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Comment Received From: Steven Kelly

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IEP Comments on Revised Proposal re Regional ISO Governance

Additional submitted attachment is included below.

August 2, 2016

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

Re: Comments of the Independent Energy Producers Association (IEP) on the California ISO REVISED PROPOSAL for Principles for Governance of a Regional ISO (dated July 15, 2016)

The Independent Energy Producers Association (IEP) appreciates the opportunity to submit comments on the California Independent System Operator's Revised Proposal for Principles for Governance of a Regional ISO (Revised Proposal), dated July 15, 2016. IEP provided comments on the initial Proposed Principles and we are pleased with the opportunity to provide additional comments in light of recent changes to the proposal.

IEP appreciates the significant improvement and advancement that has occurred between the earlier initial Proposed Principles and the Revised Proposal. The Revised Principles eliminate the concept of a Transitional Board, and thereby provide a clearer path to a permanent Regional ISO Board through the role of a temporary Transitional Committee. Equally important, the Revised Proposal creates a greater level of independence to a future Regional ISO Board by not "hard-wiring" into the organization's By-laws prohibitions on the adoption of policy prescriptions that may fall within the domain of a future Board. IEP views these changes as very helpful and significant.

In commenting on the initial proposed principles, IEP raised concerns regarding the independence of the governance structure. We were particularly concerned that the proposed governance structure would undermine the Regional ISO Boards independence and/or impede the ability of the organization to make timely decisions. The Revised Proposal defers to a Transitional Committee many decisions related to a number of key matters. While IEP does not

oppose the formation of a Transitional Committee, indeed such a committee at this point in time may be a necessary condition for moving forward, we take this opportunity to reiterate and more fully address the critical necessity of realizing a truly independent governing structure capable of acting in a timely manner on matters within its domain.

Irrespective of the context, a truly *independent* governing structure is not achieved when, by design of the organization's By-laws, decision-making overlaps between any two separate bodies within the overall governance structure. Even though the Revised Principles indicate that the role of the Western States Committee (WSC) will be informed by future discussions within the Transitional Committee, the WSC is given primary authority over matters that would "materially diminish or impair state or local authority" (Revised Proposal, Section 1.3) Importantly, no specific definition is provided as to what would be material; what triggers a diminishment of authority; what would constitute impairment of authority; and, what ultimately is a matter of state or local authority. Equally important, the Revised Principles state that "policy approval by the committee [WSC] would be a prerequisite to any ISO Section 205 filing with FERC in those areas" [i.e. matters of state or local authority]. [Revised Proposal, Section 6.6] As a practical matter, Section 205 filings are standard for the ISO to get FERC tariff approval to conduct its business. Section 205 filings by the ISO must be timely, and the filings enable full vetting by interested parties. IEP does not support the concept of a WSC with a veto authority over 205 filings.

The provisions related to the WSC are concerning as they also portend an organizational structure premised on an internal system of checks which undermines the independence of the Regional ISO Board. As a practical matter, weaving into the Regional ISO Board's Bylaws a specific role for the WSC is unnecessary and unwarranted.¹ The Regional ISO Board's domain will be what it is. One must assume that the Regional ISO Board's tariff will govern the areas in which it may act, and it may not act beyond that tariff or beyond its authorities. If the ISO acts outside its authority, stakeholders, policymakers, and others have ample tools including litigation to contest that authority (as well as any policy prescription). Similarly, one can assume in parallel that the area(s) of individual state authority are what they are. When and where areas of

¹ IEP supports the formation of an entity such as the WSC, just as we support an entity such as a Market Advisory Committee. However, in both instances, entities such as these must serve in an advisory capacity to the Regional ISO Board. The Board must remain independent to act on matters that fall within its domain.

jurisdiction interfere, proven processes exist, including judicial review, to resolve disputes and determine where state and federal jurisdiction rests. This is the appropriate way to address this matter, particularly since the determination as to what is a matter of state authority will vary across each of the individual states and, equally important, will change over time.

States and state-based governing authorities (e.g. publicly-owned utilities or POU) have an abundance of tools to manage matters that fall within their domain, and the concept of a Regional ISO Board does not affect or undermine these existing tools or authorities. Clearly, the principle of Transmission Owner Withdrawal provides the means by which entities dissatisfied with the Regional ISO Governance may extract themselves from its unwelcome grasp. IEP is not aware of any opposition to this principle. Moreover, state authorities (e.g. legislatures and/or public utility commissions) and the governing boards of POU) have great influence over their jurisdictional entities in terms of investment, policies, and programs. Traditionally, if jurisdictional entities (including POU) are not assured of cost recovery, they do not make the investment of time and resources. This controlling-authority and dynamic is not impaired if an entity participates in a single-state ISO/RTO, in a regional ISO/RTO, or any other structure governing electric grid operations.

In summary, a grid operator that is not truly independent is not an “Independent System Operator,” and the lack of independence will impair timely and effective decision-making. Moreover, the apparent desire by some to undermine the independence of the grid operator is unwarranted and unnecessary, given the myriad existing tools to protect and preserve state authority. We appreciate the opportunity to provide these comments on this important issue.

Respectfully Submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, sweeping flourish at the end.

Steven Kelly
Policy Director
IEP