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Second Revised Proposal

Principles for Governance of a Regional ISO

[NON-REDLINED “CLEAN” VERSION – see note on next page]

October 7, 2016

Principles for Governance of a Regional ISO (Second Revised)

PLEASE NOTE: For ease of reference, the Second Revised Proposal shows in redline the changes made to the Revised Proposal issued on July 15. The redlining reflects the changes only to the principles themselves, and not to the narrative explanations (such as this introduction) that provide context for the revisions adopted in this draft. A version that shows a clean copy without redlines will also be posted together with the redlined version.

Introduction

On August 8, 2016, the Governor of California sent letters to the California Legislature and the Governors of the other states where PacifiCorp operates addressing the ongoing effort to develop a framework for transitioning the California Independent System Operator (“ISO”) into a regional grid operator. The Governor observed that while very significant progress has been made on key issues relating to regionalization, including the completion of the studies required by Senate Bill 350, more work still needs to be done. The Governor directed his staff and state agencies to continue to collaborate with their counterparts in other states, the ISO, and the California Legislature to develop a strong proposal for consideration by January of next year.

This Second Revised Proposal of Principles for Governance of a Regional ISO (“Second Revised Proposal”) seeks to facilitate the collaborative process, consistent with the goal of having a legislative proposal by January. The governance structure of a regional ISO is clearly one of the key topics that must be addressed for regionalization to go forward. Prior to the Governor’s letter, the ISO had developed, through a stakeholder process that included three workshops convened by the California Energy Commission, a Revised Proposal of eight Principles for Governance of a Regional ISO (“Revised Proposal”). The Revised Proposal was issued on July 15, 2016 and was the subject of a joint agency workshop in California on July 26, after which parties submitted written comments. Additionally, stakeholders have since provided comments at other forums, including on-going discussions with energy policy and regulatory leadership from western states. The Second Revised Proposal builds upon this input.

The Second Revised Proposal retains each of the eight principles from the prior draft and refines them in ways that seek to address many of the issues raised by stakeholders in their comments. For the most part, the refinements take the form of additional detail fleshing out certain aspects of the principles where stakeholders had questions, particular concerns, or expressed a need for more specifics. To that end, the Second Revised Proposal provides more detail about:

- (1) The process that will be used to determine whether a policy initiative could impact state authority (*see* Principle 1);
- (2) The composition of, and process for selecting, the Transitional Committee and the role the committee will play once established (*see* Principle 3);
- (3) The deadline for completing the transition to a regional Board (*see* Principle 4);
- (4) The two-step nomination and approval process for selecting new Board members, including the composition and role of the Nominating Committee and the Approval Committee, as well as a voting rules for the Nominating and Approval Committees that are designed to promote a high degree of collaboration and consensus-building among participants (*see* Principle 5); and

Principles for Governance of a Regional ISO (Second Revised)

(5) The voting rule that will be used for matters within the primary authority of the Western States Committee, which is also designed to promote a high degree of collaboration and consensus-building among the states (*see* Principle 6) .

The Second Revised Proposal also makes other more specific refinements in response to particular stakeholder comments as discussed below.

The ISO looks forward to working with all stakeholders to further refine these principles and establish a final proposal that can serve as the framework for the governance of a regional Independent System Operator.

The Proposal

1. Preservation of State Authority

Various commenters recommended that the principles should more fully define the process for determining whether a proposed policy initiative would materially diminish state or local authority. It was recommended that the ISO use as a model the collaborative process that currently exists in the context of EIM governance for addressing stakeholder challenges to ISO staff determinations regarding whether a matter falls within the primary authority of the ISO Board or the EIM governing body. The ISO has revised Section 1.3 to incorporate a similar collaborative process that would allow the members of the Western States Committee and the ISO Board to collectively consider any potential claim that a proposed policy initiative could materially diminish state authority. This model is designed to promote and facilitate a collaborative resolution of such matters and ensure that there is a workable mechanism for addressing such issues if they arise.

As a clarifying matter, it bears mention that the process set forth in this Section is intended to apply on a going-forward basis to new policy initiatives proposed after a regionalized governance structure is already in effect.

With these modifications, the 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.

Principles for Governance of a Regional ISO (Second Revised)

- 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 new ISO policy initiative would materially diminish or impair the state or local authority described in Section 1.1 above. This process will include a defined procedure for state or local authorities to raise any such concern with ISO staff during the stakeholder policy development process and, if the matter is not resolved to their satisfaction during the policy development process, then with the ISO Board and the Western States Committee prior to approval of the proposed policy for filing at FERC. The procedure will require the ISO Board to consult and collaborate with the Western States Committee to determine whether the proposed policy complies with the provisions in the ISO documents regarding preservation of state authority. If either body, by a majority vote of its voting members, preliminarily concludes that a proposed policy would materially diminish or impair state or local authority, then the matter will be resolved by a combined vote of the members of the ISO Board and the voting members of the Western States Committee sitting together as one body. If the combined body determines, by a majority vote, that the proposed policy would diminish or impair state or local authority, then the policy will not be approved unless the voting members of the Western States Committee unanimously approve it. Absent such approval, the matter will go back to ISO staff for further policy development.

2. Transmission Owner Withdrawal

Note: There are no changes proposed to this Principle.

- 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.

Principles for Governance of a Regional ISO (Second Revised)

3. Transitional Committee of Stakeholders and State Representatives

The comments on the Revised Proposal generally supported development of a Transitional Committee. There were, however, a variety of recommendations made regarding potential changes to the sectors, and various commenters opposed the proposal to have the sectors choose two potential candidates, one of whom would be selected by the Board. The Second Revised Proposal makes some revisions to the sectors in response to this input, requires the sectors to identify only one candidate, and provides that the selected individual will serve on the Transitional Committee.

The Second Revised Proposal also narrows the scope of issues that the Transitional Committee will consider. This change is made to ensure that the committee has a well-defined and achievable scope of work that is focused specifically on the key outstanding issues that are not resolved in these principles.

More detail has also been provided with regard to the processes that the Transitional Committee will use to vote on and submit its proposal to the ISO Board for final review and the Board will use in reviewing the proposal. In the prior version, there was a requirement that the proposal have the unanimous support of all of the state representatives on the Transitional Committee before it could be submitted to the Board. Several commenters recommended eliminating this requirement on the ground that it was overly restrictive and potentially unrealistic. The Second Revised Proposal instead requires the Transitional Committee to use its best efforts to achieve a consensus proposal, but allows the committee to submit a proposal supported by a majority of the committee, provided that any committee members that do not support any aspect of the proposal may include a written submission addressing any areas of disagreement. If a consensus proposal is achieved, the Board is required to approve it unless it articulates a compelling reason not to do so, such as that the proposal would violate some aspect of the guiding principles, FERC precedent or other applicable law.

Other minor revisions are also proposed that seek to clarify the prior draft.

With these modifications, the principle reads as follows:

- 3.1. A transitional committee on governance will be established and will be responsible for addressing the governance issues that these principles identify for it to consider.

Principles for Governance of a Regional ISO (Second Revised)

- 3.2. The committee will be comprised of one public official from each of the states in the expanded ISO footprint.¹ Each state will use its own process to select a person who has significant knowledge and experience in energy policy and utility regulatory issues to serve as that state's representative on the committee.
- 3.3. The committee will also include a cross section of stakeholders from throughout the region, with a representative from each of the following sectors:
 - a. Investor-Owned Utilities
 - b. Publicly-Owned Utilities (Municipals, Co-ops, CCAs)
 - c. Independent Power Producers (includes Generators and Marketers)
 - d. Large Scale Renewable Energy Providers
 - e. Distributed Energy Resource Providers
 - f. Federal Power Marketing Administrations
 - g. Public Interest Groups
 - h. End-Use Consumer Advocate Groups
- 3.4. Selection of the members: The members of each sector will select an individual who will represent their sector on the transitional committee. The ISO Board may, if necessary, appoint additional members to the committee to ensure that the committee, as a whole, is geographically diverse and adequately represents the views of the region.
- 3.5. The ISO Board will adopt a charter² describing the process the committee will follow to consider the issues it is charged with addressing, including provisions for soliciting stakeholder input and holding public meetings.
- 3.6. The committee should work expeditiously to address the issues within its purview, making every effort to develop a final proposal on all of the issues within nine to twelve months. The ISO will support the work of the committee as requested.
- 3.7. The committee's proposal will be submitted to the ISO Board for review and approval. The committee shall use its best efforts to establish a consensus proposal that is supported by all committee members. If consensus is not reached, the committee may forward a proposal supported by at least a majority of the committee. Any committee member or members who do not support the majority proposal may include a written submission that

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.

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

Principles for Governance of a Regional ISO (Second Revised)

addresses the area or areas of disagreement. The Board will give the committee recommendation due deference and acknowledge the stakeholder input in making its decision. If the transitional committee submits a consensus proposal that is supported by all committee members, the Board should approve it unless the Board identifies a compelling reason not to do so, such as that the proposal is inconsistent with these governing principles, FERC precedent, or other applicable law. Once the Board accepts the proposal, the ISO will seek any other necessary approvals, such as from FERC.³

4. Transition Period

The Revised Proposal contained a deadline by which the transition to a regional board would commenced, but did contain a deadline by which the transition would be completed. The Second Revised Proposal eliminates the deadline for starting the transition and instead establishes a deadline of three years for completing the transition. This change more directly addresses the concern expressed by some stakeholders that a long and undefined transitional period should be avoided. It also provides flexibility within this defined three-year period to seat new Board members in orderly manner, without attempting to prescribe at this juncture all of the details of the process. The Second Revised Proposal also clarifies that sitting Board members may be appointed to serve on the regional board beyond the transition period, but only if they are selected to do so through the new nomination and approval process established in the principles.

With these modifications, the principle reads as follows:

- 4.1. There will be a transition from the current board selection process to a regional ISO board selected entirely through a new nomination and approval process as set forth in Principle 5 below. This transition will commence on the date when the regional governance plan becomes effective and will be completed within 36 months of that date.⁴
 - a.
- 4.2. After the transition is complete, the regional ISO Board will be comprised of nine members, all of whom will have been selected by the new nomination and appointment method. Individuals that are sitting on the ISO Board when the regional governance plan becomes effective may be considered for reappointment as candidates for the regional Board, pursuant to the same nomination and appointment process applicable to other candidates. Board members must satisfy the various requirements that FERC has adopted

³ Implementation of the ISO's new governance structure, including the matters that are subject to the transitional committee's consideration, may be contingent on regulatory review by FERC and potentially the IRS for compliance with their respective regulatory requirements. A principle potentially may be subject to revision if required by FERC or the IRS.

⁴ See Principle 8 for the requirements for regional governance plan to become effective.

Principles for Governance of a Regional ISO (Second Revised)

for the independent board members of multi-state RTOs, including financial independence from market participants.

5. Composition and Selection of Regional ISO Board

The process used to identify and select the membership of the regional ISO Board is a key issue that was addressed only at a relatively general level in the Revised Proposal. The Second Revised Proposal provides more detail regarding the key components of the process, which would then be further developed by the Transitional Committee. The goal of these revisions is to establish a set of parameters now that cover the most important elements of the process, while relying on the give and take of the Transitional Committee process to develop certain further specifics relating to the make-up of the stakeholder-based Nominating Committee.

One of the key issues raised by some commenters is the voting rules that will be used by the Nominating Committee for establishing a slate of nominees and by the Approval Committee for confirmation of nominees. The Second Revised Proposal includes supermajority provisions at both levels that are intended to ensure a high degree of collaboration and consensus-building among the participants in this process. Specifically, a candidate must receive the support of at least 75% of the voting members of the Nominating Committee to be forwarded to the Approval Committee, and the slate of nominees then must receive the support of at least 75% of the voting members of the Approval Committee representing at least 75% of total load in order to be confirmed. This approach promotes consensus-building at both stages of the process. Moreover, the voting rule for the Approval Committee ensures that concerns of both large and small states are fully considered because even a relatively small number of states or a small amount of total load could block approval of a candidate.

Another key issue involves ensuring that an appropriately broad and representative group of stakeholders provides input on potential candidates through the Nominating Committee, while maintaining a workable size for that committee. To that end, the Second Revised Proposal establishes a set of guidelines that the Transitional Committee would follow in developing the sector representatives who would serve on the Nominating Committee. The proposal would provide for up to nine total voting sector representatives on the Nominating Committee, with up to seven sectors representing the various types of entities that participate in the ISO's markets and up to two sectors representing public interest/consumer advocacy groups. This proposal is based to a large extent on feedback regarding the recent experience of the stakeholder nominating committee used to identify candidates for the EIM governing body. Stakeholders involved in that process, which involved a nominating committee of similar size and make-up, reported that this size and structure was efficient, enabled a frank and positive exchange of views on the candidates, and was conducive to building broad consensus for a strong slate of candidates. Stakeholders who were involved in that process also recommended that the public interest/consumer group sector

Principles for Governance of a Regional ISO (Second Revised)

representatives be given a voting seat rather than an advisory seat in order to further promote collaboration and consensus-building within the committee, which is why this revised proposal would make those representatives voting members.

Finally, one commenter asked for further information regarding why the proposal recommends having nine members serve on the regional ISO governing Board. The ISO settled on that number because it is large enough to ensure that the Board is able to meet its fundamental responsibilities, including having enough members to serve on various Board committees (such as the audit committee), but small enough to enable the Board to operate efficiently. Because the ISO Board typically meets as a whole on a near monthly basis, it would be logistically difficult to have a significantly larger Board and it would pose a substantial burden and expense. It would also potentially dilute the level of responsibility that each Board member must have for the successful oversight of the regional ISO's ongoing operations. The proposed number is, moreover, generally consistent with the size of the boards in other existing regional ISOs/RTOs. PJM, MISO, and ISO-NE all have boards with nine voting members, while SPP has seven voting members. MISO used to have a seven-member board, but recently increased it to nine for reasons similar to those expressed above. Thus, the size arrived at by other successful regional ISOs/RTOs provides further evidence in support of the size proposed here.

With the modifications referenced above, the principle reads as follows:

- 5.1. Members of the regional ISO Board will be appointed through a two-step process that includes: (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.
- 5.2. The stakeholder-based Nominating Committee will be comprised of representatives selected by their respective stakeholder sectors. There will be no more than nine sectors in total, each of which will provide one voting representative to the Nominating Committee. Up to seven of the sectors will be established for the various types of entities that participate in the ISO's markets. Up to two sectors will be established for representatives of public interest and/or consumer advocacy groups. Each sector will be limited to entities that operate within the ISO's regional footprint or, in the case of public interest/consumer advocacy groups, are actively involved in energy issues within the ISO's regional footprint. The Nominating Committee may not forward a candidate to the Approval Committee unless the candidate has the support of at least 75% of the voting members of the Nominating Committee.
 - a. The Transitional Committee will develop a proposal that identifies and defines each of the voting sectors that will participate in the Nominating Committee, consistent with

Principles for Governance of a Regional ISO (Second Revised)

the requirements set forth in this principle. The proposal may also include non-voting, ex officio members, if appropriate to facilitate the work of the Nominating Committee.

5.3. The Nominating Committee will forward a slate of candidates to the Approval Committee for its consideration. The slate will be comprised of one candidate for each available position on the Board.

5.4. The Approval Committee will vote on the slate as a whole. For a slate to be approved, it must receive affirmative votes from at least 75% of the voting members of the Approval Committee representing at least 75% of the total load within the ISO footprint.

- a. If the slate submitted by the Nominating Committee is not approved, then the process goes back to the Nominating Committee, which must revise the slate before returning to the Approval Committee.

6. Establishment of a Western States Committee

The Second Revised Proposal makes several changes in response to comments made by stakeholders.

In response to concerns from POU, the proposal relaxes the provision that limited the types of individuals that may serve as POU/PMA representatives to the WSC. The ISO also made edits to remove language that had created a misimpression that the proposal intended to limit the scope of issues on which the POU/PMA members may provide input. The ISO also increased the number of POU representatives from one to two in response to comments from POU stakeholders that the number, size and diversity of POU across the region warrants having two non-voting representatives. These revisions are in Section 6.4 of the revised proposal.

In response to comments made principally by stakeholders representing state commissions and state-sanctioned consumer advocates, the ISO has removed language from the prior proposal that created the misimpression that staff from such entities may not be permitted to attend or participate in meetings of the WSC. The revisions clarify that the WSC will generally perform its work in open session and that all members of the public, including such staff, will be invited to attend and participate. These revisions are found in Section 6.5.

The ISO also further developed the proposed voting rule that the WSC members would use when considering matters that are subject to their primary authority. As with the voting on approval of Board members discussed in Principle 5, the ISO proposes a requirement that a proposal must be approved by at least 75% of voting members representing at least 75% of total load. As discussed above, this rule promotes a high degree of collaboration and consensus-building and ensures that

Principles for Governance of a Regional ISO (Second Revised)

concerns of both large and small states are fully considered because even a relatively small number of states or a small amount of total load could block approval of a proposal. These revisions are found in Section 6.7.

The ISO further notes, as a point of clarification, that it does not intend for this load-based weighted voting rule to apply to other matters involving the day-to-day administration of the WSC or to decisions by the WSC on whether to provide advisory input on topics outside its primary authority. As suggested by one commenter, there could also be different rules regarding whether votes on such topics require a majority or supermajority of members depending on the nature of the specific issue to be decided. These details can be decided at a later juncture, preferably by the representatives of the states that are charged with starting up the WSC.

The revised proposal also removes references to the Transitional Committee on topics that are no longer expected to be deferred to that body for determination. Section 6.6, for example, previously stated that the Transitional Committee would identify in more detail the specific topics within the categories of resource adequacy and transmission cost allocation that should fall within the primary authority of the WSC. The ISO has decided to work on addressing this “scope of authority” issue now, rather than deferring it to the Transitional Committee, principally because this issue is closely related to the ongoing stakeholder efforts devoted to regional resource adequacy and transmission access charge options. The ISO has developed a discussion paper and draft proposal that will make suggestions for topics within these areas that should be subject to the WSC’s primary authority. The ISO will be issuing this paper and seek comments on it in conjunction with any comments on this Second Revised Proposal.

In response to comments, the ISO has also defined the term “sustained period of inaction” used in Section 6.8.c.

With these modifications, the 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.

Principles for Governance of a Regional ISO (Second Revised)

- 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. Two individuals selected by publicly-owned utilities within the ISO footprint.
 - b. One individual from a federal power marketing administration in the West.
 - c. The two non-voting member groups described above, who should not have day-to-day work responsibilities that are directly related to market transactions, will participate in all deliberations of the body.
- 6.5. The WSC will be subject to open meeting rules that require the body to provide public notice of its meetings and permit non-members, including staff of state commissions and state-chartered consumer advocates, to attend and participate in all such meetings, with the exception of any executive session meetings set for the members to address a confidential matter.
- 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.
 - 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. For any proposal within the primary authority of the WSC to be approved, it must receive affirmative votes from at least 75% of the voting members of the committee representing at least 75% of the total load within the ISO footprint.
- 6.8. For matters within the committee's primary authority, the governing documents will include 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

Principles for Governance of a Regional ISO (Second Revised)

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 (but only after giving the WSC 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. A sustained period of inaction means that the WSC has failed reach resolution on a matter pending before it for a period of at least 90 days after the matter has been placed before the WSC for consideration.

7. Stakeholder Processes and Stakeholder Participation

The ISO has not proposed any further changes to this Principle at this juncture. Several commenters continue to request that the ISO commit to a revised stakeholder process that would include some form of a formal stakeholder committee. This is an important topic and one that deserves further discussion among all stakeholders, both in comments on this Second Revised Proposal and ultimately in the Transitional Committee forum contemplated in this Principle. So while Principle 7.1.b remains unchanged, the ISO commits to working with all stakeholders and with the Transitional Committee as it considers the full set of options to revise the current stakeholder process.

- 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

Principles for Governance of a Regional ISO (Second Revised)

The revised proposal makes conforming revisions to this principle relating to the role of the transitional committee.

With these modifications, the principle reads as follows:

- 8.1. Following the development and approval of regional governance plan by the 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.