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**THE OFFICE OF RATEPAYER ADVOCATES™ COMMENTS ON
PROPOSED PRINCIPLES FOR GOVERNANCE OF A REGIONAL ISO**

Additional submitted attachment is included below.



ORA

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THE OFFICE OF RATEPAYER ADVOCATES' COMMENTS ON PROPOSED PRINCIPLES FOR GOVERNANCE OF A REGIONAL INDEPENDENT SYSTEM OPERATOR (ISO)

The Office of Ratepayer Advocates (ORA) is the independent consumer advocate within the California Public Utilities Commission (CPUC), with a statutory mandate to obtain the lowest possible rates for utility services consistent with reliable and safe service levels. ORA also advocates for consumer protection related to utility service and for cost-effective approaches to achieving California's environmental goals. ORA appreciates the opportunity to comment on the *Proposed Principles for Governance of a Regional ISO* (Proposed Principles) circulated by the California Independent System Operator Corporation (CAISO) on June 9, 2016, and on some of the comments of stakeholders at the June 16 and June 20, 2016 workshops.

The Proposed Principles embrace the goal of preserving state authority over resource planning, procurement policy, transmission planning within the state, and other "matters currently regulated by the states," and provide for an important role for state regulators in determining regional ISO policies in these areas. ORA supports these goals. At the same time, the lead agencies and stakeholders involved in the regionalization effort recognize that the "binding provisions to protect and preserve state authority" contemplated in the Proposed Principles require approval by the Federal Regulatory Energy Commission (FERC).¹ While the Proposed Principles do not make clear at what point in the transition process the CAISO would seek FERC approval, ORA understands that the CAISO plans to submit the proposed governance structure to FERC in the first quarter of 2017.² ORA recommends a process for FERC review of the proposed new governance structure at a clearly defined point. The proposed review process would reduce regulatory uncertainty, minimize the risk of litigation, and eliminate the possibility that significant resources will be spent transitioning to a governance structure that FERC ultimately does not approve.

This process proposal is the primary focus of these comments. ORA's remaining comments request clarification of a few other provisions in the Proposed Principles.

¹ A FERC governance decision would not eliminate uncertainty about the jurisdictional line between federal and state regulation under the Federal Power Act, but it would answer some important questions about how much of a role states could play in influencing regional ISO decisions impacting state energy and environmental policies.

² The CAISO announced this intention at the June 30, 2016, CAISO-PacifiCorp regionalization meeting at the California Governor's Office.

ORA proposes a process to confirm that FERC will approve the proposed provisions to preserve state authority before ISO governance changes are implemented:

This section relates to the following Proposed Principles:

- 1. Preservation of State Authority**
- 4. Transitional Committee of Stakeholders**
- 5. Initial Board and Transition Period**
- 7. Establishment of a Body of State Regulators**

As noted earlier, the Proposed Principles embrace the goal of preserving state authority over resource planning and other matters currently regulated by the states, and provide for a significant role for state regulators in shaping regional ISO policy in those areas. ORA supports these goals, and stakeholders may reach agreement on them at the regional level. FERC approval of a governance structure congruent with those goals is necessary. For example, it is not known whether FERC will permit the ISO to “share” its Section 205 filing rights³ with a Body of State Regulators.⁴ Nor is it known whether FERC would approve a provision precluding the ISO from seeking to establish a new capacity procurement mechanism unless state regulators agree.⁵ This information is necessary to inform decisions on regionalization by state regulators and lawmakers.

Given the substantive uncertainty over whether such key provisions will be approved, some stakeholders have expressed concern that the Proposed Principles may “overpromise” the extent of state authority that can realistically be preserved in a regional ISO. Also, on a procedural level, it is unclear at what point in the transition process FERC approval would be sought. The Proposed Principles appear to leave open the possibility that the regional governance structure, once approved by the California legislature, could become effective before FERC reviews it.⁶ To

³ Section 205 of the Federal Power Act, 16 U.S. C. § 824d.

⁴ See 18 C.F. R. § 35.34(j)(iii) (RTOs must have “exclusive and independent authority under section 205 of the Federal Power Act . . . to propose rates, terms and conditions of transmission service provided over the facilities it operates); *Massachusetts v FERC* (1st Cir. 1984), 729 F.2d 886 (rejecting a Section 205 filing because it had been submitted pursuant to a state commission order); *Midwest Independent System Operator*, 122 F.E.R.C. P61,283; 2008 FERC LEXIS 592, ¶¶ 52 (accepting a role for state regulatory authorities in setting resource adequacy requirements as proposed by MISO while stating that “the role for state authorities cannot undercut this Commission’s authority to review resource adequacy and reserve margins that affect matters within our jurisdiction, i.e., provisions that affect our authority under sections 201, 205, and 2056 of the FPA to ensure that the provisions of the tariff will result in just and reasonable and not unduly discriminatory or preferential rates.”).

⁵ See *FERC v. Electric Power Supply Assn.*, 136 S. Ct. 760, 2016 Lexis 853; *Hughes v. Talen Energy Marketing, Inc.* 136 S. Ct. 1288, 2016 U.S. LEXIS 2797; *Midwest Independent Transmission System Operator, Inc.*, 122 FERC P61,283 (2008), ¶¶ 52-59 (accepting a role for state regulators in setting resource adequacy requirements, with qualifications).

⁶ See Proposed Principles, p. 3, n. 1.

reduce the uncertainty, a number of stakeholders have urged the CAISO to find out from FERC as soon as possible which provisions are likely to be approved.

Here is one way it could be done:

- The CAISO prepares a Section 205⁷ tariff amendment filing at FERC, based on the Proposed Principles (as they may be modified based on stakeholder comments). The Section 205 submission contains all the tariff amendments and governance documents necessary to implement the Proposed Principles, including the bylaws.

Alternatively, the CAISO files a request for a declaratory order on the preservation-of-state-authority provisions referred to in the Proposed Principles, and on the proposed role of the Body of State Regulators.⁸ This approach might expedite matters, since the petition and FERC’s review would be narrowly focused on specific issues concerning the role of state regulators in governance.⁹

- The California Legislature approves the proposed changes to the governance of the expanded ISO prior to its submission to FERC, and revises the Public Utilities Code Sections¹⁰ necessary to implement the expanded ISO governance structure. The proposed revisions to the Public Utilities Code would be conditioned upon FERC’s approval of the tariff and the approval of each of the states that must authorize PacifiCorp to join the expanded ISO.¹¹
- The CAISO submits the Section 205 tariff filing to FERC, conditioned upon PacifiCorp joining the expanded ISO. If PacifiCorp does not join the CAISO, the tariff amendments implementing the expanded ISO governance structure would not become effective.
- The FERC process for Section 205 filings would allow other states, stakeholders, and market participants to protest and otherwise weigh in on the record, subject to due process protections.¹² Entities that have concerns about the proposed governance

⁷ Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).

⁸ See FERC Rule of Practice 207. Yet another option is for the CAISO to submit the proposed governance documents for review by FERC staff, “for the purpose of receiving staff suggestions and comments . . . prior to filing with [FERC].” 18 C.F.R. § 35.6.

⁹ In 2010, the California Public Utilities Commission requested a declaratory order on a preemption issue, and the three largest electric utilities subject to its jurisdiction jointly sought a declaratory order on the same issue. FERC ruled in just over two months. See Order on Petitions for Declaratory Order in EL10-64 and EL10-66 (issued July 15, 2010).

¹⁰ For example, Public Utilities Code Sections 337, which provides that the five-member Board of the ISO is appointed by the governor of California, subject to confirmation by the California legislature.

¹¹ Oregon, Washington, Idaho, Utah, and Wyoming.

¹² 18 C.F.R. §35.8 Protests and interventions by interested parties.

Unless the notice issued by the Commission provides otherwise, any protest or intervention to a rate filing made pursuant to this part must be filed in accordance with §§385.211 and 385.214 of this chapter, on or

structure would need to raise them in the Section 205 proceeding, or they would likely be barred from raising them later.¹³

- FERC approves, rejects, or requires modification of the proposed tariff containing the governance structure of the expanded ISO.
- States would then know if FERC accepts the governance structure, including the critical provisions precluding the expanded ISO from proposing a centralized capacity market and allowing the states to oversee the expanded ISO's policy regarding resource adequacy and transmission cost allocation. If FERC rejects aspects of the proposed governance structure, state-level decision makers and stakeholders will then know what FERC will not approve, and can consider their options. They could work to develop a governance structure that FERC will accept.

This process would provide greater certainty earlier on, and allow state decision makers and market participants to make informed decisions and binding commitments before the CAISO changes its governance structure.

2. Greenhouse Gas Accounting

While Greenhouse Gas (GHG) accounting for the entire expanded ISO footprint makes sense, it is unclear why this principle is included in governance. There may be good reasons for it, but ORA requests clarification.

8. Stakeholder Processes and Stakeholder Participation

ORA recommends the following additions to the Principles concerning stakeholder processes and participation:

- Both consumer advocates and public interest groups are important stakeholders in the expanded ISO. The regional governance structure should enable meaningful participation of consumer advocates who represent the end users that will pay the transmission access charge (TAC) of the expanded ISO. It is also important that environmental and other public interest groups have a voice in the regional ISO, but for purposes of stakeholder representation, consumer advocates should be treated as a

before 21 days after the subject rate filing. A protest must state the basis for the objection. A protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant a party to the proceeding. A person wishing to become a party to the proceeding must file a motion to intervene.

¹³ Applications for rehearing of a FERC decision must be filed within 30 days. 16 U.S.C. § 8251 (a). Parties to the section 205 proceeding could seek judicial review within 30 days of FERC's order on the applications for rehearing. Judicial review is limited to issues presented to FERC in a timely application for rehearing. 16 U.S.C. § 8251(b).

distinct category.

- ISO funding to enable consumer advocates to participate is necessary and appropriate. States could also provide funds for consumer advocates and for other public interest groups in their states.
- The governance structure should require that regional ISO board meetings be open to the public and subject to transparency and accountability requirements similar to California's Bagley-Keene Act.
- The governance structure should require that non-market participants be provided access to data and information underlying all operations and initiatives of the regional ISO, including information about transmission costs, subject to appropriate protections for the disclosure of confidential data.