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## **Environmental Justice Parties' Comments on Revised Governance Proposal**

*Additional submitted attachment is included below.*

# Environmental Justice Parties' Comments

## Second Revised Proposal: *Principles for Governance of a Regional ISO*

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The California Environmental Justice Alliance (“CEJA”), Asian Pacific Environmental Network (“APEN”), Communities for a Better Environment (“CBE”), and The Greenlining Institute (collectively hereinafter the “Environmental Justice Parties”) respectfully submit these comments to the California Energy Commission in response to the California Independent System Operator’s (“CAISO”) Second Revised Proposal for the Principles for Governance of a Regional ISO (“Governance Proposal”).

### **DISCUSSION**

**New Principle:** *Clear language to assure that state requirements are upheld and that benefits to environment and ratepayers are considered in decision-making.*

In SB 350, the California Legislature described the primary cornerstones of a regional authority. The first cornerstone is the requirement that a new regional authority continue to comply with state law. The relevant language provides:

The transformation of the Independent System Operator into a regional organization shall not alter its obligations to the state or to electricity consumers within the state or its obligations to comply with state laws. The Independent System Operator shall retain its obligations set forth in Section 345.5, shall maintain the standards for open meetings and public access to corporate records as set forth in Section 345.5, and shall facilitate effective tracking and reporting mechanisms in support of state enforcement of [GHG requirements].<sup>1</sup>

Section 345.5 of the Public Utilities Code explicitly requires CAISO to “ensure the reliability of electric service and the health and safety of the public”<sup>2</sup> and to manage its grid in a way that is consistent with “[a]pplicable state law intended to protect the public’s health and the environment” among other things. The Legislature did not intend for CAISO to change these responsibilities when it became a regional authority. In the governance document, one principle should, using the language from Sections 345.5 and 359.5, explicitly state that a regional authority will continue to comply with these requirements and ensure that it manages the grid consistent with the laws intended to protect public health and the environment.

<sup>1</sup> Cal. Public Util. Code § 359.5.

<sup>2</sup> Cal. Public Util. Code § 345.5(b).

The next cornerstone that the Legislature required is a study demonstrating overall benefit to ratepayers, which it said includes:

The creation or retention of jobs and other benefits to the California economy, environmental impacts in California and elsewhere, impacts in disadvantaged communities, emissions of greenhouse gases and other air pollutants, and reliability and integration of renewable energy resources.<sup>3</sup>

These five benefits provide markers for the operation of the regional authority and key considerations for its policy decisions. To reflect this, one principle should also state that it will consider how its decisions impact jobs, disadvantaged communities, GHGs and emissions of other pollutants, and reliability and integration of renewable energy resources. This important cornerstone should be described within the initial governance document.

The third cornerstone provided in the legislative language is the requirement for accountability to the states participating in the regional authority. SB 350 includes the following provision:

One year after the seating of the new, revised governing board of the Independent System Operator pursuant to the modifications of its governance structure, and every two years thereafter, the Independent System Operator shall prepare a report to the states within the areas it serves documenting its furtherance of applicable state and federal laws and regulations affecting the electric industry.<sup>4</sup>

One principle should also include that the new regional authority will provide data and regular reports to states within its areas documenting its furtherance of state and federal law and regulations affecting the electric industry.

These three cornerstones should be explicitly included in the governance document to fully reflect the Legislature's intentions for a regional authority.

**First Principle:** *Clear language to assure preservation of state authority and public participation in process.*

The purpose of the First Principle, as provided by the Governance Proposal is to “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 resources or transmission siting within their state.”<sup>5</sup> The goal of this principle– the preservation of state’s authority – is critical for the formation of the regional authority. However, as drafted, the language does not fully accomplish this for several reasons.

Initially, as drafted, this first principle only applies to policies that “would materially diminish or impair the state or local authority.” It is not clear what the definition of “materially”, “diminish” or “impair” are in this context. All ISO policies that directly conflict with state or local authorities should be subject to this first principle as well as all ISO policies that intrude upon an area regulated by the state or local authority. To

<sup>3</sup> Cal. Public Util. Code Section 359.5(e).

<sup>4</sup> Cal. Public Util. Code Section 359.5(h).

<sup>5</sup> Governance Proposal, Section 1.1.

assure that the ambiguous terms “materially,” “diminish” and “impair” are not narrowly interpreted to not include policies that should be considered, CAISO should include clarifying language in this principle that assures that all policies conflicting or intruding on areas regulated by state and local authorities are included and considered in this process.

Second, as drafted, this first principle only applies to concerns raised “during the stakeholder policy development process.” However, in practice, potential issues with policies are not always recognized in the policy development process. There may be instances where the conflicting nature of a policy is only evident when the policy is implemented. To assure that implementation issues can also be addressed by this principle, CAISO should add clarifying language that issues related to conflicts with state or local authorities can be raised in any step of the process.

Third, as drafted, the principle only allows state or local authorities to raise potential concerns during the process. This process would benefit from allowing all stakeholders to raise potential issues and concerns and flagging them for the relevant state or local authority as well as for the ISO. Relatedly, there is not a clear public process for the procedure CAISO developed for hearing concerns related to these issues. Issues related to intrusion on state or local authority are likely to be significant and in the public interest. The Environmental Justice Parties request that the public be notified of such issues and be allowed to participate in the decision-making process.

Fourth, as drafted, there are too many procedural steps in Section 1.3 to assure that these important issues are considered in a timely way. It is unclear why there needs to be an additional step after a majority of the ISO board or Western States Committee determine that there is a concern with an ISO policy. If the majority of either of these bodies determine that a policy creates an issue with a state or local authority, ISO should have to develop the policy further and present it again to these two bodies until the majority of members agree that the issue has been resolved to the satisfaction of the majority of the members.

***Third and Fifth Principles:*** *Include representation from disadvantaged and low-income communities on the Transition and Nominating Committees.*

As currently drafted, CAISO proposes that the Transitional Committee is made up of six members from utilities or administrators, one member from a consumer advocate group, and one member from a public interest group.<sup>6</sup> The fifth principle proposes a Nominating Committee made up of nine members that identifies candidates in their sector for the ISO Board. Currently the Nominating Committee is made up of seven members from entities within the ISO market and two for public interest or consumer advocacy groups.<sup>7</sup>

The Environmental Justice Parties request that CAISO add one more member to both the Transitional and Nominating Committees specifically representing low-income and disadvantaged communities and their interests. ISO will be deciding important issues related to dispatch and balancing our energy supply. These decisions can result in higher pollution and higher energy rates, which significantly impact low-income and disadvantaged communities. To ensure that these communities are considered in these decisions, a representative on the decision-making committees should represent these interests.

***Sixth Principle:*** *Develop open public process for Western States Committee decisions.*

<sup>6</sup> Governance Proposal, Section 3.3.

<sup>7</sup> Governance Proposal, Section 5.2.

The sixth principle develops a Western States Committee to operate as an independent check upon decisions. For the Western States Committee to truly operate as an independent body, a few changes are needed. First, the Western States Committee could allow stakeholders to submit comments on matters before them. Second, the Western States Committee could be required to report communications made to it by interested parties when it is making a decision or other ex parte rules ensuring transparency of and fairness in the decision-making process. The same requirements could be added for the regional authority's board.

**Seventh Principle:** *Assure meaningful public participation.*

The seventh principle requires the transitional committee to develop a “process to facilitate broad and robust stakeholder participation.” CAISO should not delegate the details of the stakeholder process to a transitional committee. At the very least, CAISO should develop markers to ensure that there is a meaningful public process.

With relation to end-use consumers, the National Association of State Utility Consumer Advocates (“NASUCA”) found:

End-use consumers are not consistently able to provide effective input about their interests because the decision-making process is complicated and extremely time-intensive, and most consumers and their advocates lack the resources required to meaningfully monitor and influence the stakeholder process.<sup>8</sup>

The difficulties NASUCA describes for end-use consumers is exponentially higher for disadvantaged and low-income communities. The Environmental Justice Parties recommend the following initial steps to assure meaningful participation:

- Open and public meetings whenever possible including options for remote participation;
- Assure that ISO Board and ISO have experience to understand issues impacting low-income and disadvantaged communities;
- Available translation services for communities;
- Intervenor compensation for organizations representing the public interest;
- Outreach to specific communities that are impacted by decisions;
- Clear and transparent deadlines;
- Availability of underlying data in accessible formats; and
- Materials available in easy-to-understand format and language.

Thank you for consideration of these comments.

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<sup>8</sup> See NASUCA, Model Governance RTO ISO Document, <https://nasuca.org/model-corporate-governance-rto-iso-document/>