattle, and portions of the San Francisco Bay Area. It is inconceivable that given this geographic, service, and political footprint, that representatives from public power be excluded from the Body of State Regulators.

Concerns have been raised that since public agencies are market participants this would be an untenable conflict of interest, and duplicate representation on any Market Advisory Committee. CMUA observes that in certain instances states that will be serving on the Body of State Regulators also have agencies, such as the California Department of Water Resources, that are market participants, so this issue is not limited to municipal power agencies. More importantly, this duplicate representation is appropriate because, in fact, public power entities wear two hats, and are the regulators and stewards for their customer interests as well as market participants. Indeed, it is our responsibility to represent our customers.

However, to address concerns that public power agencies would exert undue influence on the decision-making process, CMUA proposes that public power representatives have an advisory role on Body of State Regulators. To ensure meaningful and proportional representation, the number of representatives should reflect to number of customers served within the states included within the RTO footprint. With respect to the Proposed Principles, this would mean no less than two public power advisory seats on the Body of State Regulators.

This element of governance design must be specified as part of any proposal, and not left to the deliberations of a Transitional Committee.

Stakeholder Process and Stakeholder Participation

CMUA is disappointed that the Proposed Principles place so little emphasis on this issue and leave the parameters of any Market Advisory Committee or similar structure completely to future deliberations.

CMUA seeks clear and concrete assurances that a strong Market Advisory Committee be included up front in any governance proposal and not relegated to future determination. Specifically, CMUA seeks a Market Advisory Committee that is made up of market participants whom are expected to be persons at an executive or commensurate level of experience and credibility in the industry, that will directly advise any RTO Board on market policy matters. This Market Advisory Committee would be made up predominately of entities that have a direct financial stake in the market, and include investor owned utilities, publicly owned utilities, independent generators, renewable generation developers, third party transmission developers, and possibly federal Power Marketing Administrations. It may include consumer and environmental advocates in an advisory role. The Market Advisory Committee must have direct interaction with the Board. CMUA suggests a structure like the Southwest Power Pool (“SPP”), where the MAC sits with the Board during policy deliberations.

If a strong MAC is not hard wired into the governance Principles, CMUA will advocate for a voting role for Public Power on the Body of State Regulators.

To clarify and reiterate our earlier positions, CMUA believes that aspects of the existing CAISO Stakeholder process work well. We wish to retain the iterative process where the CAISO and stakeholders exchange proposals and comments and market design solutions are developed. Further, CMUA has no desire to replicate the complexity of the stakeholder processes in certain other RTOs where there may be dozens of technical working groups. Nevertheless, it is important to design stakeholder structures in anticipation of where we may be going, not simply where we are today. We expect that additional stakeholder structures are needed to reflect the breadth and diversity of a regional footprint. Certainly some of the mechanical details can be left for future development. However, this high level MAC with direct interaction with the Board is an essential check and balance and must be part of any sound governance structure upfront.

CMUA also reiterates that it cannot support intervenor funding for non-governmental organizations, whom often have regulatory advocacy budgets far in excess of CMUA members. CMUA is willing to discuss how funding might be considered for state offices of consumer advocates, but must be assured that any funding mechanism will not result in a disproportionate level of costs being collected from California consumers to pay for consumer offices in other states.

Right now, other portions of the Western Interconnection are actively examining grid coordination options that do not include the CAISO. This includes utilization of the services of SPP in lieu of the CAISO. It is not reasonable to expect that a less inclusive stakeholder process than that used by SPP would help persuade areas of the West that integration with California is attractive as compared to alternatives.

Conclusion

Given the enormity of the issues presented by possible CAISO regional expansion, the complexity of issues presented, and the balancing that must be accomplished to arrive at an acceptable governance structures, CMUA urges a deliberate consideration of these matters outside the rushed legislative end-of-session. CMUA urges adoption of the governance suggestions presented by CMUA, its members, and the broader public power community.

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Respectfully submitted,



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