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Docket 16-RGO-01: California Municipal Utilities Association Comments on the May 6, 2016 Regional Grid Operator and Governance Workshop

Additional submitted attachment is included below.

May 26, 2016

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

RE: Docket 16-RGO-01: California Municipal Utilities Association Comments on the May 6, 2016 Regional Grid Operator and Governance Workshop

The California Municipal Utilities Association (“CMUA”) is pleased to provide these written comments to reinforce the panel presentation on regional system operator (“RSO”) governance at the May 6, 2016, Workshop.

CMUA has attached hereto the “Public Power Statement of Principles on CAISO Market Expansion”. This document was developed by numerous public power entities throughout the West, facilitated by the American Public Power Association, and reflects a public power consensus in the West.

Accountability Along with Independence

As governance structures for any regional grid operator are examined, several goals should be paramount. CMUA supports an independent board to be the ultimate decision maker for any regional grid operator, but appurtenant structures must be put in place to achieve equally important goals, including accountability, openness, accessibility, and responsiveness to consumers and market participants.

CMUA supports the following measures:

- A strong role for states and other regulators. Discussion has commenced with respect to how states will participate in RSO decision making. CMUA has no hard and fast position with respect to the exact form of any formal delegations to a regional regulator committee, but supports a strong role for entities such as state regulators and representatives of public power consumers on key market design issues. With regard to the role of public power, in many

states in the West public power serves significant percentages of load outside the jurisdictional obligations of state commissions; in certain states more than half. As such, it will be important to consider a role for public power in any regional regulators committee. As these regional structures are considered however, we must keep in mind that the rules of the market are, ultimately, the jurisdiction of the Federal Energy Regulatory Commission, and whatever mechanisms put in place will ultimately bow to federal authority.

- A formal Market Advisory Committee. It is our understanding that in certain other RTOs, such as the Southwest Power Pool, the lead market committee meets jointly with the Board and although it has an advisory role only, sits in on briefings from RTO management and openly discusses market issues with the Board directly. While CMUA believes the current stakeholder process works well for the current CAISO configuration, the proposed increase in geographic scope of any RSO, and the diversity of participants, will likely demand something more. A Market Advisory Committee will provide a forum in which stakeholder representatives would provide high level policy guidance to the Board and RSO management on an ongoing basis. That said, CMUA also supports retention of the existing stakeholder process for market design changes, which we observe works well and provides a reasonable opportunity for stakeholders to weigh in on detailed market issues. Further, CMUA does not support development of a cumbersome stakeholder voting structure or a proliferation of committees that would make participation in the stakeholder process overly burdensome.

Energy Imbalance Market Governance

The EIM is still in its infancy. Over half the proposed EIM Entities have not gone operational. It seems likely that the EIM will expand further. The EIM governance model was developed with wide support, and the current and proposed participants have committed to the EIM with reliance on that governance structure. CMUA strongly supports a durable EIM Governing Board separate and apart from any RSO Board so long as the EIM is a separate market offering.

Issues that Arose at the Workshop

A Hybrid or Transitional Board Structure

While CMUA is not opposed at this time to a hybrid or transitional Board, we are wary of complexities that are not compelled by reasons of sound decision making. To date, CMUA has seen no compelling rationale to create any transitional structure between the current CAISO Board and the end-state independent Board.

Intervener Compensation

Numerous parties have raised the issue of funding for non-governmental organizations (“NGO”) or other advocates to participate in RSO processes. CMUA has significant concerns regarding this concept. Many of these advocacy groups are extremely well funded, with regulatory and overall

advocacy budgets that dwarf the resources of public power entities. It would be ironic that, under these concepts, these public power consumers would be asked further augment well-funded advocacy groups with consumer dollars. This is not a proposal that CMUA can support.

Sincerely,



Tony Braun

Braun Blasing McLaughlin & Smith, P.C.

Counsel to the California Municipal Utilities Association

Attachment

Public Power Position Statement Regarding CAISO Market Expansion *Governance Principles*

REVISED: MAY 18, 2016

INTRODUCTION

The purpose of this paper is to state the broadly supported views of Publicly Owned Utilities¹ (herein referred to as POU or Public Power) in the West with regard to the ongoing expansion of the EIM market and the potential expansion of the full California Independent System Operator (CAISO) market, and to recommend principles to guide such a regionalization, were it to come to fruition. This is not however intended to be a statement of explicit support or opposition for the integration of the CAISO with PacifiCorp or others. As discussed below, POU have concerns about this effort and desire to see the best possible outcome for all affected utilities and their customers.

There are number of utilities that operate existing Balancing Areas (BAs) in the West that have joined or are contemplating joining the CAISO's Energy Imbalance Market (EIM). It should be remembered that the CAISO EIM is still in its early stages, with only two EIM entities currently operational. Lessons continue to be learned, and the planned expansion of EIM participation deserves considerable attention and a thorough evaluation to ensure that the EIM's potential benefits are maximized. Many POU are currently evaluating the potential benefits of participation in the EIM and additional analysis will allow them to make a more informed decision.

Contemporaneous to the EIM expansion, PacifiCorp is evaluating Full Market Integration and consolidation of its BA into the CAISO BA. It is likely that there will be additional utilities that will evaluate merging their BAs with the CAISO. POU in the West recognize and respect that each utility that is a BA has the right to decide with its wholesale and retail customers how it wants to engage in the Western markets, including participation in organized markets. However, POU in the Western Interconnection who may have their own BA or are Transmission Dependent Utilities (TDUs) inside a third party BA, are concerned about how this will impact our existing arrangements for supplying electricity to our customers.

CAISO is performing a series of studies and analyses to assess the implications of

¹ The paper was drafted by a representative group of Western POU, following a series of discussions to determine the issues of greatest importance and areas of common ground.

PacifiCorp's possible full integration into the CAISO, as directed by the California legislature and Governor. Public Power is concerned that the current timeline for this effort, in parallel to the operational aspects of additional entities already scheduled to join the CAISO EIM, is creating a situation where the regionalization effort will receive inadequate analysis — particularly the direct impact of the regionalization proposal on existing load and resource arrangements across the West.

Public Power does not believe it is prudent to ask the California legislature to consider possible changes to governance without a more complete analysis than the CAISO's current timeline will permit. Similarly, if the regionalization effort moves forward on the CAISO's current schedule, there is a risk that a number of Western state Public Utility Commissions (PUCs) will be asked to approve this merger of BAs without a sufficient foundational analysis of the costs, benefits, and potential impacts to their state's consumers that would meet their individual state legal standards that apply to such a proceeding.

Public Power encourages the CAISO to consider a broad and open stakeholder process that would support a full analysis, which could then be the factual basis for the California legislature's consideration of possible governance changes, as well as the subsequent review by state PUCs and other stakeholders. Absent this more thorough analysis, Public Power is concerned that the current pace will only generate opposition and litigation that will prevent the CAISO from achieving the objectives its current timeline was established to achieve.

POUs in the West have identified four areas we believe deserve this deeper discussion, and are the subject of this position statement:

1. Future governance model for the CAISO as it expands beyond California,
2. Treatment of resource adequacy (RA),
3. Transmission access issues, including cost allocation and access rules between the expanding CAISO footprint and non-participating market participants, and
4. Allowance of a transition period in order for entities to address the stranding of existing assets and realigning of commercial arrangements that may be displaced by CAISO expansion.

The remainder of this paper discusses Public Power's principles regarding Governance.

GOVERNANCE

If a Regional System Operator (RSO) were to be established within the Western Interconnection, Public Power supports the formation of an independent Board of Governors (Board) that would govern this entity.

"Independence" is not the only hallmark of sound governance. Any properly structured Board and appurtenant committees must ensure accountability, openness, accessibility and responsiveness to consumers and market participants. Additional structural protections, as described herein, are therefore required beyond the creation of an "independent" Board

for an RSO to be successful. Further, there will have to be instilled an organizational culture that reflects the sometimes competing energy policy objectives of the states that make up the Western Interconnection.

If the State of California makes the statutory changes necessary to reform the governance of the current CAISO, Public Power strongly recommends the following principles for any new Western RSO.

Board Size and Composition

While many possible Board compositions (state appointed, stakeholder, non-affiliated) may meet the independence criterion, the most practical approach is likely to be a non-affiliated Board, consistent with the designs of other ISOs and of the EIM Governing Board. Generally, this means that Board members must not have financial interests in individual market participants and have met a minimum level of ethical conflict of interest checks. Public Power recommends that the Board be sized appropriately, with no fewer than seven members, to allow the Board to be diverse. In this context, diversity means a diverse representation of professional experience, geography, industry backgrounds, and expertise, as well as gender identity, ethnic, and cultural diversity. Emphasis should be given to ensuring representation across the Western Interconnection's sub-regions. A strong preference should be given to candidates with experience within the Western Interconnection. Any Board member must, first and foremost, have a fiduciary duty to the RSO. Subject to further consideration, Board governance and meetings should regularly include the Market Advisory Committee and the Regional Authorities Committee, described in the following sections.

Committees/Advisory Bodies

Absent additional checks and balances, merely constituting an independent Board does not ensure sound governance. Additional measures designed to allow for sufficient input from market participants and state commissions will greatly improve the likelihood that consensus is reached prior to submission of proposals to the Federal Energy Regulatory Commission (FERC). Strategies, such as instilling a culture of "dispute avoidance" should also be considered to promote the resolution of differences among RSO members and market participants within the stakeholder process, rather than within a FERC docket or state PUC proceedings.

An independent Board is essential, but also carries the risk that proposals may be submitted to, and approved by FERC without stakeholder support. It is therefore recommended that governance rules be developed to require that proposed RSO FERC tariff filings that do not have the support of a majority (or a minimum percentage) of the Market Advisory Committee would require the following:

1. A justification for overriding the Market Advisory Committee's decision, such as a reliability need or demonstrable net benefits, and
2. Include for consideration any alternative proposal that was approved by a majority

of the Committee.²

3. Provisions within the bylaws to prevent the implementation of capacity markets or other expansions of the scope of the market that are not widely supported by the market participants and regulatory authorities.

Market Advisory Committee

Consistent with other Regional Transmission Organization (RTO) governance structures, Public Power recommends a strong Market Advisory Committee (MAC). This Committee would consist primarily of market participants that have direct financial interests in the market operation through ownership of electric power or transmission assets, or load serving responsibilities. This Committee would not have decisional authority, and could not veto or modify RSO Staff recommendations, but would be a formal advisory channel to provide opinion and counsel to the RSO Board itself. Subject to further consideration, this Committee should be modeled along the lines of the Members Committee utilized in SPP.

The MAC would provide both individual and collective input to the Board. This provides a direct indication to the Board, in a public forum, of the views of the MAC, and provides clear feedback to the Board of the RSO Staff's ability to resolve disputes within the stakeholder process before matters come to the Board.

The MAC should be comprised of representatives who reflect a diverse array of interests, including investor-owned utilities, municipal utilities and joint action agencies, cooperatives, independent power producers, state power agencies, Federal Power Marketing Agencies, renewable power producers, public interest and consumer advocates, and large and small end use consumers.

One benefit of this type of committee structure is that it forges a working bond between the RSO organization itself and the market participants, potentially resulting in a great deal of consensus on matters and making it a rare event when the Board formally considers a matter that does not have broad Member support.

Whether through the MAC or in a separate but similarly constituted committee, market participants or members should comprise the nominating committee and select Board members on a going forward basis, with at least one slot on the nominating committee designated for a public power utility representative.

² For example, the New England Power Pool's Participants Agreement requires that proposals by ISO New England for which the Participants Committee have instead approved an alternative by a vote that is "greater than 60% of a Market Rule proposal that is different from the one proposed by ISO, including, but not limited to, a Governance Participant proposal, ISO shall, as part of any required Section 205 filing, describe the alternate Market Rule proposal in detail sufficient to permit reasonable review by the Commission, explain ISO's reasons for not adopting the proposal, and provide an explanation as to why ISO believes its own proposal is superior to the proposal approved by the Participants Committee."

Regional Authorities Committee

Within the ISOs and RTOs in the United States, stakeholders typically have representation on a Member or Market Advisory Committee and their regulatory bodies have representation on a states' committee. In the Western states, Public Power entities are not jurisdictional to the state utility commissions, and Public Power transmission owners, as well as agencies of the federal government with long-term service obligations to Public Power customers, serve significant percentages of load and operate substantial portions of the grid across the Western Interconnection. Indeed, in some states, Public Power serves a majority of the load. Public Power therefore plays an essential role in the region, and how their interests will be considered will likely be a key consideration as they assess whether to participate in or support the contemplated Western RSO.

In total, POUs account for about one-fourth of both electricity consumption and the number of customers in the Western Interconnection, thus justifying commensurate representation on the proposed Regional Authorities Committee (RAC) by POU representatives, including rural electric cooperatives. Therefore the RAC should be comprised of state commissioners and public power representatives.

This body of regulators and public power representatives would serve an advisory role on all issues, but play a critical function in the decisions on enumerated issue areas, particularly with regard to matters that are directly relevant to state and local jurisdiction. While the exact composition and responsibilities of the RAC is a subject for further discussion, this Committee should be given a strong role or the lead in the determination of proposals for specific issues, such as the following:³

1. The use of participant funding for transmission enhancements,
2. Transmission cost allocation,
3. Financial Transmission Rights (FTR) or Congestion Revenue Right (CRR) allocation,
4. The approach for resource adequacy across the RSO footprint, and
5. Outcomes and recommendations that stem from the applicable regional transmission planning process.

The RAC should have a standing Cost Allocation Working Group to address this sensitive and critical issue.

Subject to further discussion and consideration, Public Power believes that it should be difficult for the RSO to make significant policy changes absent strong concurrence from the RAC. We stop short of formal approvals, but other tools should be considered such as requiring the RSO to assume a Section 206 burden of proof when not acting in accord with state and local consensus, or providing the RAC formal section 205 co-filing authority.

Durability of Energy Imbalance Market Governance

³ For example, under the SPP bylaws, the Regional States Committee has "primary responsibility for determining regional proposals and the transition process" for these types of issues.

The PacifiCorp/CAISO presentation on Regional Governance Development of February 10, 2016, opened the discussion of whether there would continue to be a separate EIM Governing Body if and once an independent Board is set up for an RSO. It is Public Power's strong view that the EIM Governing Body should continue to exist as currently structured and empowered, so long as the EIM is a separate market offering, and there are EIM Entities that have chosen not to merge BAs with the RSO. For all practical purposes, the EIM is the only regional market collaboration that many BAs will consider. Continuation of a separate EIM governance is a key indicator to assure existing EIM Entities and those considering future EIM participation that the EIM is a durable market operation and will not be dissolved under the formation of an RSO. Public Power recommends that affirmative protections for the durability of the EIM be included in any new RSO bylaws.