

## DOCKETED

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*Comment Received From: Sarah Edmonds*

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**PacifiCorp Comments on Second Revised Governance Principles**

*Additional submitted attachment is included below.*

## Optional Stakeholder Comments Template

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

Submitted by	Organization	Date Submitted
Sarah Edmonds, Vice President and General Counsel	PacifiCorp	November 3, 2016

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](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 (“ISO”).

#### **General Comments**

PacifiCorp’s comments on the Second Revised Governance Principles are based on PacifiCorp’s review and analysis of the proposals contained therein as well as informal outreach efforts with its state regulatory authorities. PacifiCorp appreciates the time and effort of its state regulatory authorities, officials, and stakeholders across the West who have contributed to advancing the regional governance dialogue, including the filing of comments on the current governance proposals.

PacifiCorp believes that an acceptable governance proposal that supports and facilitates changes to California’s existing laws dictating the governance of the ISO is a critical threshold obstacle that must be resolved before the company and stakeholders continue to invest significant resources in resolving other issues connected to the integration effort. Without acceptable regional governance, states outside California are not likely to give PacifiCorp needed approval to participate in a regional ISO. Resolution of governance is also a priority because of timing considerations; California Senate Bill 350 provides for consideration of modifications to its governance structure, no later than December 31, 2017. Accordingly, it is critical that stakeholders share their views on the current governance proposals so that all issues and concerns can be addressed before a regional governance proposal can be considered by the California legislature during its 2017 session.

PacifiCorp fully understands that in order to support any future requests of its states to approve its integration into a regional ISO, in addition to acceptable governance, it will also need to demonstrate that there are net benefits for each of its states. At present, PacifiCorp does not have all of the potential cost information it would need to calculate state-specific net benefits. This information is developed through pending or future market re-design stakeholder initiatives, each of which requires substantial dedication of resources from all stakeholders. If an acceptable governance proposal that supports and facilitates changes to California's existing laws cannot be achieved in the 2017 California legislative session, there is little or no value in continuing to invest significant resources in resolving all of the market re-design stakeholder initiatives connected to the integration effort.

### **Comments on Governance Principles**

#### **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.

PacifiCorp continues to support the provisions in the Second Revised Governance Principles that the regional ISO's new governance structure will include binding provisions to protect and preserve state authority over matters currently regulated by the states themselves, including procurement policy, resource planning and certificate of public convenience and necessity approvals for utilities within their jurisdiction, and generation resource or transmission siting within their state. This principle provides an important assurance to states that the formation of the regional ISO will not alter any fundamentals of state jurisdiction.

PacifiCorp also continues to support the provision that any change to regional ISO bylaws or other corporate governing documents that relate to state authority must require unanimous approval by both the new Board and the Western States Committee.

PacifiCorp acknowledges and appreciates the ISO's efforts in response to California Governor Brown's August 8, 2016 letter, to include more detail in this Second Revised Governance Principles proposal, leaving less to be deferred for future development by the proposed Transitional Committee. Accordingly, PacifiCorp supports the proposed revisions to Section 1.3 of the Second Revised Governance Principles, which provide details for a process to determine whether a proposed policy initiative would materially diminish or impair state or local authority. PacifiCorp understands that this process will give state and local authorities the opportunity to raise concerns with ISO staff, the ISO Board, and the Western States Committee, prior to approval of any policy for filing with the Federal Energy Regulatory Commission.

#### **2. Transmission Owner Withdrawal**

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

PacifiCorp continues to support the principle that the regional governance structure must ensure the right of participating transmission owners to withdraw from the ISO, either voluntarily or in light of an order by their state regulator. PacifiCorp believes that the language as drafted is appropriate for establishing a basic principle, but notes that additional detail needs to be developed through appropriate stakeholder processes.

For example, the proposal should address what happens if a participating transmission owner has one state authority that orders it to exit the regional ISO. This would be an extremely challenging regulatory scenario because PacifiCorp requires approvals from all six of its jurisdictions to transfer operational control of its transmission system to the regional ISO. It is unclear from the ISO tariff or existing law what PacifiCorp would be required to do if, sometime after regional ISO integration, one or more (but not all) of PacifiCorp's states required it to exit the regional ISO. PacifiCorp recommends that this subject be an issue that should be deferred to and resolved by the Western States Committee in the event of such circumstances due to the complex multi-state nature of the issue.

### **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.

PacifiCorp continues to support use of a Transitional Committee charged with implementing the governance design and documentation that embodies the principles ultimately adopted in this process. PacifiCorp also supports the provisions that modify and explain the composition of the Transitional Committee and the public process it will use to develop a regional governance plan that implements the principles adopted. Further, PacifiCorp appreciates that the Transitional Committee process ensures that committee members will include one public official from each state in the expanded ISO footprint, selected by each state using a process developed by the state. It is important that the existing ISO board have no role or influence in this process.

PacifiCorp requests that any subsequent revisions to the proposal address the timing of when the Transitional Committee would or could be initiated.

PacifiCorp notes that the modification to allow each stakeholder sector to self-select one candidate to represent that sector on the Transitional Committee is an improvement over the prior proposal that contemplated that the existing ISO Board would select from sector-proffered candidates. PacifiCorp notes, however, that the process contemplated in the current proposal may be logistically challenging and problematic for members of the sectors because of the organization that will be required. Several of the identified sectors may have no existing structure or framework in place for achieving this level of coordination, especially across a six-state region. In order to avoid inefficiencies or lost time, PacifiCorp suggests that the ISO proactively consider what kinds of support or organizational services it may be able to offer to assist sectors in getting organized and in selecting a Transitional Committee representative.

PacifiCorp further understands and agrees with the provision that allows the ISO Board to appoint additional members to ensure geographic diversity. While PacifiCorp is cautious about granting any roles or authority to the existing ISO Board, in this case, it may be a practical necessity if the overall balance of Transitional Committee representatives lacks sufficient regional diversity. PacifiCorp supports the modifications in this section that provide that the governance plan must be approved by, at least, a majority of the Transitional Committee and for the Transitional Committee to strive to complete work in nine to

twelve months, although PacifiCorp is not sure that this timeframe is realistic and that the work of the Transitional Committee may take significantly longer.

#### **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.

PacifiCorp requests the production of a timeline that would help visually illustrate the likely order of key governance milestones.

PacifiCorp supports the modifications to the provision to transition from the existing ISO Board to a new independent ISO Board through a new nomination and approval process, as provided in principle 5 of the Governing Principles, as further developed by the Transitional Committee. PacifiCorp understands that the transition will begin on the effective date of the regional governance plan and will be completed within three years. However, PacifiCorp is concerned about the existing ISO Board's approval authority over the final governance plan, and other regional initiatives, such as Transmission Access Charge and Regional Resource Adequacy, before the Board is fully independent. PacifiCorp suggests that this concern could be mitigated by (1) developing a role for the Western States Committee for approving or advising on regional ISO final governance plans (and other regional initiatives such as the Transmission Access Charge and Regional Resource Adequacy), or (2) provide for a significantly shorter transition period, after approval of the governance plan, to establish the fully independent ISO Board, in order to provide the opportunity to the new ISO Board to approve subsequent regional initiatives (such as the Transmission Access Charge and Regional Resource Adequacy). In addition, PacifiCorp believes the transitional period deadline should align with a potential go-live date of PacifiCorp becoming a participating transmission owner. PacifiCorp is concerned that one or more of the states that regulate PacifiCorp may not approve PacifiCorp to integrate into a regional ISO unless it is transitioning into a regional ISO with a fully independent ISO Board. In general, PacifiCorp requests additional clarification about what the likely composition of the ISO Board would be during the 36-month process, as it seems likely that for this period, the ISO Board would be in some state of transition to a fully independent ISO Board. The logistics and timing of this transition relative to the composition of the fully independent ISO Board need to be clarified.

#### **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.

PacifiCorp supports the provisions for a two-step nomination and approval process, similar to the process used for selecting the EIM Governing Body, and appreciates the additional details and parameters provided in the proposal regarding the process to be further developed by the Transitional Committee. The two-step process will involve both (1) a stakeholder-based Nominating Committee that selects nominees with the assistance 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. PacifiCorp understands that the Nominating Committee will be comprised of up to nine voting sector representatives to nominate a nine-member regional ISO Board. PacifiCorp supports this proposal, but has concerns regarding the voting structure for approval of a slate of nominees. In the proposal, the ISO states that for a slate to be approved, the slate of candidates submitted to the Approval Committee “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.” PacifiCorp has made outreach to its state regulators regarding this voting rule as proposed here, and in Principle 6 as the voting rule for matters within the Western States Committee’s primary authority, and states are significantly concerned with the proposal, as explained further under Principle 6, below.

**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.

With respect to the scope of the Western States Committee’s areas of primary authority, PacifiCorp has received feedback from its states that limiting the Committee’s primary authority to only the planning reserve margin portion of the Regional Resource Adequacy initiative is too narrow of a scope and should be broadened. For example, some are suggesting that Regional Resource Adequacy counting rules should also

fall under the Western States Committee's primary authority. PacifiCorp has submitted separate comments on the "*Potential Topics within the Primary Authority of the Western States Committee*" Discussion Paper and Draft Proposal.

PacifiCorp remains supportive of the provision that calls for the Western States Committee to provide policy direction and input on matters of collective state interest. In general, this is a model that has served other regional ISOs well and would be a good fit for the multi-jurisdictional nature of PacifiCorp's service territory. PacifiCorp appreciates and supports the following elements of the proposal:

- Allowing a state to appoint a non-regulator representative to the committee.
- Increasing the number of publicly-owned utility representatives to two non-voting members and maintaining a non-voting position for a representative of a federal power marketing administration.
- No limited attendance or participation in Western States Committee meetings (i.e., open meetings).
- Addition of details and processes on topics originally expected to be developed by the Transitional Committee (with the exception of voting rules as explained below).
- Clarification of "sustained period of inaction," defined as after the Western States Committee has failed to reach resolution for a period of at least 90 days, as used in the provision to allow the ISO to file tariff changes with the Federal Energy Regulatory Commission regarding the matters within the primary authority of the Western States Committee after a sustained period of inaction by the committee.

PacifiCorp understands the desire of some for the voting structure for matters under the Western States Committee's primary authority to include at least some form of weighted voting based on load. PacifiCorp appreciates the additional details provided in the Second Revised Governance Principles, however, the voting rule proposed here, and in Principle 5, above, is very problematic. PacifiCorp was able to support the provision in the previous proposal because it left additional details on voting rules to the Transitional Committee. PacifiCorp has received feedback from its states that the newly proposed voting structure of at least 75% of voting members representing at least 75% of total load is undesirable because it has the potential to result in either a California veto or a two-state (i.e., two states that are not California) veto. For example, in order for the seven voting members to achieve 75% approval, six of the seven votes must be "yes" votes. Two "no" votes (by states other than California) would result in non-approval. In addition, if six of the seven states vote "yes" and California votes "no", the result is an effective California veto based on the 75% of load rule. This structure does seem to encourage consensus among members of the Western States Committee to avoid a deadlock, but it is also possible that deadlock will result.

While PacifiCorp believes the comments submitted by Western Resource Advocates, titled "*Western Resource Advocates Voting Considerations for the Western States Committee*," provides helpful constructive suggestions for addressing concerns around weighted voting. There have also been helpful discussions among state representatives addressing various voting alternatives for the Western States Committee based on a one-state/one-vote model, including a limited period of required unanimity for voting or different voting requirements depending on the issue under consideration. PacifiCorp must ultimately defer to the views of its states on this matter and feedback received from informal outreach indicates that anything other than a one-state/one-vote model continues to illustrate the risk that California is unwilling to let the California ISO become a truly independent regional body. The next iteration of the governance



proposal that addresses voting for the Western States Committee should offer a proposal that addresses this very important and potential “deal breaker” issue.

PacifiCorp also requests specific clarification in the next iteration of the proposal as to whether a “sustained period of inaction” would also include failure of the Western States Committee to affirmatively pass a resolution or vote or if “inaction” is more narrowly intended to mean the failure of the Western States Committee to take a vote. In other words, PacifiCorp wishes to understand if the ISO’s backstop authority will take effect if the Western States Committee cannot affirmatively pass a resolution needed to solve a market issue because of a one-state veto (California) or a two-state veto (two states or more that are not California), assuming the current voting proposal.

**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.

PacifiCorp continues to support the provisions that suggest the Transitional Committee should consider changes to the ISO’s current stakeholder process to facilitate broad and robust stakeholder participation. PacifiCorp believes that a stakeholder group, such as a market advisory committee, for multiple stakeholder sectors is a good idea for a regional ISO and supports this element of a future regional ISO.

**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.

PacifiCorp remains concerned about any approval role performed by the existing ISO Board for provisions relating to the governance of the regional ISO, as contemplated in this principle.