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SDG&E's Comments On CAISO's Second Revised Proposal on Regional Governance

Additional submitted attachment is included below.

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

Submitted by	Organization	Date Submitted
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Stakeholders are encouraged to use this template to provide comments on the Second Revised Proposal: *Principles for Governance of a Regional ISO* posted on October 7, 2016.

All documents for the Regional Grid Operator and Governance Proceeding are available at:
http://www.energy.ca.gov/sb350/regional_grid/documents/index.html

Submit comments to the California Energy Commission Docket 16-RGO-01:
<https://efiling.energy.ca.gov/Ecomment/Ecomment.aspx?docketnumber=16-RGO-01> or
docket@energy.ca.gov

Comments should be submitted by October 31, 2016.

The Second Revised Proposal retained the eight principles from the prior draft and refined them in ways that seek to address many of the issues raised by stakeholders in their comments. Please provide comments for further refinement of these principles, which will be used to establish a final proposal that can serve as the framework for the governance of a regional Independent System Operator.

General Comment:

SDG&E is concerned that some stakeholders are viewing expansion of the ISO as: (i) an opportunity to extend California's climate policies into other regions of the West, or (ii) as a threat to the creation of certain kinds of jobs within the state of California. Both of these views jeopardize the prospects for expansion, and neither are consistent with the underlying mission of an expanded ISO which is to provide an efficient centralized market platform that provides all market participants equal access to the transmission grid. Governance policies which give any state, including California, undue influence over the market rules which accommodate individual state's public policy requirements, will not be attractive to entities who may be considering joining an expanded ISO. All stakeholders need to take the long view: An efficient centralized market platform with a wide geographical footprint will provide a solid foundation upon which state and federal policy objectives can be implemented with minimum cost to consumers.

1. Preservation of State Authority

The Second Revised Proposal proposes revisions to section 1.3 to establish a process for determining whether a proposed new ISO policy initiative would materially diminish or impair the state or local authority. Please comment on this change or any other aspect of preservation of state authority.

The CAISO's proposal provides that "[t]he 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." (Proposal at 3). SDG&E supports the principle that those matters constitutionally and historically reserved to the states, should remain the province of the states in an expanded ISO.

Nonetheless, the CAISO's proposal contemplates "bylaws or other corporate governance documents" that, among other things, "prohibit [ISO] from proposing or endorsing a centralized market for the forward procurement of electric capacity..." (Id.) SDG&E objects to this provision because it appears to go beyond what has been constitutionally and historically reserved to the states. Indeed, there are functioning centralized capacity markets in other ISOs. At this point in time, there does not appear to be any imminent shortages of dependable capacity within the Western Interconnection—at least at the system level—so the need for a centralized capacity market is not pressing. However, as the Independent Energy Producers and other suppliers have pointed out, there is no obvious benefit in legally precluding the expanded ISO from proposing and implementing such a market in the future if the benefits of doing so are determined to outweigh the risks.

In the second revised proposal, the ISO has further developed the proposed voting rule that the Western States Committee ("WSC") members would use when considering matters that are subject to their "primary authority." As with the voting on approval of Board members, 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. SDG&E is concerned that the 75%-of-load voting rule will not be acceptable to the other states in that it gives California effective veto over decisions of the WSC. If the other states do find this rule unacceptable -and there is anecdotal evidence indicating this is the case- SDG&E believes the CAISO should revise its governance proposal to make the WSC strictly advisory, at least as to those matters which have been constitutionally and historically reserved to the states.

2. Transmission Owner Withdrawal

The Second Revised Proposal proposes no changes to this principle. Please provide feedback on this principle.

SDG&E supports CAISO's proposal to include a provision that would enable a participating transmission owner to withdraw from an expanded ISO. The proposal permits a PTO to withdraw from the expanded ISO voluntarily or in light of an order by the state or local regulatory authority. It is unclear to SDG&E whether a state regulator or local regulatory authority has the authority to order a participating transmission owner to withdraw from the expanded ISO. SDG&E believes that any principle that would enable a PTO to withdraw from the expanded ISO must be consistent with FERC policy.

3. Transitional Committee of Stakeholders and State Representatives

The Second Revised Proposal makes revisions to the sectors that will serve on the Transitional Committee, requires the sectors to self-select one candidate to serve on the Transitional Committee, narrows the scope of issues that the Transitional Committee will consider, and provides additional detail with regard to the processes to be used by the Transitional Committee to vote on and submit its proposal to the ISO Board, as well as the process the ISO Board will use in reviewing the proposal. Please provide feedback on these changes and any other aspect of this principle.

In the second revised proposal, CAISO made several revisions to the sectors represented on the transition committee, *i.e.*, eliminating or consolidating some of the sectors. SDG&E supports these proposed changes. The changes do not affect stakeholder representation on the transition committee. Diverse stakeholder representation is necessary if the regional ISO to be successful.

The second revised proposal also eliminates the requirement that the sectors identify two candidates to represent each selector and that the ISO Board chooses between the two candidates put forth by the sector. SDG&E supports this proposed change. SDG&E believes that the sectors and not the ISO Board should determine who the representative for their respective sector should be.

Although the second revised proposal does not address the qualification requirements of Board members; it seems to be an issue for the Transition Committee to address. SDG&E believes that it is important for the CAISO to include a provision in the governing principles on the key qualifications of a regional ISO Board Member. The fundamental purpose of the governance principles is to set the tone and parameters for a regional ISO. A provision that states what qualifications a regional board member should have is part of that purpose. SDG&E believes qualified candidates should represent as many of the following qualifications as possible: (1) electric industry expertise, (2) market expertise, (3) general corporate/legal/financial expertise, and (4) public interest expertise.

Also, consistent with FERC-approved policy for CAISO Board membership, SDG&E believes qualified candidates for the expanded ISO Board cannot be employed by, or provide consulting services to, any person or entity that is engaged in the generation, transmission, marketing, trading or distribution of electricity within the geographic area of the Western Electricity Coordinating Council or affiliated with any actual or potential participant in any market administered by the expanded ISO. Additionally, qualified candidates cannot hold any financial interest that would be prohibited by 18 C.F.R. Section 35.34(j)(1)(i); or have another actual or perceived conflict of interest that would be prohibited by the Code of Conduct & Ethical Principles and that could not be resolved before the candidate becomes a member of the expanded ISO Board. The Governing Principles should clearly state these requirements.

4. Transition Period

The Second Revised Proposal eliminates the deadline for starting the transition to a regional board and instead establishes a deadline of three years to complete the transition. It also provides flexibility within this defined three-year period to seat new Board members, including sitting Board members (if they are selected to do so through the new nomination and approval process established in the

principles), without attempting to prescribe all of the details of the process. Please provide comment on this revision or any other aspect related to this principle.

SDG&E supports an up to three year transition period upon reaching the desired milestones set in SB 350 (DeLeon). A shorter transition period to an independent board is better. As depicted in Appendix A attached, SDG&E recommends a hard-cut-over addition of four new board members (Option A) upon the commencement of the transition period. SDG&E believes honoring the current board members full three year term sets precedence for an expanded ISO beyond the integration of PacifiCorp.

For a new PTO joining the expanded ISO, the current board members would remain in place at that time, serving their full terms. There will be a gradual transition to include the new PTO and their respective state. This process also takes into account that up to nine new board members would be in office upon completion of the three year transition period.

Also, for other stakeholders' consideration in Appendix A, Option B and C are included as illustrations with the gradual addition of four new board members during the transition period (Option B) and a hard cut-over to nine new board members (Option C).

5. Composition and Selection of Regional ISO Board

The Second Revised Proposal provides more detail regarding the key components of the process used to identify and select the membership of the regional ISO Board, which would then be further developed by the Transitional Committee. Revisions also establish a set of parameters that rely on the Transitional Committee process to develop certain further specifics relating to the make-up of a stakeholder-based Nominating Committee. Additionally, the Second Revised Proposal includes supermajority provisions for 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 proposal also establishes a set of guidelines that the Transitional Committee would follow in developing the (up to nine) total voting sector representatives who would serve on the Nominating Committee. Finally, the ISO offers information regarding why the proposal recommends having nine members serve on the regional ISO governing Board. Please comment on these clarifications and revisions, or any other aspect related to this principle.

SDG&E believes that political geography should not play a deciding role in the appointment and or composition of the expanded ISO Board. The mission of the expanded ISO Board is to oversee the development and management of short-term markets (day-ahead and real-time) and longer-term transmission planning processes that provide efficient and open-access to the transmission system under the control of the expanded ISO. This mission has little to do with geography and everything to do with independence, vision and expertise.

The second revised proposal states that if the slate of candidates submitted by the Nominating Committee is not approved by the Approval Committee then the process goes back to the Nominating Committee, which must revise the slate before returning to the Approval Committee.

SDG&E is concerned that imposing a supermajority rule that committee members representing at least 75% of total load must vote in favor of the slate of candidates, will be unacceptable to the other states since it effectively gives California veto authority. If the other states do, in fact, object to the supermajority of load rule - and these is anecdotal evidence that they do - SDG&E would support eliminating this rule; relying solely on the agreement of 75% of the voting members.

In addition, SDG&E believes that more information is needed for the Board selection process. It is unclear to SDG&E what steps the Nominating Committee must take to revise the slate of candidates and what happens should the Approval Committee reject a second slate of candidates from the Nominating Committee. We recommend that CAISO consider the process established in the Energy Imbalance Market (“EIM”) charter as a guide for flushing out this aspect of its proposal.

6. Establishment of a Western States Committee

The Second Revised Proposal relaxes the provision that limited the types of individuals that may serve as POU/PMA representatives to the WSC and removes language that created a misimpression that the proposal intended to limit the scope of issues on which the POU/PMA members may provide input, or 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. It also increases the number of POU representatives from one to two. Importantly, the ISO further develops the proposed voting rule that the WSC members would use when considering matters that are subject to their primary authority, and defines the term “sustained period of inaction”. As a point of clarification, the ISO notes 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. These details can be decided at a later juncture, preferably by the representatives of the states that are charged with starting up the WSC. Finally, the ISO has decided to work on addressing this “scope of authority” for the WSC issue now, rather than deferring it to the Transitional Committee, and has subsequently 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. Please comment on these revisions to the revised Principles for Governance in relation to the WSC, and provide any additional feedback on this principle.

SDG&E agrees with CAISO’s proposal to establish a stand-alone WSC of state regulators, consisting of members from regulatory and other state agencies representing all of the states within the footprint of the expanded ISO. However, except for those matters constitutionally and historically reserved to the states, such as long-term resource adequacy and supply procurement,¹ SDG&E does not support providing the WSC with primary authority over regional ISO policy initiatives.

SDG&E objects to any governance proposal which confers the WSC with Section 205 filing rights concerning the expanded ISO’s transmission planning process and associated transmission cost allocation

¹ As noted elsewhere in these comments, SDG&E does not see the benefit of permanently precluding the expanded ISO from developing and implementing a centralized capacity market.

among the sub-regions of the expanded ISO. FERC already has authority over the CAISO's transmission planning process and has exclusive authority over transmission cost allocation.

This is over-reaching and contradictory to established law and policy. Section 201 of the Federal Power Act ("FPA")² grants FERC, not the states, comprehensive and exclusive jurisdiction over the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce, with limited exceptions. FPA Section 205³ grants filing rights to public utilities, not to state agencies or commissions. In fact, the court and the FERC have determined that unilaterally granting Section 205 filing authority over any body other than the public utility would "allow a state to do what FERC itself cannot, namely, to change an interstate rate practice that FERC has not found unreasonable."⁴ The FERC has expressly noted that it has only permitted the sharing of Section 205 filing authority in a multistate context when the affected parties have so consented.⁵ As discussed more fully below, SDG&E does not consent to the prerequisite proposal.

To be clear while SDG&E has concerns with the authority the CAISO's proposal confers on the WSC regarding the exercise of Section 205 rights, SDG&E's concerns should not be misinterpreted as opposing direct and active participation by the WSC in the expanded ISO. Constructive participation by the WSC in the expanded ISO is essential, and all parties need to be at the table.

In the second revised proposal, the ISO has 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, 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. SDG&E is concerned that the 75%-of-load voting rule will not be acceptable to the other states in that it effectively gives California veto over decisions of the WSC. If the other states do find this rule unacceptable - and there is anecdotal evidence that they do-- SDG&E believes the CAISO should revise its governance proposal to make the WSC strictly advisory, at least as to those matters which have not been constitutionally and historically reserved to the states.

² Federal Power Act, 16 U.S.C. §§824(a)-(b).

³ 16 U.S.C. §824d.

⁴ Massachusetts, Dep't of Public Utilities v. United States, 729 F.2d, 886, 888 (1st Cir. 1984)(cited by Midwest Independent Transmission System Operator, Inc., 122 FERC ¶61,283 at P 66 (2008)("MISO").

⁵ In MISO, the FERC, among other things, denied the request to grant Section 205 filing rights to the Organization of MISO States. The FERC distinguished its decision in MISO (PP 64-68) with its decision in Southwest Power Pool, Inc. ("SPP"), 108 FERC ¶61,003. Among other things, the FERC stated:

[T]he provision to require SPP to make certain section 205 filings on behalf of its Regional State Committee was a consensual agreement of SPP, its transmission owners and its state commissions. There is no evidence of such agreement here....without any concrete proposal before us, we are unsure whether the OMS'[Organization of MISO States] ability to compel Midwest ISO filings could conflict with the Midwest ISO's independent rights and responsibilities under section 205 of the FPA, by allowing the OMS (or individual states) to dictate what filings the Midwest ISO will make with the Commission. (Id. at P 67)

7. Stakeholder Processes and Stakeholder Participation

The ISO has not proposed any further changes to this principle at this juncture; however, 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. Please provide any additional feedback on this principle.

Except for adding limited financial support (travel and incidental expenses) for qualified public interest entities, SDG&E does not believe that changes to CAISO's existing stakeholder process are warranted at this time. However, SDG&E supports the expanded ISO Transitional Committee reviewing the CAISO's existing stakeholder process to determine if any changes are needed to ensure the stakeholder process for the expanded ISO is effective.

8. Requirements for Plan to Become Effective, including Governor's Certification

The Second Revised Proposal made conforming revisions to this principle, modifying the proposed development of a regional governance plan by the Transitional Committee then approved by the ISO Board, and replacing it with both the development of and approval of a regional governance plan by ISO Board. Coupled with the development of governance documents and any necessary regulatory approvals, the governance plan will become effective only after it is approved by the Governor of California. Please provide any additional feedback on this principle.

SDG&E does not believe the Governor of California should have the ability to block formation of an expanded ISO. That authority should reside solely with the FERC based on the merits of the necessary tariff changes.

SDG&E notes that the current Governor of California has, so far, been supportive of an expanded ISO. SDG&E believes the support of all states' governors will be important in creating an environment that encourages new participants to join an expanded ISO.

Attachment A

Option A:
Hard Cut to 9 Member Board with Continuity in Transition Period

ISO Board of Governors

Seats and Term of Office

Seat	Office	Term	Current Process	Current Process	Transition Year 1	Transition Year 2	Transition Year 3	Final Board
1	Governor / Director	3 yrs	Mark Ferron	Mark Ferron	Mark Ferron	Reappointment or New	2020	2021
2	Governor / Director	3 yrs	David Olsen	David Olsen	David Olsen	Reappointment or New		
6	Governor / Director	3 yrs			New	Reappointment or New		
3	Governor / Director	3 yrs	Ashutosh Bhagwat	Reappointment or New			Reappointment or New	
4	Governor / Director	3 yrs	Angelina Galiteva	Reappointment or New			Reappointment or New	
7	Governor / Director	3 yrs			New		Reappointment or New	
5	Governor / Director	3 yrs	Richard Maullin	Richard Maullin	Reappointment or New			Reappointment or New
8	Governor / Director	3 yrs			New			Reappointment or New
9	Governor / Director	3 yrs			New			Reappointment or New

Option B:
Transition to 9 Member Board with Continuity in Transition Period

ISO Board of Governors

Seats and Term of Office

Seat	Office	Term	Current Process	Current Process	Transition Year 1	Transition Year 2	Transition Year 3	Final Board
1	Governor / Director	3 yrs	Mark Ferron	Mark Ferron	Mark Ferron	Reappointment or New	2020	2021
2	Governor / Director	3 yrs	David Olsen	David Olsen	David Olsen	Reappointment or New		
6	Governor / Director	3 yrs				New		
3	Governor / Director	3 yrs	Ashutosh Bhagwat	Reappointment or New			Reappointment or New	
4	Governor / Director	3 yrs	Angelina Galiteva	Reappointment or New			Reappointment or New	
7	Governor / Director	3 yrs					New	
5	Governor / Director	3 yrs	Richard Maullin	Richard Maullin	Reappointment or New			Reappointment or New
8	Governor / Director	3 yrs			New			Reappointment or New
9	Governor / Director	3 yrs			New			Reappointment or New

ISO Board of Governors

Seat	Office	Term	Current Process	Current Process	Transition Year 1	Transition Year 2	Transition Year 3	Final Board
1	Governor / Director	3 yrs	Mark Ferron	Mark Ferron	Reappoint or New	Reappoint or New	2020	2021
2	Governor / Director	3 yrs	David Olsen	David Olsen	Reappoint or New	Reappoint or New		
6	Governor / Director	3 yrs			New	Reappoint or New		
3	Governor / Director	3 yrs	Ashutosh Bhagwat	Reappoint or New	Reappoint or New		Reappoint or New	
4	Governor / Director	3 yrs	Angelina Galiteva	Reappoint or New	Reappoint or New		Reappoint or New	
7	Governor / Director	3 yrs			New		Reappoint or New	
5	Governor / Director	3 yrs	Richard Maullin	Richard Maullin	Reappoint or New			Reappoint or New
8	Governor / Director	3 yrs			New			Reappoint or New
9	Governor / Director	3 yrs			New			Reappoint or New