

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electricity Reliability Standards)
) **Docket No. RM05-30-000**
)

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON NOTICE OF PROPOSED RULEMAKING

The California Independent System Operator Corporation (“CAISO”) hereby submits its Comments¹ in response to the Notice of Proposed Rulemaking (“NOPR”) issued by the Federal Energy Regulatory Commission (“Commission”) in this proceeding on September 1, 2005. The NOPR proposes, *inter alia*, to (1) establish criteria that an entity must satisfy in order to qualify to be the Electric Reliability Organization (“ERO”) that will propose and enforce Reliability Standards for the Bulk Power System in the United States, (2) specify the standards that will apply to the review and approval of Reliability Standards, and (3) specify the criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards.

The CAISO appreciates the opportunity to comment on the rules that will govern the formation and functioning of EROs and Regional Entities. Establishing

¹ In addition to these individual Comments, the CAISO is a signatory party to the comments being filed today by the ISO/RTO Council. The CAISO supports the positions taken in the ISO/RTO Council comments. The instant Comments focus on specific issues of particular importance to the CAISO.

clearly defined roles for EROs and Regional Entities and clear rules for the development of Reliability Standards will promote the reliable operation of the Bulk Power System. The CAISO supports the development of strong and clear national Reliability Standards. However, as both a market operator and a transmission system operator that must implement Reliability Standards, the CAISO submits that any Reliability Standards must be workable, reflect appropriate regional differences and function within (and not undermine) a market operations paradigm.

Further, fundamental to the development of sound and reasonable Reliability Standards and the fair and non-discriminatory enforcement of such standards is a requirement that the ERO and Regional Entities be independent of market participants. To that end, the governance and standards setting process of the ERO and any Regional Entity must be fair, open, balanced, non-discriminatory and inclusive.

Consistent with the foregoing, the CAISO urges the Commission to issue a Final Rule that reflects the following key principles: (1) an ISO or RTO should not be precluded from being a Regional Entity; (2) ISOs and RTOs must be represented on any ERO or Regional Entity “balanced stakeholder board” or “hybrid board” and, to the extent such board is an independent board elected by stakeholders, ISOs and RTOs must constitute a separate stakeholder segment not grouped with any other industry segment; (3) ISOs and RTOs must constitute a separate, standalone segment for purposes of selecting any ERO independent board and for purposes of participating in any ERO or Regional Entity committee

or sub-committee; (4) the CAISO has established rules that “assure its independence of the users, owners and operators of the Bulk-Power System while assuring stakeholder representation in the selection of directors”; (5) national Reliability Standards must be strong, clear and generally applicable, but they should be minimum standards that would permit a Regional Entity to propose more stringent standards, as well as legitimate regional variations; and (6) the Commission should not apply a higher substantive standard for Regional Entities not formed on an Interconnection-wide basis than it does for Regional Entities formed on an Interconnection-wide basis.

I. SPECIFIC COMMENTS

A. Sections 38.3 and 38.7 -- The Commission Must Ensure That EROs and Regional Entities Are Independent And That All Stakeholder Segments Are Fairly And Adequately Represented (NOPR at PP 40, 79, 84)

1. EROs and Regional Entities Must Be Independent At All Levels

Section 215(c)(1) of the Federal Power Act (“FPA”) and proposed Section 38.3(b)(2) of the Commission’s Rules requires that the ERO certified by the Commission have established rules that “assure its independence of the users and owners and operators of the bulk power system, while assuring fair stakeholder representation in the selection of its directors and balanced decision making in any ERO committee or subordinate organizational structure.” This same requirement applies to Regional Entities. 16 U.S.C. §215.(e)(4) and 18 C.F.R. §38.7(c)(2). In addition, the Regional Entity must be governed by an independent board, balanced stakeholder board or a combination independent

and balanced stakeholder board. 16 U.S.C. §215.e)(4) and 18 C.F.R. § 38.7(c)(1).

The Commission must ensure that the ERO and all Regional Entities are truly independent from the board level down through the staff level. Because the ERO and Regional Entities will propose and enforce Reliability Standards that will be applicable to all users of the interstate transmission system, it is critical that the sole interest of the ERO and Regional Entity be the fair and non-discriminatory development and enforcement of Reliability Standards that promote the functioning of a reliable interstate transmission grid. To achieve that objective, the ERO and Regional Entity boards (as well as ERO and Regional Entity committees and sub-committees) must be independent of the control of any individual stakeholder and any class of stakeholders. Further, because the ERO and Regional Entities function for the benefit of all users of the transmission grid, not individual stakeholders or classes of stakeholders, the governance of the ERO and all Regional Entities, as well as the standards setting process, must be fair, balanced (both on an industry sector basis and on a geographic basis), non-discriminatory, and inclusive. In particular, the board selection and standards setting process must ensure that all distinct industry segments are fairly and adequately represented.² This is necessary to ensure that the ERO and Regional Entities formulate Reliability Standards and resolve disputes in a fair and non-discriminatory manner and in a manner that recognizes the input of all affected

² Moreover, it is important that these principles be carried through from the board level to the committee and sub-committee level. Indeed, FPA Section 215(c)(2)(A) and proposed Rule 38.3(b)(2) recognizes that ERO and any Regional Entity must assure balanced decision-making in any committee or “subordinate organizational structure.”

industry segments, appropriate regional differences and the different operational (and market) paradigms that exist today. Finally, not only should ERO and Regional Entity boards be independent, but the ERO and Regional Entities should have a professional staff that is independent.

2. ISOs and RTOs Must Be Represented As A Separate Industry Segment

It is important that ISOs and RTOs be adequately represented in connection with ERO/Regional Entity governance and the development of Reliability Standards. ISOs and RTOs have a legitimate, unique and significant interest in reliability in general and in the development and enforcement of Reliability Standards in particular. That interest is not -- and cannot be -- adequately represented by any other party. For the reasons set forth below, ISOs and RTOs need a separate voice in both the development and ratification of Reliability Standards.

First and foremost, ISOs and RTOs are, by design, independent of other market participants and do not have an economic interest in market (and other) outcomes. ISOs and RTOs are primarily interested in providing non-discriminatory and reliable transmission service and in developing Reliability Standards that are practical, workable and consistent with sound business, market and operational principles. Further, many ISOs and RTOs, including the CAISO, are not-for-profit corporations.

Second, ISOs and RTOs are responsible for maintaining reliable operations over large geographic areas and over the transmission systems of

numerous transmission owners. In particular, under Order Nos. 888 and 2000, ISOs and RTOs have primary responsibility for ensuring short term reliability of grid operations and are generally responsible for ensuring that transmission services can be provided reliably. *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., ¶31,036 at 31,731 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., ¶31,048 at 30,247(1997); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs., ¶31,089 at 31,092, 31,103(2000). ISOs' and RTOs' scope of responsibility includes, *inter alia*, compliance with and implementation of applicable short and long term Reliability Standards for the bulk electric system. As FERC recognized in Order No. 888-A, in fulfilling its responsibilities with respect to reliability, ISOs and RTOs must comply with the applicable standards set by NERC and regional reliability councils. Order No. 888 at 31,731, *order on reh'g*, Order No. 888-A at 30,247-48.

Third, unlike any other industry group, many ISOs and RTOs are charged with the dual responsibility of maintaining a reliable electric system and operating markets. Reliability Standards have the potential to impact ISO/RTO market operations.³ It is important that Reliability Standards work effectively within a

³ Reliability Standards can impact markets and competition in any number of ways including, but not limited to, limiting access to transmission, affecting organized ISO/RTOP market operations, creating barriers to participation in organized spot markets, and favoring one type of generation over another without a legitimate operational basis for doing so.

markets paradigm and not undermine market operations or competition.⁴

Because of their dual role, ISOs and RTOs are uniquely situated to evaluate the impact of proposed Reliability Standards on both market and grid operations.

Accordingly, ISOs and RTOs should have a separate “voice” in the development and ratification of Reliability Standards.

Although ISOs and RTOs are relatively few in number compared to the number of entities that comprise other industry sectors, ISOs and RTOs play a significant and unique role in the operation of markets and the bulk electric power grid and have a legitimate and distinct business interest in standards-setting organizations. Because ISOs’ and RTOs’ interests cannot be adequately represented by any other industry segment, ISOs and RTOs need a separate voice in the development and ratification of Reliability Standards and should not be included in other stakeholder segments, in particular stakeholder segments that profit from market and transmission outcomes.

3. Recommendations For Ensuring Independent EROs and Regional Entities

⁴ FPA Section 215(d)(6) recognizes that there can be a conflict between Reliability Standards and the Commission-approved tariff provisions of an ISO or RTO. Accordingly, the statute provides that a Final Rule must include a process for resolving such conflicts. The Commission proposes a process for resolving conflicts in Section 38.9. The CAISO submits that ISOs and RTOs need to be adequately represented in both the standards development and the ratification process -- both at the ERO level and at the Regional Entity level -- in order to identify potential conflicts early on, present their concerns, ensure that Reliability Standards can function effectively in a markets paradigm, and seek to resolve any conflicts before they reach the Commission. In any event, the special status accorded to ISO/RTO tariffs under the FPA and the fact that there is an interplay between Reliability Standards and ISO/RTO tariffs, necessitates that ISOs and RTOs be represented as a separate industry segment with respect to board selection and Reliability Standards development.

The CAISO urges the Commission to adopt the following recommendations in its Final Rule in order to ensure the independence of EROs and Regional Entities. These requirements also are necessary to assure (1) fair and adequate stakeholder representation in the selection of ERO and Regional Entity directors and (2) balanced decision-making by the ERO, and all committees and subordinate organizational structures.

First, for the reasons discussed in Section II.B, the Commission should not preclude ISOs and RTOs from being Regional Entities.

Second, in regions where an ISO or RTO is not the Regional Entity, ISOs and RTOs must be represented on any Regional Entity balanced stakeholder board or hybrid board.

Third, if the Regional Entity board is an independent board elected by stakeholder segments, ISOs and RTOs must be a separate and distinct segment and not be grouped with any other segment. Likewise, ISOs and RTOs must be a separate, stand-alone segment for purposes of selecting the independent board of the ERO.

The WECC includes ISOs and RTOs in the transmission owners (“TOs”) stakeholder sector.⁵ However, ISO/RTO interests are clearly separate and distinct from the interests of TOs. Because ISOs and RTOs are very limited in number, including them in any larger group with entities whose interests are not aligned will result in ISOs and RTOs being easily out-voted under any one-

⁵ It is more appropriate to group ISOs and RTOs with RRCs than with TOs, but ISOs and RTO really should not be grouped with any other stakeholder segment given their unique and significant interest in Reliability Standards.

person, one-vote scheme (especially since ISOs and RTOs will always be significantly outnumbered by transmission owners). This could lead to ISOs and RTOs not being adequately represented even though they have a significant role with respect to reliability.

Fourth, the ERO should reflect geographic balance. For example, the NERC bylaws provide that the independent system operator/regional transmission organization sector shall be represented on the Stakeholders Committee -- the committee that is responsible for board selection -- by one representative from the Western Interconnection and one representative from either the Eastern Interconnection or the Texas Interconnection.

Fifth, depending on the size and scope of the Regional Entity, it might be appropriate for the Regional Entity to reflect geographic balance in the board selection and standards setting processes so that transmission owners and operators from all sub-regions comprising the Regional Entity are adequately represented. Geographic balancing recognizes that the interests of all sub-regions may not be aligned and therefore promotes balanced decision-making. Sixth, no two sectors should be able to control the vote on any matter, no single sector should be able to defeat a matter, and no entity should be eligible to be a member of more than one sector.

Seventh, the aforementioned principles should apply to the board selection process, the Reliability Standards setting process, and to all committee and sub-committee structures and processes. This is necessary to “assure fair stakeholder representation in the selection of [ERO and Regional Entity] directors

and balanced decision-making in any ERO [or Regional Entity] committee or subordinate organizational structure.”

Eighth, the ERO and Regional Entities should have a professional staff that reports directly to the ERO/Regional Entity board and not to any stakeholder committees. Further, with respect to the standards setting process, the staff of the ERO and/or the Regional Entity should be responsible for preparing and presenting proposed standards to the board with input from stakeholders and committees. In this way, ERO and Regional Entity staff would function in a manner similar to Commission staff.

Ninth, consistent with the rules the Commission has approved for ISOs and RTOs, the ERO and all Regional Entities, and their employees, should not have a financial interest in any the economic performance of any industry participant.

B. Section 38.5 -- The Final Rule Should Not Preclude ISOs and RTOs From Being Regional Entities (NOPR at P 71)

The Commission notes that the *Principles For Electric Reliability Organization That Can Function On An International Basis* (“*Reliability Principles*”) developed by the Bilateral Electric Reliability Oversight Group⁶ recommends that ISOs and RTOs should not become Regional Entities and that Regional Entities should be distinct from the operators of the transmission system such as ISOs and RTOs. The Commission queries whether the final rule

⁶ The Bilateral Electric Reliability Oversight Group is comprised of representatives from the Department of Energy, the Commission, and the Federal-Provincial-Territorial Electricity Working Group in Canada.

should mandate this. NOPR at P 71(9). The Commission also asks whether there are ways for an ISO or RTO to adequately separate its enforcement function from its operation of the Bulk Power System to fully ensure the independence of the enforcement unit. *Id.*

The Commission should not *per se* preclude ISOs and RTOs from being Regional Entities. The statute does not expressly preclude ISOs and RTOs from being Regional Entities; so, the Commission should not, and lawfully cannot, simply defer to an external document, *i.e.*, the Bilateral Principles, as the sole basis for barring ISOs and RTOs from serving as Regional Entities. Any such decision must be based on reasoned decision-making supported by substantial evidence in the record.⁷ The Commission should review applications by an ISO or RTO to become a Regional Entity on a case-by-case basis to determine whether they satisfy the statutory criteria. As discussed below, there are numerous valid reasons why it would be appropriate to permit ISOs and RTOs to serve as Regional Entities.

ISOs and RTOs already have many of the characteristics and qualifications required of a Regional Entity. In that regard, ISOs and RTOs satisfy the independence requirements applicable to Regional Entities. Indeed, Commission-approved ISOs and RTOs are required to meet more stringent independence criteria than the independence criteria proposed for Regional Entities in the NOPR.

⁷ See *Electric Consumers Council v. FERC*, 747 F.2d 1511, 1513 (D.C. Cir. 1984).

ISOs and RTOs also have the necessary technical expertise and knowledge of (and experience with) regional conditions and operations to perform the standards setting responsibilities of the Regional Entity. Further, ISOs and RTOs already have reliability obligations under Order Nos. 888 and 2000, and they are intimately familiar with regional issues that affect reliability. Also, ISOs and RTOs are of sufficient size, scope and configuration to serve as Regional Entities because they operate the transmission systems of multiple transmission owners over a large geographic footprint. Given that the Commission has already found that Commission-approved ISOs and RTOs serve a region of sufficient scope and configuration to permit them to maintain reliability, effectively perform their required functions, and support efficient and non-discriminatory power markets, it logically follows that ISOs and RTOs are of sufficient size, scope and configuration to serve as Regional Entities. Finally, many ISOs and RTOs, including the CAISO, already have Commission-approved enforcement programs in place that can serve as the model for any Reliability Standards enforcement program. Thus, ISOs and RTOs are well positioned to assume the responsibilities of a Regional Entity.

Two other important considerations support permitting ISOs and RTOs to serve as Regional Entities. First, most ISOs and RTOs operate markets, and it is important that Reliability Standards and market rules be “in synch” so as not to adversely impact competition. Second, FPA Section 215 clearly envisions an important implementation role for ISOs and RTOs and recognizes the potential for Reliability Standards to conflict with ISO and RTO tariff provisions. ISOs and

RTOs are in the best position to identify, address and resolve these issues in the first instance given their dual responsibilities for both market operations and reliable grid operations. Conflicts between Reliability Standards and ISO/RTO tariffs and market operations can be addressed more efficiently and effectively if an ISO/RTO is also permitted to serve as the Regional Entity. Adding an additional layer -- in the form of a separate Regional Entity -- to address these potential conflicts is neither necessary nor efficient.

The **sole** reason the Bilateral Electric Reliability Oversight Group gives as to why ISOs and RTOs should not be Regional Entities is the conclusory statement that “[t]he Regional Entity should be distinct from the operators of the system, such as RTOs and ISOs.” The *Reliability Principles* make no attempt to indicate why such separation is necessary. ISOs and RTOs are not like other transmission system operators, and the reasons that might caution against other transmission operators serving as Regional Entities do not apply to ISOs and RTOs. First, ISOs and RTOs are independent just like Regional Entities are supposed to be. Second, many ISOs and RTOs are not-for-profit corporations and they have a fiduciary duty to the public interest. Thus, a non-profit ISO or RTO can develop and enforce Reliability Standards fairly and in a non-discriminatory manner just as a Regional Entity is expected to do. Third, ISOs and RTOs are limited in number and are more “regional” in nature -- and have more Commission-imposed regional obligations -- than individual transmission system owner-operators. Fourth, as discussed below, there are adequate ways to insulate the enforcement function from the remainder of ISO/RTO operations

in order to ensure the independence of the enforcement unit. Thus, there are no legitimate impediments to an ISO or RTO serving as a Regional Entity.

The CAISO acknowledges the Commission's concerns about how an ISO/RTO would be able to adequately separate its enforcement function from its operations function to ensure the independence of the enforcement unit. The CAISO believes that there are at least two ways this concern can be effectively addressed. First, an ISO/RTO serving as a Regional Entity could establish a separate, independent Reliability Standards Compliance Unit ("RSCU") that would report directly to the ISO/RTO board and/or the ERO board.⁸ The RSCU would be autonomous of the ISO/RTO management. An independent RSCU could function in a manner similar to how independent market monitors function. See *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, 100 FERC ¶¶61,138 at PP 429-32 (2002). There is no legitimate reason why that same model (or a similar model) would not work for a unit that enforces Reliability Standards. Indeed, the Commission has approved several market monitoring plans that include an independent market monitoring unit that (1) reports directly to the ISO/RTO board, and (2) is responsible, *inter alia*, for monitoring ISO/RTO operations -- in particular monitoring whether the ISO or RTO treats market participants neutrally and without undue discrimination. See, e.g., *Southwest Power Pool, Inc.*, 106 FERC ¶¶ 61,110 at PP 163-64 (2004); *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶¶ 61,326 at 62,516-

⁸ Also, the RSCU could report unscreened findings and recommendations to the Commission.

19 (2001). An independent RSCU satisfying the standards applicable to, and imposed on, independent market monitors could effectively and independently monitor compliance with Reliability Standards.

An alternative to the approach described above would be for the ERO to be responsible for monitoring the compliance of any ISO or RTO that serves as a Regional Entity and to undertake any necessary enforcement actions against such ISO or RTO.

Adoption of either of the aforementioned approaches should satisfy the Commission's concerns. For the forgoing reasons, the Commission should allow ISOs and RTOs interested in serving as Regional Entities to present their case and plans to address any necessary separation issues in proceedings on the delegation agreement (or in any proceeding resulting from the ERO's failure to enter into such a delegation agreement).

C. Sections 38.3 and 38.7 -- The Commission Should Clarify The Independence Requirement (NOPR at PP 40, 79)

Under Section 215(e)(4)(B) of the FPA and Rule 38.7(c)(2), a Regional Entity must have established rules that "assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors." The CAISO requests that the Commission confirm that the CAISO's new board selection process satisfies the aforementioned standard in the event the CAISO were to seek to become a Regional Entity.

As the Commission is aware, on May 13, 2004, the CAISO filed a Petition for a Declaratory Order in Docket No. EL05-114 describing a new board selection process for the CAISO's governing Board, which process includes use of a professional search firm and stakeholder involvement in the selection of Board members.⁹ In its CAISO Governance Order issued on July 1, 2005, the Commission found that the CAISO's new Board selection process was "acceptable for purposes of the Order Nos. 888 and 2000 independence requirements, because it should help ensure the appointment of Board members that are both independent and have strong expert credentials."¹⁰ CAISO Governance Order at P 1. *see also* CAISO Governance Order at PP 18, 19, 24. Further, the Commission recognized that the Board selection process would "help prevent market participants from controlling or appearing to control the Board's decision-making process." *Id.* at P18. The Commission also recognized that the CAISO's "proposal to give stakeholders a role in deciding the makeup of CAISO's Board is also important because it allows for input from all market participants with regard to Board candidates" and the "process will guard against any one class of market participants having control over the selection of the Board." *Id.* at P19.

Based on these findings, the Commission should confirm that the CAISO has established rules that "assure its independence of the users and owners and

⁹ The new Board selection process is summarized in the Commission's July 1, 2005 *Order on Petition for Declaratory Order. California Independent System Operator Corporation*, 112 FERC ¶61,010 at PP 10-13 (2005) ("CAISO Governance Order").

¹⁰ Elsewhere, the Commission stated that the CAISO's Board selection process was "consistent with the principles of independence that the Commission has previously enumerated." CAISO Governance Order at P 18.

operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors.”

D. Section 38.7 --Relationship Between The ERO And The Regional Entity (NOPR at PP 80- 84)

Proposed Section 38.7 of the Commission’s Regulations provides that the ERO may enter into an agreement to delegate to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and Enforcing Reliability Standards. The Commission raises a number of questions regarding the relationship between the ERO and the Regional Entity and seeks comments on the rules relating to the delegation of ERO authority to a Regional Entity. The CAISO’s comments on the regional delegation issues raised by the Commission are set forth below.

1. Status of Regional Entity Reliability Proposals (NOPR at PP 46, 80)

The Commission states that a Regional Entity may propose Reliability Standards to the ERO that, if ultimately approved by the Commission, would become regional variances in a specific region. NOPR at P 80. The Commission indicates that any such regional variances would become ERO variances, not Regional Reliability Standards, because it would be the ERO that submits the proposed Reliability Standard to the Commission for review. The Commission further states that it anticipates that any regional variances would supplement ERO Reliability standards, not substitute for them. *Id.* Elsewhere the Commission concludes that the statute does not require it to give “due weight” to the technical

determinations of Regional Entities not organized on an Interconnection-wide basis or creating a presumption with regard to the reasonableness of any Reliability Standard proposed by such Regional Entity. NOPR at P 46. The Commission states that it expects a greater level of uniformity among Reliability Standards approved for Regional entities not organized on an Interconnection-wide basis. The CAISO believes that the issues raised in NOPR Paragraphs 46 and 80 are interrelated and need to be addressed and resolved on that basis.

The CAISO agrees that the Commission's interpretation that regional variances should be variances of national standards and not regional Reliability Standards is consistent with the intent of the statute. In that regard, Congress intended for the ERO to issue the standards. See House of Representatives, Committee On Energy and Commerce, Report to accompany H.R. 1640, pp.225, 260 (July 29, 2005) ("House Report"). Further, the statute recognizes that the ERO files and proposes standards (16 U.S.C. § 215(d)) and that the regional entity merely "propos[es] reliability standards to the ERO." 16 U.S.C. §215(e)(4).

However, the CAISO believes that the more important and relevant focus should be on the ERO establishing -- and the Commission approving -- strong and clear national standards that are broad enough to be implemented effectively, without discriminatory impact, in all regions and in organized-market and non-organized- market areas alike. The national standards should apply to all regions and to **all** users and operators of the Bulk Power System, but they should be minimum standards. A Regional Entity should be permitted to propose regional variations that are superior to, *i.e.*, more stringent than, the national

standards, similar to how the Commission permitted public utilities to propose changes to the Order No. 888 *pro forma* tariff.¹¹ Further, Regional Entities should be permitted to propose regional variations that are narrowly targeted to address legitimate and appropriate regional differences.¹² In that regard, Regional Entities are in a better position than the ERO to determine how national standards should be implemented in a particular region.

However, Regional Entities should not be permitted to substitute less stringent regional variances for stronger national standards or obtain (or grant) exemptions from the generally applicable national standards. In that regard, Congress intended that the Reliability Standards adopted by the ERO would be **mandatory** standards. House Report at 225, 260. Thus, **all** users and operators of the Bulk Power System, including entities described in Section 201(f) of the Federal Power Act, must be required to comply with the Reliability Standards adopted by the ERO and approved by the Commission. See 16 U.S.C. § 215(b)(1). Strong, clear and generally applicable national standards are necessary to prevent a “Swiss Cheese” effect on the interstate transmission grid

¹¹ For example, the ERO could set a national standard that each control area must, at a minimum, carry sufficient Contingency Reserves to cover the most severe single contingency. See, e.g., NERC Policy 1—Generation Control and Performance, B. Disturbance Control Standard, Standard 2. However, a Regional Entity should be permitted to propose a higher standard. For example, the WECC requires that each control area maintain a Contingency Reserve that is the greater of (1) the loss of generating capacity due to forced outages of generation or transmission equipment that would result from the most severe single contingency (at least half of which must be spinning reserve); or (2) the sum of five percent of the load responsibility served by hydro generation and seven percent of the load responsibility served by thermal generation (at least half of which must be spinning reserve). See WECC Minimum Operating Reliability Criteria, Section 1—Generation Control and Performance, A. Operating Reserve, Standard 1.

¹² For example, the west does not follow NERC’s transmission loading relief standard, but has its own loop flow procedure.

with respect to reliability matters, whereby there are a plethora of divergent regional standards or variations, with some regions having strong Reliability Standards and other regions having weak standards or exemptions from national standards. Commission review of proposed Reliability Standards (including regional variations) consistent with this discussion will facilitate the development of mandatory national standards that Congress intended and avoid a host of disparate regional standards and/or exemptions.

2. Appropriate Size, Scope and Configuration of Regional Entity (NOPR at P 84(1))

The Commission asks whether it should prescribe a size, scope and configuration requirement for the Regional Entity and, if so, what that should be. NOPR at P 84(1). Although the scope and configuration of a Regional Entity should be a relevant factor in the determination of whether the ERO should delegate its enforcement authority to a particular Regional Entity, the requirement should not be a rigid boundary drawing exercise, and the Commission should not formulate any strict requirements. As the Commission recognized in struggling with the same issue in attempting to determine the appropriate size and configuration of RTOs, this is a fact-specific issue that involves many technical considerations. Order No. 2000 at 31,079-80. The entities most familiar with such considerations in a region are probably in the best position to propose a workable solution. Ultimately, the Commission has ample authority under the statutory standard for delegations to address any size or configuration issues.

In the CAISO's opinion, the footprint of a Commission-approved ISO or RTO should be of sufficient size and scope for a Regional Entity. In that regard, the Commission will already have found that the ISO/RTO serves a region of sufficient scope and configuration to permit it to perform its ISO/RTO functions, e.g., maintain reliability, effectively perform planning and congestion management, and support efficient and non-discriminatory power markets. It logically follows that the ISO/RTO footprint should be adequate for purposes of developing Reliability Standards for a region.

3. Should the ERO Require Regional Entities To Adhere To Uniform Processes in such matters as governance, collection of dues and fees or comp[laince monitoring? (NOPR at P84(5))

The CAISO believes that the Commission should allow the ERO and the Regional Entity to develop delegation agreements based on the needs of the particular region. Also, the CAISO does not believe that the ERO should dictate exactly what the Regional Entity should do with respect to governance, enforcement procedures and dues. Those specific implementation details should be left for development by the Regional Entity. However, it would be appropriate for the ERO -- and the Commission if necessary -- to establish some core principles that would apply to the governance and committee structure of Regional Entities. In particular, the general standards regarding governance discussed in Section II.A. should apply to Regional Entities, as appropriate, given the specific circumstances. However, the implementation details should be left up to the Regional Entities.

4. Should The Commission Set The Standard By Which Regional Entity Applications Will Be Reviewed (NOPR at P 84(9))

The Commission queries whether it should set the standard by which Regional Entity applications to the ERO will be reviewed or whether the ERO should be allowed to set the standard. The Commission notes that the statute requires the Commission and the ERO to rebuttably presume that a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power reliability, but seeks comments on whether a higher standard should apply to Regional Entities that are not organized on an interconnection-wide basis. NOPR at P 84(9).

The CAISO submits that the Commission should set the standard by which Regional Entity applications will be reviewed because it is the entity that is ultimately responsible for approving all such delegations. In that regard, the statute requires the Commission to establish regulations authorizing the ERO to enter into delegation agreements and authorizes the Commission to modify any delegations. See FPA Section 215(e)(4). Also, having the Commission set the delegation standards up-front will promote a transparent, objective and fair delegation process.

The CAISO notes that the statute does not expressly require that a higher substantive standard apply to Regional Entities not formed on an Interconnection-wide basis. The statute merely accords Interconnection-wide entities a rebuttable presumption that they satisfy one of the statutory criteria

required for approval. This is simply an evidentiary presumption that determines how a substantive standard can be satisfied; it is not the substantive standard. Thus, the mere fact that Interconnection-wide Regional Entities are entitled to a rebuttable presumption that they meet one of the substantive standards in the statute, does not mean that a higher substantive standard applies to Regional Entities not formed on an Interconnection-wide basis. The bottom line is that both Interconnection-wide and non-Interconnection-wide Regional Entities must satisfy the same substantive standards.

The Commission asks what standards or guidelines it should apply in determining whether a delegation agreement promotes effective and efficient administration of Bulk Power System reliability. As a starting point, the Commission might consider factors similar to those that it considers for purposes of determining whether an RTO is of sufficient size and scope to permit the RTO “to effectively perform its required functions and to support efficient and non-discriminatory power markets.” See Order No. 2000 at 31,081, 31,083-85. Such factors include the size of the region, whether the region encompasses a contiguous geographic area (recognizing there may be holes), whether the region encompasses a highly interconnected portion of the grid, and whether the region incorporates existing transmission entities. Other relevant considerations might include (1) whether the delegation will result in unnecessary duplication, (2) whether the delegation will promote a proliferation of small Regional Entities (with which the ERO will have to interact individually), (3) the impact of the delegation on seams issues, (4) whether the interests and types of operations in

a proposed region are too diverse for control by a single Regional Entity, and (5) whether regions with market operations should be within the scope of a Regional Entity whose purview includes non-market regions.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt a Final Rule consistent with the discussion herein.

Respectfully submitted,

/s/ Anthony J. Ivancovich

Anthony J. Ivancovich
Assistant General Counsel -Regulatory
Stacie Ford, Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7135
Fax: (916) 608-7296

Counsel for the California Independent
System Operator Corporation

Date: October 7, 2005



October 7, 2005

Via Electronic Filing

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket Nos. RM05-30-000**

Dear Secretary Salas:

Transmitted herewith for electronic filing in the above-referenced proceeding are Comments of the California Independent System Operator Corporation on Notice of Proposed Rulemaking.

Thank you for your attention to this matter.

Yours truly,

/s/ Anthony Ivancovich
Anthony Ivancovich

Counsel for the California Independent
System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California, on this 7th day of October 2005.

/s/ Anthony J. Ivancovich
Anthony J. Ivancovich