

## DOCKETED

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**The Industrial Customers of Northwest Utilities' Comments on Regional Grid Operator Governance**

*Additional submitted attachment is included below.*

## Comments on Regional Grid Operator Governance

The Industrial Customers of Northwest Utilities (“ICNU”) appreciates this opportunity to comment in California Energy Commission Docket No. 16-RGO-01, regarding recent Regional Grid Operator and Governance workshops and the California Independent System Operator’s (the “ISO”) *Proposed Principles for Governance of a Regional ISO* (“ISO Proposal”). ICNU is an incorporated, non-profit association of large electric consumers in the Pacific Northwest, with membership that includes large power customers of PacifiCorp and customers of several other potential new Participating Transmission Owners (“PTOs”) considering integration into the ISO. Accordingly, ICNU is interested in ISO initiatives considering tariff modifications to accommodate the potential integration of new PTOs from across the West, including the ongoing Regional Resource Adequacy (“RA”) and Transmission Access Charge (“TAC”) initiatives.

Like many stakeholders with significant interests outside of California, ICNU is considering the potential benefits of an ISO that encompasses a larger regional footprint, or what is sometimes referred to as a Regional System Operator (“RSO”). In this context, ICNU has commented in both the RA and TAC initiatives that future support for an RSO will depend upon a determination that: 1) joining the market will result in no harm to customers of PacifiCorp or any other potential new PTOs; and 2) any incremental benefits associated with the market are shared equitably between market participants. Moreover, current governance proposals are important issues to stakeholders considering the formation of a western RSO, in order to provide assurances that customers of any new PTO will not be harmed by integration and that benefits will be shared equitably.

### **A. Preservation of State Authority**

ICNU is encouraged by the strong focus within the ISO Proposal on preserving state authority. Under the proposal, a new RSO governance structure would “include binding provisions” designed to protect and preserve state authority over “procurement policy, resource planning and ... resource and transmission siting.”<sup>1/</sup> Among such “matters currently regulated by the states themselves,”<sup>2/</sup> ICNU believes that governance provisions should also explicitly protect and preserve state authority over retail rates.

To this end, Commissioner Florio has previously suggested that “it will be necessary to develop a governance structure in which each state is assured of retaining its traditional control over ... retail rates.”<sup>3/</sup> Likewise, state regulators outside California have also agreed that “decision-making authority should reside at the state level wherever possible,”

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<sup>1/</sup> ISO Proposal at 2 (June 9, 2016).

<sup>2/</sup> Id.

<sup>3/</sup> Commissioner Michel Florio, *Governance of a Regional ISO: Suggestions for Addressing the Political Dilemma* at 2 (Apr. 29, 2016).

including “retail ratemaking.”<sup>4/</sup> Also, express provision for the continued protection of state authority over retail ratemaking will further another RSO governance principle identified by state regulators: “governance should be structured to avoid federal pre-emption of state laws or regulations.”<sup>5/</sup>

## **B. PTO Withdrawal**

The ISO proposes that a future RSO “structure shall ensure the right of participating transmission owners to withdraw from the ISO, either voluntarily or in light of an order by their state regulator.”<sup>6/</sup> ICNU believes that this right of withdrawal will be critical to customer support of new PTO integration, especially in recognition of a state regulatory body’s ability to successfully order such a withdrawal. Otherwise, both new PTO customers and state regulatory commissions may effectively be ceding excessive control to the RSO, contrary to the aforementioned emphasis on preserving state authority.

That said, ICNU understands the concerns raised during recent workshop discussion, to the effect that PTO withdrawal could have materially adverse consequences and should not be taken lightly. While details will need to be worked out, ICNU suggests that assurances of PTO withdrawal rights are not mutually exclusive to the establishment of orderly withdrawal safeguards, in order to prevent undue harm to remaining PTOs within a future RSO.

## **C. Initial Board and Transition Period**

In prior comments, ICNU supported the following governance principles espoused by state regulators: 1) “A regional ISO must be neutral”; and 2) “No single state should dominate governance.”<sup>7/</sup> The ISO’s proposed transitional process, however, appears to fall short of these principles. Specifically, the ISO proposes that an “initial board will include the five current members of the ISO board and four new members selected by the other states.”<sup>8/</sup> Obviously, such a board composition would allow California-appointed members to dominate transitional governance.

ICNU may find it difficult to support the formation of an RSO that continues to be dominated by California, even if only in its initial stages. In fact, ICNU understands that other western stakeholders would also be unlikely to support RSO formation unless and until the source of ISO power is completely severed from California legislative control. Thus, if

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<sup>4/</sup> EIM Body of State Regulators (“BoSR”), *Principles and Issues for a Western Regional ISO* at 3 (Apr. 29, 2016).

<sup>5/</sup> Id.

<sup>6/</sup> ISO Proposal at 3.

<sup>7/</sup> BoSR, *Principles and Issues for a Western Regional ISO* at 1, 3.

<sup>8/</sup> ISO Proposal at 3.

California is unwilling to allow for truly independent RSO governance, from the very first stages of RSO formation, then this entire enterprise may have little probability of success.

Notwithstanding, the ISO's proposal could seemingly accommodate the creation of a neutral transitional board, in that "establishment of this initial board will be triggered when the new corporate governance documents are approved by the ISO Board and have become effective."<sup>9/</sup> In other words, the California legislature could repeal state authority over the ISO, and the ISO board could simultaneously approve the formation of a new, independently governed RSO.

#### **D. Composition of Regional ISO Board**

The importance of a neutral transitional process is apparent when considering that the ISO proposes that a "transitional committee will develop a new nomination and approval process that will be used on a going-forward basis."<sup>10/</sup> That is, the neutral composition of a permanent RSO board may ultimately depend upon the neutrality of the transitional process which develops it. Conversely, the ISO may find it challenging to assure stakeholders outside California that the permanent RSO board will not be dominated by California, despite the ISO's proposal for a transitional structure in which "California-appointed members will constitute a majority of the state selected members."<sup>11/</sup>

Similarly, ICNU is not certain that a proposed "focus on establishing a board with professional expertise in relevant areas" is preferable to an RSO board comprised of state-appointed representatives. During recent workshop discussions, some roundtable panelists favored a board designed to protect state interests over governance by a group of "technocrats," who may prove oblivious to state policy concerns. At this point, ICNU may also favor board members appointed by and directly accountable to individual states. As noted in workshop discussion, technical experts should still have a prominent role in advising state-appointed board members. Moreover, there is no apparent reason to believe that technical experts could not efficiently see to the daily operational needs of an RSO, without stakeholders having to cede all governance control to the same experts.

#### **E. Establishment of a BoSR**

ICNU is not necessarily opposed to the concept of a BoSR, with "[o]ne regulator from each State in the regional ISO footprint [to] serve on the body."<sup>12/</sup> However, ICNU is generally concerned that such a structure may not conform well with the individual state laws underlying the establishment of the various state regulatory commissions. This has been an issue

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<sup>9/</sup> Id.

<sup>10/</sup> Id. at 4.

<sup>11/</sup> Id.

<sup>12/</sup> Id.

with PacifiCorp's Multi-State Process, which has prevented the direct participation of state commissioners in the development of inter-regional cost allocation agreements. For purposes of the ISO proposal, a single state regulatory commissioner may not have the authority to submit a vote to the BoSR, absent agreement from a quorum of commissioners. In addition, for a commission to take action in such a body, formal procedural processes and accompanying administrative orders may be required. Thus, while ICNU is not necessarily opposed to the concept of a BoSR, there may be practical issues that need to be resolved if one is to be established.

Notwithstanding, actual regulators sitting on the BoSR would potentially be able to ensure that RSO board members were acting consistently with state interests, regardless of the ultimate composition of the board. For instance, the BoSR might provide a clear measure of protection for states against potentially divergent interests of an RSO board comprised of technical experts. Even if an RSO board consists of state-appointed members, however, oversight by actual regulators on the BoSR could still be valuable and may also mitigate potential concerns over board voting structure.

The ISO also proposes that “[o]ne individual appointed by the publicly-owned utilities within the ISO footprint will also serve on the body in a non-voting, advisory capacity.”<sup>13/</sup> Assuming the entire BoSR concept is practical, ICNU supports this proposal, as several of its members are large consumers of public utilities in the Pacific Northwest, who may be significantly affected by RSO operations even if they do not join the RSO. To this end, ICNU believes it may be worthwhile to consider a more direct or expanded public power role in the BoSR, as suggested in recent workshop discussion.

ICNU is concerned, however, that proposed voting rules for the BoSR may create practical difficulties and raise neutrality issues. For instance, the ISO proposes that, “at a minimum,” BoSR approval of policies “will require an affirmative vote of a majority of the members of the body, *as well as members representing at least a majority of load in the regional footprint.*”<sup>14/</sup> To the extent that the “majority of load” rule would create a practical veto power for California, ICNU would have concerns over California’s ability to dominate BoSR functions. Additionally, the dual requirement of a numerical majority and a load majority could render the BoSR ineffectual, should other states and California consistently find themselves on opposite sides of numerical majority and load majority voting, respectively.

## **F. Stakeholder Processes and Stakeholder Participation**

Under the ISO’s proposal, a transitional committee would consider “[w]hether there should be a funding mechanism to facilitate the participation by State consumer advocate

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<sup>13/</sup> Id.

<sup>14/</sup> Id. at 5 (emphasis added).

bodies, and if so, who would qualify for such funding, who would pay for it, and how funds would be allocated.”<sup>15/</sup> As a well-established advocate of major consumers of PacifiCorp and several other Pacific Northwest utilities which may also consider integrating into an RSO as new PTOs, ICNU considers this to be an important element in a fairly representative RSO governance structure.

### **Conclusion**

Overall, the ISO Proposal contains several features which ICNU could likely support in an RSO governance structure. In order to be acceptable to many stakeholders outside California, however, ICNU believes that the ISO Proposal will need to be revised to ensure that both transitional and permanent governance will be neutral and protect against future California dominance.

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<sup>15/</sup>

Id.