

112 FERC ¶ 61,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

California Independent System
Operator Corporation

Docket No. EL05-114-000

Mirant Delta, LLC and
Mirant Potrero, LLC

Docket No. EL01-35-002

ORDER ON PETITION FOR DECLARATORY ORDER AND REMAND

(Issued July 1, 2005)

1. On May 13, 2005, the California Independent System Operator Corporation (CAISO) filed a petition for declaratory order (petition), requesting that the Commission find proposed changes to CAISO's Board of Governors (Board) selection process result in a governance structure that the Commission finds acceptable. In this order, the Commission concludes that CAISO's proposed Board selection process is acceptable for purposes of the Order Nos. 888¹ and 2000² independence requirements, because it should help ensure the appointment of Board members that are both independent and have strong

¹ See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² See *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

expert credentials. In addition, we find that CAISO's Board, as currently constituted, meets the independence requirements of Order No. 888 and Order No. 2000.

I. Background

2. On November 1, 2000, the Commission issued an order proposing ways to remedy problems in the California wholesale bulk power market.³ In that order, the Commission proposed that CAISO's Board be replaced with an independent, non-stakeholder Board effective 90 days after the date of that order, because the Commission found that CAISO's then-existing stakeholder Board was not functioning in an independent manner. On December 15, 2000,⁴ the Commission issued an order adopting the November 2000 Order proposal (i.e., directed CAISO to replace its existing stakeholder Board with a non-stakeholder Board consisting of members who were independent of market participants).

3. Before the December 2000 Order could be implemented, the California State Legislature passed a bill (AB 5x) on January 18, 2001, authorizing the replacement of the then-existing Board with a five-member Board to be appointed by the Governor of California (Governor) and confirmed by the state senate.⁵ Soon thereafter, the stakeholder Board resigned, and five Governor-appointed members assumed control of the Board.

4. Although the Commission remained extremely concerned regarding the lack of independence of CAISO's Board, because of the exceptionally volatile energy prices in California, we were reluctant to take further action at that time. After prices became stable in California, the Commission once again issued an order, on July 17, 2002, addressing CAISO's governance structure.⁶ The Governance Order directed CAISO to

³ *San Diego Gas and Electric Co.*, 93 FERC ¶ 61,121 (2000) (November 2000 Order), *order on reh'g*, 97 FERC ¶ 61,275, *appeal filed sub. nom. California ex rel. Lockyer*, 383 F.3d 1006 (9th Cir. 2001), *reh'g denied*, 99 FERC ¶ 61,160 (2002).

⁴ *San Diego Gas and Electric Co.*, 93 FERC ¶ 61,294 (2000) (December 2000 Order), *order on reh'g*, 97 FERC ¶ 61,275, *appeal filed sub. nom. California ex rel. Lockyer*, 383 F.3d 1006 (9th Cir. 2001), *reh'g denied*, 99 FERC ¶ 61,160 (2002).

⁵ See CAL. PUB. UTIL. CODE § 337(a) (Deering 2005) ("The Independent System Operator governing board shall be composed of a five-member independent governing board of directors appointed by the Governor and subject to confirmation by the Senate.").

⁶ *Mirant Delta, LLC*, 100 FERC ¶ 61,059 (2002) (Governance Order), *reh'g*
(continued)

replace its Board through a process in which a Board Selection Committee, which was to be composed of stakeholders, would have chosen Board members from a slate of candidates compiled by a nationally recognized executive search firm. Additionally, the Governance Order instructed CAISO to create a stakeholder advisory committee to promote stakeholder input on the Board's decisions.

5. CAISO appealed the Commission's denial of its request for rehearing of the Governance Order to the United States Court of Appeals for the District of Columbia Circuit. On June 22, 2004, that court issued an opinion vacating and remanding the Governance Order, finding that the Commission has no authority under the Federal Power Act to require CAISO to replace its Board with a new board chosen through procedures dictated by the Commission.⁷ However, the court also noted that if the Commission "concludes that the CAISO lacks the independence . . . to constitute an [independent system operator (ISO)] for the purposes of Order No. 888, then it need not approve CAISO as an ISO."⁸

6. On May 13, 2005, CAISO filed a petition for declaratory order that describes a proposed new Board selection process for CAISO's governing Board, which includes a professional search firm and stakeholder involvement in the selection of Board members. CAISO asks the Commission to find that its proposed changes to the Board selection process result in an acceptable governance structure.

granted in part and denied in part, 100 FERC ¶ 61,271, *reh'g denied*, 101 FERC

¶ 61,078 (2002), *rev'd and remanded sub nom. California Independent System Operator Corp. v. FERC*, 372 F.3d 395 (2004).

⁷ *California Independent System Operator Corp.*, 372 F.3d at 401-403.

⁸ *Id.* at 404. We do not interpret the court's opinion as precluding the Commission from disallowing certain jurisdictional authorizations (e.g., flexibility in interconnection requirements or administration of certain types of tariff provisions) for ISOs or regional transmission organizations that the Commission determines do not have sufficiently independent governing boards.

II. Interventions, Protest, and Answers

7. Notice of CAISO's filing was published in the *Federal Register*⁹ with interventions and protests due on or before May 31, 2005. Entities that filed motions to intervene in this docket are listed in Appendix A to this order. On June 15, 2005, CAISO filed an answer.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We find good cause to grant the late, unopposed, joint motion to intervene of the Cogeneration Association of California and the Energy Producers and Users Coalition and the joint motion to intervene of Duke Energy Marketing America, LLC, Duke Energy North America, LLC, and Duke Energy Trading and Marketing L.L.C. given the early stage of the proceeding, their interest in the proceeding, and the absence of any undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept CAISO's answer and, therefore, will reject it.

B. Board Selection Process

1. CAISO Petition

10. CAISO's petition lays out the key elements of its new Board selection process. It proposes to employ an independent search firm in the selection of its Board members not less than 120 days prior to the expiration of any Board member's term. The search firm will develop a list of four or more candidates for each open Board seat not later than 90 days prior to the expiration of the term of a Board member.

11. The petition also states that the search firm will find candidates who have one or

⁹ 70 Fed. Reg. 30,711 (2005).

more of the following qualifications: (1) electric industry expertise; (2) market expertise; (3) general corporate, legal, and/or financial expertise; and (4) public interest expertise. In addition, candidates must have a reputation for excellence in their areas of expertise. The search firm will create a matrix to analyze the qualifications of each of the candidates that it selects. CAISO also proposes that candidates selected by the search firm cannot be employed by, cannot consult for, or hold any direct or indirect financial interest in any person or entity engaged in the generation, transmission, marketing, trading, or distribution of electricity within the United States. As a result, the search firm will not consider anyone who is employed by an organization with stakeholder interests anywhere in the United States as a Board candidate.

12. Furthermore, under the proposal, CAISO will organize a group of 36 representative stakeholders (Board Nominee Review Committee) to review and rate the candidates recommended by the search firm. Each of the 36 members will represent one of the following six member-classes: (1) transmission owners; (2) end-users and retail energy providers; (3) public interest groups; (4) alternative energy providers; (5) transmission-dependent utilities; and (6) generators and marketers. Each of these member classes will determine its own method of selecting its six members to serve on the Board Nominee Review Committee. When the Board Nominee Review Committee receives the search firm's slate of candidates, it will determine the appropriate ranking for each candidate. Not less than 60 days prior to the expiration of any Board member's term, the Board Nominee Review Committee will forward its ranking of each candidate to CAISO.

13. After confirming that the ranked candidates include all of the potential candidates that the search firm identified, CAISO will send the candidate list, along with the rankings, to the Governor for consideration as possible Board members. However, in accordance with state law, the Governor can ignore this slate of candidates and appoint a Board member of his or her own choosing.¹⁰ A candidate chosen by the Governor will

¹⁰ In addition, pursuant to state law, appointees are subject to confirmation by the state senate. *See supra* note 5 and accompanying text. With respect to the removal of Board members, CAISO's bylaws provide: "The Governing Board may remove any Governor [i.e., a Board member], with or without cause, if at least two thirds (2/3) of the Governors then in office vote in favor of such removal with the approval of the State Oversight Authority." CAISO Amended and Restated Bylaws, § 7 (April 12, 2001), available at <http://www.caiso.com/docs/2000/06/01/2000060110361815044.pdf>. Thus, we note that the Governor does not have the of removal.

begin serving upon the expiration of the term of the member that the appointee is replacing or, if a position is vacant, immediately upon appointment.

2. Interventions and Protests

14. The Northern California Power Agency (NCPA) asserts that CAISO's proposal does not create the proper structural framework required for a true stakeholder process that will allow CAISO to claim that its proposed board selection process achieves some measure of true independence. NCPA states that CAISO failed to obtain stakeholder input when it was designing its Board selection process and filed the proposal with the Commission prior to informing stakeholders that it was preparing such a proposal. NCPA also argues that the proposal does not describe how a particular market participant becomes eligible to participate in a given sector or how market participants will organize themselves within each sector for voting purposes. According to NCPA, as long as the Board lacks viable input from stakeholders, it will remain captive to CAISO management and never be responsive to stakeholder concerns.

15. The California Electricity Oversight Board (Oversight Board) supports the use of an independent search firm for selecting the list of eligible candidates. The Oversight Board also supports CAISO's proposed Board selection criteria, including the employment and financial interest restrictions. It also states that the requirement that candidates have a proven record of excellence in their area of expertise shows the strengths of the proposed Board selection process.

16. The Metropolitan Water District of Southern California (Metropolitan) believes CAISO's Board selection process is reasonable. However, Metropolitan asserts that the employment and financial interest restriction is too broad in scope. In particular, it takes issue with CAISO's proposal that all potential candidates not have financial ties to any market participant in the United States. It believes that few potential candidates that have a proven reputation for excellence will be able to meet the potential conflict of interest restriction on a nationwide basis. Metropolitan also argues that if candidates were selected under this restriction, it will greatly narrow the potential candidate pool and make it difficult for CAISO to create a diverse and qualified board. Therefore, it states that the potential conflict of interest restriction should be limited to ties in the Western Interconnection.

3. Commission Determination

17. As we stated in Order No. 888, the primary purpose of an ISO is to ensure fair and

not unduly discriminatory access to transmission and ancillary services for all users of the system.¹¹ As such, an ISO should be independent of any individual market participant or any one class of participants.¹² Consistent with those principles, the Commission has expressed concern in the past over the fact that CAISO's Board was not functioning in an independent manner.¹³ In order to remedy that situation, the Commission proposed in prior orders a new selection process for seating the CAISO Board to create an independent, "corporate type" Board that could fulfill its responsibility to operate CAISO's transmission system and administer its energy markets in a non-discriminatory manner. To achieve that result, the Commission outlined a selection process, most recently in the Governance Order, that included the use of an independent search firm to compile a list of potential Board candidates, provided a prominent role for stakeholders in the selection process, and established professional qualifications for candidates.

18. The Commission is encouraged that CAISO has proposed a Board selection process that is consistent with the intent of the Governance Order. Indeed, the Commission believes, for the reasons discussed below, that the petition's proposed selection process will help prevent market participants from controlling or appearing to control the Board decision-making process. We conclude that CAISO's proposed selection process is consistent with the principles of independence that the Commission has previously enumerated¹⁴ and acceptable for purposes of the Order Nos. 888 and 2000 independence requirements.

19. Specifically, CAISO's proposal to utilize an independent search firm to seek qualified candidates for open Board positions is an important step in guaranteeing that independent candidates are chosen. 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.¹⁵ Thus, this process will

¹¹ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,730.

¹² *Id.*

¹³ *See generally* Governance Order, 100 FERC ¶ 61,059.

¹⁴ *See, e.g., id.* at 31,731.

¹⁵ We note that the proposed Board Nominee Review Committee is nearly identical to the Board Selection Committee that the Commission put forth in the Governance Order. *See* Governance Order, 100 FERC ¶ 61,059 at P 62.

guard against any one class of market participants having control over the selection of the Board.

20. We agree with NCPA that CAISO's proposal could more specifically describe how a particular market participant becomes eligible to participate in a given sector on the Board Nominee Review Committee. Therefore, we encourage CAISO to adopt further procedures so that the proposal sufficiently describes market participant eligibility on the Board Nominee Review Committee.¹⁶ However, we disagree with NCPA that CAISO should dictate to market participants how to organize themselves within each sector for voting purposes. We believe that each member class of the Board Nominee Review Committee should have autonomy with regard to determining its own method for selecting its six representatives on the Board Nominee Review Committee.¹⁷

21. In addition, we agree with NCPA that CAISO should consider creating an advisory committee of stakeholders that will provide the Board with input on various decisions.¹⁸ In this regard, we encourage CAISO to adopt something akin to the stakeholder advisory committee that the Commission put forth in the Governance Order.¹⁹ We think those additions to the petition's proposal will serve to strengthen the perception that CAISO's governing Board is independent.

22. CAISO's Board faces many complex issues that require that its members be highly qualified. Accordingly, the Commission finds acceptable CAISO's proposal to establish

¹⁶ See, e.g., *Entergy Services, Inc.*, 88 FERC ¶ 61,149 at 61,501 (1999) (stating that "the ultimate application filed by Entergy must include a more complete description of how the stakeholder committee will be selected and will operate [and] how adequate representation of all stakeholders is assured").

¹⁷ See Governance Order, 100 FERC ¶ 61,059 at P 62 n.81 (stating that "[e]ach of the member classes will determine the method for selecting its representatives to the [Board Selection Committee]").

¹⁸ See Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,073 (noting that the "dominant governance model (PJM, New England, New York and the Midwest) for ISOs is a two-tier form of governance. The top tier consists of a non-stakeholder board, while the lower tier consists of advisory committees of stakeholders that may recommend options to the non-stakeholder board.").

¹⁹ Governance Order, 100 FERC ¶ 61,059 at P 68.

professional qualifications for Board members in relevant areas and, thereby, ensure that candidates are qualified to be Board members.²⁰

23. We find no merit to Metropolitan's assertion that CAISO's proposal to make the conflict of interest restriction on Board candidates nationwide rather than regional is problematic. In particular, we do not think Metropolitan has demonstrated that a nationwide restriction will cause CAISO to have a problem filling board seats. In Order No. 888, the Commission stated that "[a]n ISO and its employees should have no financial interest in the economic performance of any power market participant."²¹ Consistent with Order No. 888, we believe that a potential Board member should be independent of any market participant that has economic or commercial interests that could be significantly affected by CAISO's actions. However, if CAISO later determines that it is unable to attract sufficiently qualified candidates because of the nationwide restriction and, therefore, the restriction should be limited, for example, to the Western Interconnection, we would be willing to consider a more limited restriction.

24. In conclusion, we believe that CAISO's proposed Board selection process is consistent with our past orders on CAISO's governance, because, like those orders, the new process is aimed at promoting the appointment of expert, non-stakeholder candidates to the Board. Moreover, CAISO's proposed board selection process will help ensure that market participants will not be able to unduly influence the Board and that CAISO is sufficiently independent to provide services on a non-discriminatory basis. CAISO has worked within the confines of California law to present a Board selection process that will help guarantee the appointment of Board members that are both independent and have strong expert credentials.

C. Independence

1. CAISO Petition

25. CAISO's petition enumerates the Commission's past concerns about how the Board was controlled by a single market participant, the state, which through the

²⁰ We note that the Board qualifications set forth in the petition are similar to those that the Commission enumerated in the Governance Order. *Id.* at P 63 n.83.

²¹ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,731.

California Department of Water Resources (DWR), was making “substantial purchases of electric energy in the CAISO markets on behalf of [investor-owned utilities (IOU)].”²² According to CAISO, DWR is no longer a major market participant in CAISO’s market, because, as of December 31, 2002, California law revoked the ability of DWR to purchase energy for the IOUs.²³ Therefore, CAISO asserts that since DWR no longer makes substantial purchases of electric energy in CAISO’s markets, the Commission’s main concern regarding the conflict of interest of the Board has been alleviated.

26. CAISO also notes that the terms of the two Board members who were on the Board at the time the Governance Order was issued and that were employed by organizations that represent California end-users have expired and their replacements have been appointed. Accordingly, CAISO asserts that the Commission’s concern over those Board members, as expressed in the Governance Order,²⁴ is resolved. In addition, CAISO asserts that none of the current members of CAISO’s Board is affiliated with any CAISO stakeholder organization.

2. Interventions and Protests

27. Sacramento Municipal Utility District (Sacramento Municipal) and California Municipal Utilities Association (California Municipal) both state that the Commission’s rejection of CAISO’s governance structure in the Governance Order was related to concerns regarding the State of California’s dual role as both market participant, through DWR’s procurement of power, and the state’s control of CAISO’s Board appointments. Sacramento Municipal and California Municipal argue that, although the California Energy Scheduling Division (CERS) of DWR no longer fills the net short position of investor-owned utilities on a daily basis, it still remains the contracting party for several major power contracts that serve IOU customers. California Municipal adds that DWR continues to be involved in regulatory matters involving market outcomes. The Independent Energy Producers Association and the Western Power Trading Forum (collectively, Independent Producers/Western Power) likewise assert that the State of California continues to have a direct role in CAISO’s marketplace due to existing long-

²² Governance Order, 100 FERC ¶ 61,059 at P 57.

²³ See CA. WATER CODE § 80260 (Deering 2005) (“On and after January 1, 2003, the department shall not contract under this division for the purchase of electrical power.”)

²⁴ Governance Order, 100 FERC ¶ 61,059 at P 11.

term contracts and other California-owned generation resources. They also note that DWR operates the State Water Project, the largest single user of CAISO-controlled transmission, representing about five percent of CAISO's load.

28. California Municipal and Metropolitan state that the current Board was not selected pursuant to the petition's proposed selection process; therefore, the Commission should not make a determination with regard to the independence of the Board until a Board that has been chosen under the proposed process has been seated. California Municipal also asserts that it is inconsistent with sound governance policy to allow the state, with its current involvement in the California energy market, to have ultimate control over who serves on the CAISO Board. Sacramento Municipal states that, even though the new Board may eventually calm concerns regarding state involvement in the California market, it would be premature for the Commission to make a determination on CAISO's independence until CAISO has removed both actual and perceived concerns about its independence to the satisfaction of market participants. Therefore, Sacramento Municipal requests that the Commission defer its decision on CAISO's petition, rather than deny it outright.

29. Independent Producers/Western Power assert that California law, AB 5x, creates a barrier to CAISO's independence that cannot be overcome with its proposed selection process, because it allows the governor and state senate to have the ultimate authority to appoint Board members. In this regard, NCPA and Independent Producers/Western Power note that CAISO's proposed board selection process does not obligate the governor to choose from the list of Board nominees that CAISO submits or the legislature to confirm such appointments.

3. Commission Determination

30. Some protestors take issue with the fact that the present Board was not selected under the petition's proposed selection process.²⁵ Accordingly, those protestors argue that it is premature for the Commission to make a determination as to whether the Board is independent and that such a determination should not be made until a Board is seated

²⁵ We note that a few of the protestors state that they have no complaints about the present Board. *See, e.g.*, Metropolitan Protest at 6 (stating that "[CAISO's Board] members are astute and well-qualified to serve in that capacity"); Sacramento Comments at 3 (stating that it "has high regard for those currently serving on the CAISO Board and has no reason to doubt their ability").

under the proposed process. Several of the protestors also suggest that, because the present Board was selected (pursuant to state law) by the Governor, the Board is therefore per se non-independent.

31. Although we acknowledge that the current Board was chosen by the Governor and its members were not vetted through the proposed selection process, we find that this does not necessarily mean that the present Board is not independent or that it is premature for us to make such a determination. The Commission believes that the process by which the board was chosen should neither obscure the important question of whether or not the current board is in fact independent nor preclude the Commission from making such a determination. In other words, whether or not the Governor chose the present Board members, standing alone, is not dispositive of whether or not the current Board is independent.

32. Consistent with Order No. 888, we find, for the reasons discussed below, that the present Board is independent. First, as CAISO states,²⁶ none of the present Board members are employees of or affiliated with a CAISO stakeholder group. As a result, the Commission's past concern that two members of the then-existing Board were employees of organizations that represented end-users²⁷ is no longer relevant, because those persons no longer serve on the Board.²⁸ Second, all of the present Board members appear to be well qualified. Furthermore, we find that the current Board members satisfy the professional qualifications for Board candidates that are set forth in the proposed board selection process.²⁹

33. Third, circumstances have changed since the Commission issued the Governance Order and, therefore, many of the concerns we previously expressed have been mitigated. For instance, in the Governance Order, the Commission stated that it was concerned that the Board was controlled by a single market participant, the State of California, by virtue of DWR's "substantial purchases of electric energy in the CAISO markets" on behalf of

²⁶ Petition for Declaratory Order at 11-12.

²⁷ Governance Order, 100 FERC ¶ 61,059 at P 59.

²⁸ As CAISO points out, their terms expired and their replacements have been appointed. Petition for Declaratory Order at 12.

²⁹ See Petition for Declaratory Order at Attachment A, Rule 3.

the IOUs.³⁰ Although the State of California is still a market participant through DWR, DWR is no longer statutorily authorized to engage in power supply acquisition for the state,³¹ as a result, DWR's role in CAISO's market is substantially diminished.

34. It is true, as some protestors point out, that the CERS contracts (i.e., the long-term power purchase contracts entered into by DWR on behalf of the IOUs) will remain in effect for a number of years. However, CAISO's role with respect to these long-term contracts is different than its role concerning the spot energy purchases that DWR formerly made for the IOUs. For instance, CAISO's role with regard to these long-term contracts is primarily operational, relating to scheduling of these contracts with its market redesign proposal. In addition, scheduling under the DWR contracts is now the responsibility of the IOUs, not DWR.

35. In short, because DWR is no longer making substantial purchases in CAISO's market, the Commission believes that DWR's present involvement in CAISO's market does not raise the same independence concerns as when DWR was the largest purchaser of capacity and energy in the California wholesale market, as it was at the time the Governance Order was issued.³² In addition, the Commission is unaware of any evidence that CAISO under the present Board has given DWR or any other branch of the state government favorable treatment or, for that matter, acted in any other matter in a non-independent manner.³³

36. For the above reasons, we find that the current Board is able to administer CAISO's transmission facilities in an impartial, non-parochial, and non-discriminatory manner. Thus, we conclude that the current Board is independent, consistent with Order No. 888. However, the Commission notes that it is prepared to revisit the issue of CAISO independence if we find evidence that any market participant exerts undue influence over CAISO's governance structure and could reconsider our approval of

³⁰ Governance Order, 100 FERC ¶ 61,059 at P 57.

³¹ That is, state law repealed DWR's authorization to make such energy purchases on behalf of the IOUs. *See supra* note 23 and accompanying text.

³² *See, e.g.*, Governance Order, 100 FERC ¶ 61,059 at P 54.

³³ *Cf.* Governance Order, 100 FERC ¶ 61,059 at P15 n.46 (listing evidence of CAISO's lack of independence at that time).

CAISO as an ISO.³⁴

D. Remand

37. For the reasons discussed above, CAISO's voluntarily filed petition addresses the substantive concerns raised by the Commission in the Governance Order,³⁵ which was vacated and remanded to the Commission by the the United States Court of Appeals for the District of Columbia Circuit.³⁶ Accordingly, the petition moots the need for the Commission to reconsider on remand the Commission's findings in the Governance Order.

The Commission orders:

CAISO's petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³⁴ In this regard, we note that the the United States Court of Appeals for the District of Columbia Circuit stated that if the Commission concludes that CAISO lacks the independence to constitute an ISO for the purposes of Order No. 888, the Commission need not approve CAISO as an independent system operator. *See California Independent System Operator Corp. v. FERC*, 372 F.3d 395 at 404. Thus, the Commission has the authority to revoke CAISO's ISO status if the Commission determines at any point that CAISO is not independent.

³⁵ *See generally* Governance Order, 100 FERC ¶ 61,059.

³⁶ *See supra* note 6 and accompanying text.

APPENDIX A**INTERVENORS IN CAISO DOCKET NO. EL05-114-000**

Alliance for Retail Energy Markets
 California Electricity Oversight Board
 California Municipal Utilities Association (California Municipal)
 Cogeneration Association of California (Cogeneration)³⁷
 Duke Energy Marketing America, LLC
 Duke Energy North America, LLC
 Duke Energy Trading and Marketing L.L.C.
 Energy Producers and Users Coalition (Energy Producers)³⁸
 Independent Energy Producers Association (Independent Producers)
 Metropolitan Water District of Southern California (Metropolitan)
 Mirant Parties³⁹
 Modesto Irrigation District
 Northern California Power Agency (NCPA)
 Pacific Gas and Electric Company
 Powerex Corp.
 Sacramento Municipal Utility District (Sacramento Municipal)
 Southern California Edison Company

³⁷ Cogeneration represents the power generation, power marketing, and cogeneration operation interests of the following entities: Coalinga Cogeneration Company, Mid-Set Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company, Sargent Canyon Cogeneration Company, Salinas River Cogeneration Company, Midway Sunset Cogeneration Company, and Watson Cogeneration Company.

³⁸ Energy Producers is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., ConocoPhillips Company, ExxonMobil Power and Gas Services Inc., Shell Oil Products US, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Velero Refining Company – California.

³⁹ Mirant Parties include Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero LLC.

Docket Nos. EL05-114-000 and EL01-35-002

-16-

Western Power Trading Forum (Western Power)
Williams Power Company, Inc.