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CAISO Second Revised Governance Proposal and WSC Whitepaper Comments

Additional submitted attachment is included below.

BRYCE FREEMAN
ADMINISTRATOR

DENISE PARRISH
DEPUTY ADMINISTRATOR

MATTHEW H. MEAD
GOVERNOR

Office of Consumer Advocate

2515 Warren Ave., Suite 304
Cheyenne, Wyoming 82002
Telephone 307-777-7427
FAX 307-777-5748
TTY 307-777-5723
http://psc.state.wy.us/oca.htm

California Energy Commission
Regional Grid Operator and Governance
Docket Number 16-RGO-01
Re: Comments of the
Wyoming Office of Consumer Advocate

October 26, 2016

The Wyoming Office of Consumer Advocate (WOCA) is an independent consumer advocate agency established by the Wyoming Legislature to advocate for the best interests of Wyoming utility ratepayers and all citizens of the state in matters involving public utilities. The WOCA represents the interests of all classes of ratepayers. It is the duty of the WOCA to advocate positions and policies that result in just, reasonable and affordable rates for utility services that are safe, adequate and reliable for Wyoming citizens. The WOCA previously filed comments regarding the Revised Governance Proposal. The California Energy Commissions (Commission or CEC) now solicits comments on the Second Revised Governance Proposal as well as comments regarding a white paper setting forth certain aspects of the expanded Regional System Operator (RSO) which may be ripe for reservation to the primary authority of the Western States Committee (WSC). The WOCA's comments here are responsive to the Commission's request and are a follow-on to the workshop that was held on October 17, 2016.

Second Revised Governance Proposal

First, we are pleased that the drafters of the Straw Proposal on Governance (Proposal) appear to have taken seriously the comments of many commenters, including the WOCA, in preparing the Second Revised Proposal on Governance. And, although we acknowledge much progress in the revised proposal, we nevertheless still have concerns about the governance proposal and the reservation of authority to the states through WSC as we will discuss more fully in our comments below. In our initial comments we raised serious concerns regarding various aspects of the Proposal including, among others, preservation of state authority, greenhouse gas accounting, transmission owner withdrawal, the transitional committee of stakeholders, the independence of the current CAISO Board of Directors, the establishment of the Western States Committee (now the WSC and formerly known as the Body of State Regulators) and the role of stakeholders and their participation in an RSO. Additionally, we raised a number questions and made several general observations regarding the development process underlying the Proposal.

The Proposal as revised appears to be responsive to many of our concerns and questions raised in previous comments. For example, with regard to the preservation of state authority, the revised

Proposal contemplates a collaborative process in which the ISO Board and WSC would jointly determine if a new proposed action of the RSO impinges on the authority of states to protect the interests of their citizens. We applaud such colligate collaboration. However, as expressed by other commenters during the October workshop, we are concerned with the guidance in the Proposal that suggests that this collaboration would apply only on a "going-forward basis to new policy initiatives proposed after a regionalized governance structure is already in effect".

We agree with the comments of Commissioner Florio of the California Public Utilities Commission (CPUC) who observed that many of the elements of the Proposal will be fully baked before the WSC is seated. If so, the WSC would have little ability to influence important foundational elements of the Proposal and would be left with little authority to meaningfully address or change those aspects of the Proposal. This is inconsistent with the sort of "organic development" of the RSO that we see as critical and which we urged in our earlier comments. Instead, we believe that state regulatory and policy interests should be reflected in the foundational elements of the Proposal, rather than the WSC fulfilling a primarily ministerial role after the Proposal has already been adopted by the California Legislature.

We acknowledge, however, that full engagement of the WSC in the development and implementation of the RSO will create due process issues for most consumer advocates and other interested parties in the PAC footprint. For example, PSC Commissioners who are actively engaged in the development and implementation of the RSO through the WSC, and whom would presumably endorse any proposal that would later be proffered to the PAC states for approval, would have an inherent conflict of interest in subsequent proceedings. The alternative, which is even less appealing, is for the current ISO Board to have sole approval authority. Perhaps the Transitional Committee could be reformed to include a sector representing state governments. Such a reformation could allow the state regulatory/policy perspective to be represented, along with all other perspectives, and at the same time mitigate the potential for conflicts of interest to arise later. Beyond that, we have no specific advice in this area, but we hope that the Commission will pay particular attention to this conundrum before the final proposal is presented to the California legislature.

Further, we also agree with numerous other commenters at the October workshop that a timeline should be developed so that stakeholders can determine how the various steps in the development process will be sequenced and how interested stakeholders, including the WSC, fit into that timeline. A fully transparent and public RSO development process is critical to winning approval of the Proposal in the PacifiCorp states. However, interested stakeholders also need to know when and how to participate in order for their participation to be truly meaningful.

Notwithstanding the above comments regarding the ability of the states, through the WSC, to meaningfully participate in the development of the foundational elements of the RSO, we generally support the revised Transitional Committee proposal. In our earlier comments we advocated for an inclusive, sector driven Transitional Committee as the best way to achieve robust regional dialog on these important issues. The revised Proposal reflects our recommendations in this regard. Interestingly, the revised proposal strikes the language requiring the Transitional Committee to oversee the development of Corporate Documents implementing the governance plan once it is approved. We are curious, given this stricken language, who will oversee the development of these Corporate Governance Documents.

We are also pleased that the revised proposal incorporates a defined transition period. In our earlier comments we expressed concern regarding the open ended nature of the proposed transition period and we support the revised proposal insofar as it limits the transition period to three years. In view of the required approvals in each of PAC's states and the requirement of a FERC proceeding, we believe a three year transition period is adequate without being onerous. However, under no circumstance would we support full integration of PAC into the RSO until such time as a fully independent RSO Board is seated. Again, a timeline showing development process steps and milestones would be extremely helpful in this regard.

We are further pleased that our comments regarding the independence of the RSO Board appear to have been incorporated into the revised Proposal. In our earlier comments we underscored the critical importance of seating a demonstrably independent RSO Board as quickly as possible. Under the revised Proposal a new RSO Board will be seated according to a two-step nominating and approval process aided by a professional search firm. However, there is no indication in the revised proposal regarding when this new, independent Board might be seated. Again, we believe that all stakeholders would benefit from a graphical timeline that shows the various stages of RSO development and how the various steps in each of those stages interact with each other.

Finally, the revised proposal introduces a new voting rule that applies to both the Approval Committee and the WSC, a slight variation of which also applies to the Nominating Committee. In our earlier comments we expressed concern that the original proposal contained a load share based voting rule that would inherently disadvantage PAC states with smaller loads such as Wyoming. We argued that such a voting rule could enable states with larger loads and similar environmental and public policies to essentially overrule smaller states in the context of the WSC. The revised voting rule, which would apply to the Approval Committee and the WSC, would require any issue to achieve a favorable vote of 75% of the voting members of the WSC representing 75% of the load in the expanded footprint for that issue to be reported favorably out of the WSC. The same 75% voting rule would apply to the Approval Committee as well, although a Board candidate would need only 75% of the Nominating Committee to vote favorably in order to have his or her name forwarded to the Approval Committee. We are uncertain as to why this distinction was made between the Nominating and Approval Committees.

We will reserve judgement on the revised voting rule for now. We understand the genesis of these revisions and believe that the revised voting rule is a move in the right direction from the perspective of the smaller states in the PAC footprint. The revised rule would certainly make it more difficult for the likeminded larger states in the expanded RSO footprint to impose their will on the smaller states. But, the revised voting rule may not make such an imposition impossible. During the October workshop one commenter stated that California would own 81% of the end-use load in an expanded RSO. In view of California's load share, which could give California veto power by virtue of its load share, perhaps the revised voting rule is adequate to protect the rights of smaller states; perhaps not. In any event, we reiterate here our general opposition to load share weighted voting schemes.

Western States Committee Primary Authority

In its market notice the Commission also seeks comment on certain areas of proposed primary authority that might be reserved for the WSC. In its white paper the Commission suggests two areas of potential primary authority for the WSC; cost allocation for new transmission investments and resource adequacy. Specifically, the Commission seeks comment on whether or not the establishment of a system-wide planning reserve margin should be within the primary authority of the WSC.

Our comments in this regard are aimed not so much at what areas of authority should be reserved primarily for the WSC, but go more to the practicality of assigning the two areas specified in the white paper to the WSC. In the white paper the Commission suggests new transmission infrastructure constructed under the auspices of the RSO would fall into one of three buckets; reliability projects, economic projects and public policy projects. The white paper only minimally specifies the distinguishing characteristics of each of these three types of projects. According to the white paper, the WSC would have primary authority over only public policy solutions which are assumed to be projects driven by "state, municipal, county, or federal public policy requirements". Such projects are thought to "raise broad regional and project-specific equity considerations" and may "support the policy mandates of, or provide benefits to, more than one sub-region within the broader regional system operator footprint".

The WOCA has several concerns with the proposal to grant primary authority to the WSC in the area of cost allocation and to do so only for "policy solutions". State Public Service Commissions are, first and foremost, economic regulators. In all instances that we are aware of, state PUCs establish the rates to be paid by retail customers for utility services provided to them. Such rates are based chiefly on the investments that utilities make in infrastructure, including transmission infrastructure, to provide utility service to ratepayers. It seems imminently reasonable and logical then, for states, through the WSC, to have primary authority over cost allocations for economic projects as well as policy projects. The same reasoning applies to reliability projects. State PUCs are charged with "keeping the lights on" at the lowest reasonable cost to ratepayers and as such each state has a vital interest in assuring that the transmission grid is reliable, but that unnecessary investments are not included in customer rates. It would seem that states have a vested interest in all three types of investments postulated by the Commission. We are puzzled as to why policy projects are singled out for a primary authority delegation to the states. We believe that states should also have a strong voice in the allocation of costs for projects that have purported economic and reliability benefits, and costs, as well.

In addition, we question the practicality of easily categorizing transmission investments as either reliability, policy or economic projects. We have, for several years, been active participants in the Northern Tier Transmission Group (NTTG) stakeholder process, specifically in the NTTG cost allocation stakeholder process. We have also been involved as interested stakeholders in numerous previous efforts to establish Regional System Operators. These experiences inform our comments here on cost allocation. Based on those experiences we conclude that a tidy categorization of transmission projects into policy, economic or reliability categories is nearly impossible. For example, a given project that is designed primarily to relieve congestion on the transmission grid and thereby provide economic benefits will almost always enhance reliability, and vice versa. We are uncertain as to how projects driven by policy mandates in one state would have demonstrable and quantifiable benefits to other states. The white paper contains scant detail as to how this would be determined and we would need more information before reaching the same conclusion.

The white paper suggests that if the WSC were unable to make a determination on cost allocation, allocation of the cost of new transmission investments would fall to a default allocation formula contained in the RSO's governing documents. The white paper, however, makes no mention of how this default mechanism would be developed or who would be responsible for its development. We believe that if the WSC is to be given primacy over cost allocation then it should also have the responsibility of developing the default cost allocation procedure specified in the white paper. In this way, members of the WSC would have an incentive to negotiate cost allocation issues in good faith recognizing the default alternative that they negotiated might be less appealing than a negotiated outcome on any given individual project.

The white paper also suggests that the WSC could have primary authority over determining a system wide planning reserve margin (PRM) target for resource adequacy purposes and seeks stakeholder comment in that area. Although we support the WSC having primary authority in this area, we again express our concern that achieving agreement among the members of the WSC may be difficult in practice. As more and more intermittent resources are added to the western grid, opinions about the correct level of the PRM - large enough to assure reliable operation while minimizing costs to ratepayers - will diverge. As noted by several commenters at the October workshop, those differences may be as basic as agreeing on a uniform method for "counting" the effective load carrying capacity of various resource types.

As with cost allocation authority, the white paper suggests that in the event that the WSC is unable to reach agreement on a system-wide PRM target, the PRM target would be set by default at a level equivalent to that produced by a Loss of Load Expectation (LOLE) study conducted by the RSO. Yet, that study would be based on the very assumptions upon which the WSC was unable to reach agreement. Does this mean that the RSO itself would essentially have ultimate authority over the establishment of the PRM target?

The WOCA also has an ancillary concern regarding how the WSC's primary authority over the PRM target fits within the delegated authority of the Western Electricity Coordinating Council (WECC). WECC is the entity responsible for assuring the reliability of the Western Interconnection under its delegation agreement with the North American Electric Reliability Corporation (NERC). In its role as the west's reliability assurance organization WECC establishes and enforces various reserve margin requirements and conducts west-wide planning to assure long-term resource adequacy. How would the RSO's planning and its establishment of a PRM target fit into the regional reliability framework established by WECC? More information is required in this area.

Other Matters

Perhaps as important as the areas that the white paper proposes for WSC primary authority are the areas that it does not propose for WSC primary authority. In these areas, apparently, the WSC would have an advisory role, although it is unclear at this point exactly how the WSC would exercise its advisory authority or how that advice would be incorporated into proposed actions by the RSO Board. There are multiple areas in which the WSC could have either a decision making or advisory role. For example, what role would the WSC and other interested stakeholders play in mitigating markets in the event that market energy prices spike unexpectedly? What role would the WCS and other interested stakeholders play in sanctioning bad actors that cause market price excursions? Would the WSC advisory role include participating in the development of RSO rules and policies? Are there areas of RSO operations from with the WSC and other interested stakeholders would be precluded from participating, even in an advisory capacity? Would the WSC have access to the information necessary to make decisions or provide advice in these and other RSO matters? The WOCA sincerely hopes so. Although we do not oppose reasonable restrictions on the sharing of confidential information, we believe it is imperative for the WSC and other interested stakeholders to have access to the information necessary to meaningfully engage in the various activities of the RSO.

Conclusion

We are pleased that many of our earlier comments seem to have been incorporated into the latest draft proposal on governance. However, we continue to have concerns and questions regarding the development and operation of an expanded RSO as outlined above. The Commission's white paper on reserving primary authority for states in certain areas raises additional concerns and questions as discussed supra. We urge the Commission to give our concerns serious consideration and further revise the governance proposal as necessary. We look forward to further engagement in this process.