DOCKETED

Docket Number:	16-RGO-01
Project Title:	Regional Grid Operator and Governance
TN #:	212316
Document Title:	Revised Proposal: Principles for Governance of a Regional ISO
Description:	N/A
Filer:	Misa Milliron
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	7/15/2016 11:51:27 AM
Docketed Date:	7/15/2016

Revised Proposal

Principles for Governance of a Regional ISO

July 15, 2016

Introduction

This proposed set of principles for regional governance of the ISO was initially composed after considering various white papers and testimony by state energy leadership and stakeholders from California and across the West, as well as meetings with stakeholders and legislative staff in California. The principles have been revised to address comments on the initial version from more than 40 stakeholders representing a broad range of perspectives. The initial proposal and the comments are available in an open docket at the California Energy Commission (16-RGO-01). This revised proposal will be presented at a joint state agency workshop on July 26, 2016. Following further input from stakeholders, it will be refined for transmittal to the Governor, who may choose to present them to the Legislature as a proposed modification of the ISO's governance, pursuant to Section 13 of SB 350.

The principles then could be incorporated into state legislation that, if enacted, would also sunset the provisions of the current ISO governance structure.

Should these principles be approved through California legislation, a transitional committee of stakeholders and state representatives would be formed as explained below, similar to the committee used to develop the EIM governance structure. The transitional committee would integrate these core principles into a regional governance plan and then oversee the preparation of corporate governance documents that implement the plan.

In response to numerous commenters, this revised proposal removes one principle – about tracking greenhouse gas emissions – because it is not directly relevant to corporate governance. We note that the ISO has committed to developing a transparent mechanism for tracking and accounting for greenhouse gas emissions across the new multi-state balancing authority area. The ISO believes that a regional grid operator can enhance the transparency of the types of resources used to serve load, and, at the same time, support the distinct policies of each state, including allocating any associated administrative costs to those with compliance obligations.

The revised proposal also adds new principles about when the final governance plan would become effective. A successful regional governance plan would need to be approved by not only the ISO Board, but also by all participating states. Accordingly, the principles have been refined to require that any regional governance plan must be approved by each state's representative to the transitional committee. In addition, the Governor of California must approve the plan by certifying to the California Legislature that adoption of any bylaws or corporate governance documents implements the principles approved by the Legislature, and is in the best interests of California and its ratepayers.

Other revisions of the initial proposal are explained below.

The Proposal

1. Preservation of State Authority

Most stakeholder comments support the preservation of state authority, but seek clarification and additional detail. In addition, several of the investor owned utilities and independent power producers caution against an absolute ban on a centralized capacity market, identifying the risks created by limitations on the Board's authority to appropriately manage changes in future years when addressing issues that are currently unforeseeable.

Modifications to the draft proposal in light of these comments include:

- Refining the explanation of the general scope of state authority to be preserved through binding provisions in the bylaws (or another ISO governing document):
- Clarifying that the unanimous approval of both the Board and the Western States Committee (previously referred to as the "body of state regulators," see Principle 6) would be necessary to amend the bylaw provision that protects state authority;
- A requirement that the ISO adopt a process for determining when a proposed action or policy would impair state authority; and
- Refining the restriction on capacity markets to focus mainly on mandatory capacity markets that are connected to resource adequacy requirements, and to allow individual state or local regulatory authorities to approve participation in other types of forward capacity markets.

With those revisions, this principle reads as follows:

1.1. The ISO's new governance documents will include binding provisions to protect and preserve state authority over matters regulated by the states themselves, including procurement policy and resource planning, as well as matters the ISO does not touch at all such as retail rate making, and Certificate of Public Convenience & Necessity (CPCN) approvals for utilities within their jurisdiction, and resource or transmission siting within their state.

a. This will include a provision in the ISO bylaws or other corporate governance documents that the ISO will be prohibited from proposing or endorsing a centralized market for the forward procurement of electric capacity that would (1) require capacity to clear at a market clearing price in order to count for resource adequacy purposes absent the unanimous authorization of the Western States Committee or (2) allow the participation of load-serving utilities from a state without the authorization of the applicable state regulator or local regulatory authority.

1.2. The bylaws or other corporate governing documents will preclude amendments to these provisions relating to state authority absent unanimous approval by both the ISO Board and the Western States Committee.

1.3. The ISO will establish a process for determining whether a proposed action would materially diminish or impair state or local authority. This process, to be developed more fully by the Transitional Committee, would involve consultation between the Board and the Western States Committee.

2. Transmission Owner Withdrawal

Most stakeholders agree on the value of preserving withdrawal rights. Some commenters request more detail, either as part of the principles or in a public discussion. There is general agreement that the withdrawal procedures should be clear and that the cost should not be excessive.

Some background information: Both the courts and FERC have found that a utility's withdrawal from an ISO or RTO, like its entry, is voluntary subject to contractual terms. The right of a transmission owner to withdraw from the ISO is governed by the Transmission Control Agreement. This agreement requires a transmission owner that wishes to withdraw to provide two years' prior written notice. The right to withdraw is contingent upon the transmission owner obtaining any necessary regulatory approvals. In addition, the transmission owner wishing to withdraw is required to make a good faith effort to ensure that its withdrawal "does not unduly impair the ISO's ability to meet its Operational Control responsibilities as to the facilities remaining within the ISO Controlled Grid." We note that utilities have in fact left eastern ISOs and RTOs, for example by moving from MISO to PJM.

The Transmission Control Agreement does not impose an exit fee on a transmission owner that withdraws from the ISO. A withdrawing transmission owner might incur certain charges associated with actions it took or decisions that were made before it withdrew, such as being required to pay its share of costs for a regional transmission project that was approved before its withdrawal. However, there is no exit fee per se.

With that explanation, the only revisions to this principle are for clarity, and to add reference to local regulatory authorities:

2.1. The regional governance plan shall ensure the right of participating transmission owners to unilaterally withdraw from the ISO, regardless of the reason, i.e. whether voluntarily or in light of an order by the state or local regulatory authority.

3. Transitional Committee of Stakeholders and State Representatives

Stakeholders generally support the concept of a transitional committee to develop the details of the regional governance plan. Most commenters request additional detail around the scope and makeup of the transitional committee. Also, some commenters indicated that the initial proposed principles placed too much control in the hands of California representatives.

Accordingly, this principle has been modified to explain the composition of the transitional committee and the public process it will use to develop a regional governance plan that implements the principles adopted. The details are drawn from the Energy Imbalance Market Transitional Committee, which was successful in developing a governance structure that gave the entire region a voice in the market rules for the EIM. Committee members will be selected to ensure geographic diversity, both by including one representative from each state in the expanded ISO footprint, and by enabling the ISO Board to ensure that the representatives selected by industry sectors are geographically diverse, while still allowing sectors to select their own representatives.

With those modifications, the principle reads as follows:

3.1. A transitional committee on governance will be established and charged with developing a governance design that implements the approved principles.

3.2. The committee will be comprised of one representative from each of the states in the expanded ISO footprint.[1] Each state will select a committee representative, a person who has significant knowledge and experience in energy policy and utility regulatory issues, through its own process.

3.3. It will also include a cross section of stakeholders from throughout the region – a representative from each of the following sectors:

a. Investor-Owned Utilities
b. Publicly-Owned Utilities (Municipals and Co-ops)
c. Independent Power Producers
d. Large Scale Renewable Energy Providers
e. Distributed Energy Resource Providers
f. Generators and Marketers
g. Federal Power Marketing Administrations
h. Public Interest Groups
i. State-Sanctioned Ratepayer Advocates

[1] The states in the expanded footprint are limited to the states that have Participating Transmission Owners currently within the ISO's Balancing Authority Area and states that have Transmission Owners that have expressed interest in joining the ISO's Balancing Authority Area through an MOU or similar agreement.

3.4. Selection of the members: The members of each sector will select two candidates for consideration to represent their sector on the transitional committee. The two candidates must come from different states. The ISO Board will choose between the two candidates put forth by each sector, and if necessary appoint additional members, to ensure that the representatives are geographically diverse and the committee as a whole represents the views of the region.

3.5. The ISO Board will adopt a charter[2] describing the process the committee will follow to develop and submit the regional governance plan, including open meetings.

3.6. The committee should work expeditiously to develop the governance proposal, making every effort to complete its work within nine to twelve months. The ISO will support the work of the committee as requested.

3.7. The committee's governance proposal, which must have at least the unanimous support of the representatives from various states, will be submitted to the ISO Board for a determination of whether it complies with the principles stated herein. The Board will give the committee recommendation due deference and acknowledge the stakeholder input in making their decision. Once the Board accepts the proposal, the committee will oversee drafting of the corporate documents implementing its plan, and the ISO will seek other necessary approvals, such as from FERC.[3]

4. Transition Period

Several stakeholders comment that the proposal for an initial board of political appointees is not necessary and that it is important to take a more expeditious route to an independent board appointed through a new nomination and approval process (discussed below in Principle 5).
The revised proposal removes the concept of an initial board and instead incorporates a more direct process for transitioning into a new regional governance plan.

With that modification, the principle reads as follows:

4.1. There will be a transition from the current board selection process to a board selected entirely through a new nomination and approval process developed by the Transitional Committee.

a. Within 18 months after the regional governance plan becomes effective (See Principles 3 and 8 for process), the ISO will begin to seat new members on a schedule

[2] This could be similar to the Energy Imbalance Market Transitional Committee Charter - http://www.caiso.com/Documents/FinalTransitionalCommitteeCharter-EnergyImbalanceMarket.pdf.

[3] Implementation of the proposal may be contingent on regulatory review by FERC and potentially the IRS.

and through the process developed by the transitional committee. The new members will fill both new board seats created under the regional governance plan as those seats are established, and the open seats of sitting board members, as their terms expire.

b. As part of the regional governance plan, the transitional committee may extend the terms of sitting board members if the committee concludes that doing so would benefit the new board, by having the sitting board members leave gradually in order to enhance continuity and their ability to share expertise and institutional knowledge with new board members. Even as extended, however, the terms of all board members who are sitting at the time the regional governance plan becomes effective must end within five years.

c. After the transition is complete, the board will be comprised of nine members, all of whom will have been selected by the new nomination and appointment method. Board members must satisfy the various requirements that FERC has adopted for the independent board members of multi-state RTOs, including financial independence from market participants.

5. Composition and Selection of Regional ISO Board

There is wide support from stakeholders for a board of independent members who meet FERC's requirements on independence, similar to the current ISO Board. At the same time, commenters request more detail about the nomination and selection process.

The revised proposal lays out a framework for a two-step nomination and selection process, which could be used for at least the transition period, with the details to be developed by the transitional committee. The goal of a two-step process is to establish a collaborative approach to selecting Board members to ensure a Board that enjoys the support of and is accountable to the broadest possible range of stakeholders and state policy makers throughout the ISO's regional footprint. This concept is supported by stakeholders who referenced the success of the nominating process used for EIM governance. The process was collaborative and resulted in a consensus slate of five candidates for the EIM Governing Body which the ISO Board unanimously approved.

As modified, this principle reads as follows:

5.1. The transitional committee will detail a two-step process for selecting new Board members similar to the process used for selecting the EIM Governing Body, which will involve both: (1) a stakeholder-based nominating committee that selects nominees with the assistance and support of a professional search firm; and (2) an approval committee, consisting of the voting members of the Western States Committee, which must confirm each slate of nominees. This is envisioned as a process that would be used for at least the transition period, and the transitional committee could discuss the process for later board vacancies.

6. <u>Establishment of a Western States Committee</u>

Commenters generally support the concept of a body of state regulators. Importantly, one state notes that each state should have the ability to select its own member, and that this member should not necessarily have to be a state utility regulator. Other commenters express concerns with the voting structure. Of note, the voting structure proposed would apply only when making policy decisions in the areas over which the committee has primary authority, and would not necessarily apply in other areas such as budget decisions, staffing, and other administrative tasks. The ISO has further clarified that the details of the voting structure would be developed by the transitional committee. While some stakeholders raise objections to a weighted voting, there can be important advantages to this model, including the incentives it creates for compromise. The ISO is open to additional thoughts on the voting structure that can be more thoroughly discussed by the transitional committee.

Many commenters believe that the states should have the most influence that is legally permissible over matters that have been traditionally under state authority. At the same time, several commenters note that the authority proposed for this committee over the ISO's Section 205 filings regarding certain aspects of transmission costs allocation and resource adequacy has not previously been approved by FERC, and these commenters suggest that the ISO may want to seek guidance from FERC on this aspect of the proposal. While it is uncertain exactly what contours of authority FERC will approve for this committee, the principle of a state committee with strong authority is worth pursuing.

The ISO has modified the proposal in a number of ways:

- A state may appoint a non-regulator representative to the committee. In recognition of this change, the name of the committee has changed to the Western States Committee.
- Based on stakeholder comments, the ISO also added a non-voting position for a representative of a federal power marketing administration, in recognition of the important relationship with those administrations to the western grid.
- The ISO added a provision, to be developed further by the transitional committee, which allows the ISO to file tariff changes with FERC regarding the matters within the primary authority of the Western States Committee after a sustained period of inaction by the committee. This is to ensure the ISO is able to remedy a market flaw that could materially impact ratepayers.

- The ISO clarified the role and authority of the Western States Committee, including the voting structure for areas under their primary authority.

As modified, this principle reads as follows:

6.1. The regional governance plan will include a Western States Committee (WSC) to provide input on matters of collective state interest. The committee will have primary authority in certain areas as discussed below.

6.2. The Western States Committee will be incorporated as a non-profit entity separate from the ISO, with a budget funded through the ISO.

6.3. One representative from each State in the regional ISO footprint will serve on the Committee. States will be encouraged to select either a utility commissioner or another state official familiar with utility regulatory or energy policy issues.

6.4. In addition to each state's primary member with voting rights, the WSC would include the following members, in a non-voting advisory role:

   a. One individual selected by publicly-owned utilities within the ISO footprint.

   b. One individual from a federal power marketing administration in the West.

   c. These two non-voting members, who may not have work responsibilities that are directly related to market transactions, will participate in all deliberations of the body, providing input on matters of interest to public power entities and federal power marketing administrations.

6.5. The members may decide to allow staff from state commissions or energy offices and state-chartered consumer advocates to participate in meetings.

6.6. Once a regional governance plan becomes effective, the WSC will have primary authority over certain regional ISO policy initiatives on specific topics within the subject areas of transmission cost allocation and resource adequacy, as defined in more detail by the transitional committee in consultation with state regulators and the ISO.

   a. Primary authority means the committee will play the lead role for its defined areas of authority, and policy approval by the committee would be a prerequisite to any ISO Section 205 filing with FERC in those areas.

6.7. The Committee will have a voting rule for approval of policies within its primary authority that will, at minimum, include some form of weighted voting based on load.

6.8. For matters within the committee's primary authority, the transitional committee will develop provisions that:

a. Permit the ISO to file at FERC without WSC approval, on a temporary basis, when reliability is imminently threatened (but only after giving the committee as much notice and opportunity to address the issue as the emergency circumstances may allow);

b. Permit submission of both a proposal approved by the committee and an alternative approved by the ISO board if a supermajority of the ISO board concludes that the proposal approved by the committee would severely undermine reliable operation of the grid or cause the ISO to violate a mandatory reliability standard or other binding FERC requirement; and

c. Permit the ISO to file at FERC without WSC approval after a sustained period of inaction by the WSC (to be defined by the transitional committee, and only after giving the committee as much notice and opportunity to address the issue as circumstances allow) if a supermajority of the ISO board concludes that a filing is necessary to satisfy FERC requirements or to remedy a market flaw that poses a material risk to ratepayers.

7. Stakeholder Processes and Stakeholder Participation

While stakeholders generally support the ISO's current public stakeholder process, many publicly-owned utilities, some public interest groups, and Commissioner Philip Jones from the State of Washington, urge that a strong market advisory committee of stakeholder representatives should be a part of the governance structure. Commenters from other sectors, however, did not express any view on topic. Stakeholders had varying opinions on the need for and method of funding consumer advocate groups.

There is enough support for both concepts that the revised proposal will include them among the issues to be considered by the Transitional Committee.

As revised, this principle will call specific attention to the question of a market advisory committee, and read as follows:

7.1. The transitional committee will consider other changes to the ISO's current stakeholder process to facilitate broad and robust stakeholder participation. Specific topics the committee with consider in this area include:

a. Whether there are any process improvements that could facilitate broad participation in stakeholder proceedings;

b. Whether any formal stakeholder committees, such as a market advisory committee of stakeholder representatives, should be established, and if so, the composition of the committee(s) and the role it would play; and

c. Whether there should be a funding mechanism to facilitate the participation by State-sanctioned consumer advocate bodies, and if so, who would qualify for such funding, who would pay for it, and how funds would be allocated.

8. Requirements for Plan to Become Effective, including Governor's Certification

The following new principle is explained in the introduction:

8.1. Following the development of regional governance plan by the Transitional Committee, approval by ISO Board, development of governance documents and any necessary regulatory approvals, as described in Principle 3, the governance plan will become effective only after it is approved by the Governor of California.

8.2. The Governor of California will approve the regional governance plan by certifying that the final governance proposal complies with these principles (or any other principles adopted in California legislation) and that changing the governance of the ISO as set forth in the proposal would be in the best interest of California and its ratepayers.