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ICNU Comments on Second Revised Governance Principles

Please find attached the Industrial Customers of Northwest Utilities' Comments on the CAISO's Second Revised Proposal for Principles for Governance of a Regional ISO.

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
Jesse E. Cowell (503) 241-7242	The Industrial Customers of Northwest Utilities	October 31, 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

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.

Comments on Governance Principles

The Industrial Customers of Northwest Utilities (“ICNU”) appreciates this opportunity to comment in California Energy Commission (“CEC”) Docket No. 16-RGO-01, regarding the California Independent System Operator’s (the “ISO”) Second Revised Proposal for Principles for Governance of a Regional ISO (“2nd Revised Governance 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. Like many stakeholders with significant interests outside of California, ICNU is considering the potential benefits of an ISO that encompasses a larger regional footprint. In this context, ICNU has commented in both the Regional Resource Adequacy (“RA”) and Transmission Access Charge (“TAC”) initiatives that future support for a regional ISO will depend upon a determination that: 1) joining the market will result in no harm to large customers of PacifiCorp or any other potential new PTOs; and 2) any incremental benefits associated with the market are shared equitably between market participants.

Additionally, several ICNU members could be significantly impacted by the regionalization of the ISO in other ways. For example, multiple members are power generators that might be affected

considerably, in that capacity, by regionalization of the transmission grid. Also, many ICNU members take power from public utility customers of the Bonneville Power Administration (“BPA”), rendering the future role of public power and BPA in regional ISO operations and affairs of prime import. On a number of levels, therefore, the establishment of a fairly representative regional ISO governance structure will be critical to ensure the support of large consumers throughout the Northwest.

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.

ICNU appreciates the ISO’s efforts to revise Principle 1.3, in order to establish a “collaborative process that would allow the members of the Western States Committee and the ISO Board to collectively consider any potential claim that a proposed policy initiative could materially diminish state authority.”^{1/} However, ICNU suggests that the efficacy of such process will depend upon timely clarifying amendments made to ISO bylaws and corporate governance structure.^{2/} That is, a future WSC and regional ISO Board will need tangible provisions attempting to delineate state authority, if the collaborative process established via Principle 1.3 is to be guided by recognizable standards. Otherwise, the considerations in such processes will more closely resemble unpredictable legislative deliberations than principled determinations governed by definitive and transparent guidelines.

Principle 1.1 states that “[t]he ISO’s new governance documents will include binding provisions to protect and preserve state authority over matters regulated by the states themselves.”^{3/} Yet, unless these “binding provisions” include clarifications specifically designed to anticipate and guide a WSC and ISO Board in considering whether a policy initiative could diminish or impair state authority, the binding provisions will always be subject to varying and possibly widely divergent interpretation. Moreover, ICNU is not the only stakeholder to identify the lack of clarity on this important matter, with the Independent Energy Producers Association also commenting that “no specific definition is provided as to what would be material; what triggers a diminishment of authority; what would constitute an impairment of authority; and, what ultimately is a matter of state or local authority.”^{4/} ICNU does not believe that such an uncertain scenario offers the end-use customers of potential new PTOs sufficient assurance that integration into a regional ISO will result in no harm to ratepayers.

^{1/} 2nd Revised Governance Proposal at 3. ICNU notes that the quoted explanatory text uses the word “could,” whereas the actual text of proposed principle 1.3 uses the word “would,” e.g., “whether a proposed new ISO policy initiative *would* materially diminish or impair.” ICNU recommends the substitution of “could” for “would” in the text of Principle 1.3, both as to better reflect that the Western States Committee (“WSC”) and regional ISO Board would not have perfect knowledge of what “would” happen, and to avoid the probably unwanted implication that collaborative process determinations should be given precedential value, since “would” infers a more definite conclusion.

^{2/} See CEC Docket No. 16-RGO-01, Notice of Regional Grid Operator and Governance Workshop at 2 (Oct. 7, 2016) (stating that “expansion transformation of the California ISO will require that its current bylaws and corporate governance structure be amended and that the new structure be approved by the California Legislature”).

^{3/} 2nd Revised Governance Proposal at 3.

^{4/} Summary of Stakeholder Comments to Revised Governance Proposal at 14.

ICNU raises this issue because, in prior comments, ICNU has explained several means by which a regional ISO could materially diminish or impair state authority relative to specific RA and TAC policy, leading to potentially significant cost increases to ratepayers served by a load serving entity (“LSE”) integrating as a new PTO. For instance, state or local regulatory authority (“LRA”) could be materially diminished or impaired by the effective implementation of current ISO proposals on the following matters: 1) load forecasting;^{5/} 2) allocation of RA requirements;^{6/} 3) planning reserve margin;^{7/} 4) resource counting methodology;^{8/} 5) backstop procurement authority;^{9/} and 6) TAC cost allocation.^{10/} Moreover, ICNU has not just identified issues and explained how ISO proposals would potentially diminish or impair state authority—rather, ICNU has offered simple solutions that could efficiently and drastically minimize the potential for federal preemption controversies, while also providing a future WSC and regional ISO Board with transparent and easily understandable standards for use in resolving claims that policy could diminish or impair state authority.

Specifically, ICNU has proposed the adoption of express tariff provisions acknowledging state authority on a variety of RA policy issues,^{11/} as well as the explicit articulation of TAC standards to avoid controversy.^{12/} While ICNU understands that the ISO no longer plans to file Federal Energy Regulatory Commission (“FERC”) tariff revisions reflecting regional RA and TAC policy *prior* to state regulatory proceedings to approve PacifiCorp’s integration as a new PTO,^{13/} ICNU’s proposals could easily be implemented as clarifications to Principle 1.1 in the near term, and to ISO governance documents thereafter.

To this end, ICNU proposes the incorporation of the following clarifications to Principle 1.1 (or something substantively similar, as additional subparts (b) and (c)), within the final regional governance proposal to be considered by the Governor and California Legislature:

- Regional ISO governance documents will include binding provisions providing that, in the event that regional ISO and state or local regulatory authority resource adequacy policy or actions differ in relation to particular load serving entities, including but not limited to issues of load forecasting, requirements allocation, planning reserve margin, resource counting, and backstop procurement, and as an express condition of integration into the regional ISO as a participating transmission owner, load serving entities will not hold retail ratepayers responsible for any increased costs resulting from differences in resource adequacy policy or actions between the regional ISO and the relevant state or local regulating authority.

^{5/} E.g., ICNU Comments on RA Straw Proposal at 2; ICNU Comments on Revised RA Straw Proposal at 2-3; ICNU Comments on Second Revised RA Straw Proposal at 2-3.

^{6/} E.g., ICNU Comments on RA Straw Proposal at 4-5; ICNU Comments on Second Revised RA Straw Proposal at 4-5.

^{7/} E.g., ICNU Comments on RA Straw Proposal at 6; ICNU Comments on Second Revised RA Straw Proposal at 5-6; ICNU Comments on August 10 RA Working Group at 3-4.

^{8/} E.g., ICNU Comments on RA Straw Proposal at 6; ICNU Comments on August 10 RA Working Group at 3.

^{9/} E.g., ICNU Comments on RA Straw Proposal at 6-8; ICNU Comments on Revised RA Straw Proposal at 7; ICNU Comments on August 10 RA Working Group at 2.

^{10/} E.g., ICNU - WIEC Comments on TAC Straw Proposal at 7; ICNU Comments on Revised TAC Straw Proposal at 7; ICNU Comments on August 11 TAC Working Group at 6-7.

^{11/} E.g., ICNU Comments on Second Revised RA Straw Proposal at 4-7; ICNU Comments on July 21 RA Working Group at 6; ICNU Comments on August 10 RA Working Group at 3.

^{12/} ICNU Comments on August 11 TAC Working Group at 6-7.

^{13/} E.g., RA Straw Proposal at 4; Revised RA Straw Proposal at 3; TAC Straw Proposal at 3, 7.

- Regional ISO governance documents will explicitly clarify that new participating transmission owners will have complete flexibility to determine the cost allocation and billing determinant used for transmission revenue requirement within their respective sub-regions, regardless of the transmission access charge billing determinant used by the regional ISO.

If these relatively modest clarifications are added to Principle 1.1, LSE ratepayers of potential new PTOs *outside* California will have a tremendously improved sense of assurance that ISO regionalization will not harm them. Assuming the California Legislature authorizes expansion after consideration of such specifications, thereby prompting other states to initiate proceedings to approve PacifiCorp’s request to integrate as the first new PTO in a regional ISO, ratepayer groups like ICNU would then be able to focus much more on net cost/benefit studies at the state regulatory level,^{14/} allowing a perhaps dramatically increased possibility that regionalization efforts could be supported by new PTO customers.

As the proposed governance principles currently stand, however, ratepayers of potential new PTOs have no safeguards against encroachment upon LRA and state authority beyond the very high level declarations within Principle 1.1. ICNU certainly supports the broad affirmations to preserve state authority within Principle 1.1, but without clarification and elaboration the collaborative process to resolve controversies envisioned within Principle 1.3 would be essentially rudderless. In other words, requiring the WSC, ISO Board, and interested stakeholders to appeal to federal precedent and governing law afresh in every controversy—which is likely what would happen, absent clarification and elaboration—would be inefficient and needless, given that standards can be implemented now to govern all such determinations in the future. And, based on the ISO’s explicit reservation that “[i]mplementation of the ISO’s new governance structure ... may be contingent on regulatory review by FERC,”^{15/} an election by the ISO not to clarify Principle 1.1 now could effectively mean that another opportunity to address this issue may not arise for years, when the ISO reaches the stage of developing new FERC filings.

Finally, ICNU understands that the ISO may only revise the proposed governance principles one more time before consideration by the Governor and then the California Legislature in January 2017.^{16/} Accordingly, ICNU believes an ISO decision on whether to add additional clarification to Principle 1.1 could be a watershed event in the entire regionalization process. The ISO has certainly been aware of the specific concerns over potential diminution or impairment of LRA and state authority in RA and TAC matters for some time, as well as the potential for simple solutions to

^{14/} ICNU notes that PacifiCorp has yet to issue a net/benefits cost study of its own related to regional ISO integration, while the cost benefit studies issued in California in association with Senate Bill (“SB”) 350 are inadequate for non-California purposes. In response to ICNU comments noting that California “initiatives have not supplied the fundamental demonstration of regional benefits that states and ratepayers outside California will require in order to support the formation of an RSO,” the ISO responded as follows: “The ISO has undertaken the SB350 studies *to meet the California requirement* to address the question of governance and we hope that the detailed data and report can be a foundation for other states to do their own analysis.” SB 350 Study, Stakeholder Comment and ISO Responses from May 24-25, 2016 Preliminary Results Meeting at 94 (July 12, 2016) (emphasis added). In sum, SB 350 cost/benefit studies are not designed to and will not provide the analysis, standing alone, that will be necessary to allow any other state to conclude that a regional ISO will benefit the ratepayers of those other states.

^{15/} 2nd Revised Governance Proposal at 7 n.3.

^{16/} Presentation, 2nd Revised Governance Proposal at 21 (Oct. 17, 2016).

address such concerns. ICNU has thoroughly cited prior explanations of both concerns and solutions to demonstrate that, if the governance proposals move forward *without* the proposed clarifications to protect ratepayers of potential new PTOs, then the ISO will have had every opportunity to respond to these issues in a constructive manner.^{17/} In conjunction with net cost/benefit studies, protective safeguards for LSE ratepayers may well prove to be the primary point of controversy in future state regulatory proceedings, meaning that the ISO’s decision may significantly influence the ultimate outcome of PacifiCorp integration efforts at the state level.

2. Transmission Owner Withdrawal

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

ICNU has nothing further to add on this principle.

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.

ICNU appreciates the ISO’s decision to explicitly include “End-Use Consumer Advocate Groups” as a sector serving on the Transitional Committee, thereby eliminating prior controversy over the potentially limited inclusiveness of the “State-Sanctioned Ratepayer Advocates” sector.^{18/} Nevertheless, ICNU proposes that the Transitional Committee include two representatives from the “End-Use Consumer Advocate Groups” sector.

First and foremost, more than one consumer representative is appropriate because payment of resource and transmission costs, upon which the regional ISO depends, will be borne by ratepayers. Given that ratepayers would support the entire regional structure—allowing utilities and energy producers/providers to profit, public interest organizations to promote their causes, and the ISO and federal/state/local agencies to regulate and govern—any underrepresentation from the consumer advocate section cannot be rationally justified. Therefore, an additional representative from the ratepayer advocate sector would rectify the current imbalance on the Transitional Committee. Specifically, under the current ISO proposal and in addition to state appointees, the imbalanced representation from other sectors would be as follows:

- Utilities (2) – one IOU, one POU;
- Energy Producers/Providers (3) – one each from independent power, large scale renewable, and distributed energy sectors;

^{17/} ICNU also regularly cites to prior comments and other relevant documents to allow the ISO and interested stakeholders a reference point for issues and discussion threads which, given the rapidly increasing volume of material across CEC and ISO regionalization initiatives, can pose challenges for even long-time participants to follow.

^{18/} See ICNU Comments on Revised Governance Proposal at 2-3.

- Federal PMAs (1);
- Public Interest Groups (1); and
- Consumer/Ratepayer Advocates (1).^{19/}

ICNU does not propose any reductions to these sector representations. But, a solitary representative from the consumer/ratepayer sector seems inequitable when compared to the generous allotment on the utility and producer/power side. Also, ICNU believes an allotment of two representatives to the current “End-Use Consumer Advocate Groups” sector could be less problematic than an attempt to carve out expressly defined sub-sectors, with each receiving a representative, given prior controversy over “state-sanctioned,” “state-chartered,” and other potential end-use consumer and ratepayer advocate classifications and the scope of representation by groups within such classifications.^{20/}

Lastly, ICNU suggests that Principle 3.5 could benefit from additional clarification, if not substantive revision, in stating that “[t]he ISO Board will adopt a charter” for Transitional Committee process in performing its duties.^{21/} At the very least, stakeholders outside California could benefit from clarification as to the timing and process associated with efforts by the present ISO Board to develop such a charter. Alternatively, putting all such responsibility for governance of the Transitional Committee in the hands of the current ISO Board may unnecessarily invite future controversy and opposition outside California, especially in states where sentiment for full independence or for a fresh slate in the formation of a new regional organization runs strongest.

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.

ICNU has nothing further to add on this principle.

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

^{19/} 2nd Revised Governance Proposal at 6.

^{20/} See, e.g., ICNU Comments on Revised Governance Proposal at 2-5; Summary of Stakeholder Comments to Revised Governance Proposal at 3 (Energy Users Forum and California Large Energy Consumers Association (“CLECA”) Comments).

^{21/} 2nd Revised Governance Proposal at 6.

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.

Similar to concerns about the underrepresentation of the ratepayer/consumer sector on the Transitional Committee, ICNU believes that the current proposal on the make-up of the Nominating Committee for a regional ISO Board is in need of revision. In particular, Principle 5.2 contemplates up to seven representatives drawn from direct market participants, with no more than two representatives, if even that many, taken from among both the public interest and consumer advocacy group sectors.^{22/} Further, ratepayers may have no voice at all on the Nominating Committee under the ISO’s proposal, since public interest groups could potentially fill one or both of these allotted slots: “Up to two sectors will be established for representatives of public interest *and/or* consumer advocacy groups.”^{23/}

Needless to say, the ISO can expect strong resistance against a process to nominate regional ISO Board members that could potentially exclude any representation by the ratepayer sector ultimately paying for the ISO’s existence and for most, if not all, of the costs for operations on that system. To avoid possible alienation of the entire ratepayer sector throughout the West, ICNU proposes that, as with the Transitional Committee, the “End Use Consumer Advocate Groups” sector should be guaranteed two representatives on a nine-member Nominating Committee. ICNU suggests that one representative could still be drawn from the public interest sector, with a full six allocations left for direct market participants. Moreover, ICNU’s proposed allocation appears a fair compromise because, under the ISO’s supermajority proposal for at least 75% approval before the Nominating Committee can forward a candidate to the Approval Committee, the two ratepayer/consumer representative could not form an effective veto block on their own.

In terms of the proposed voting rules for the Approval Committee, ICNU may have difficulty supporting the functional California veto which would be implemented via the 75% load voting requirement of Principle 5.4.^{24/} The same rationale which could be offered in support of California voting dominance—e.g., as CLECA explained, “other states must recognize that California makes up a majority of the load in a CAISO-PacifiCorp regional ISO; a voting rule heavily weighted in favor of California is, in CLECA’s view as a representative of California ratepayers, entirely appropriate”^{25/}—could similarly justify voting dominance from the entire ratepayer sector in Transitional Committee and Nominating Committee contexts. In short, such a principle could be described as “those footing the bill should hold all the effective power,” and there is a certain logic there. However, in the spirit of compromise, and in an effort to offer alternatives that could allow for regionalization efforts to potentially move forward, a more moderated approach may be necessary.

^{22/} Id., at 9.

^{23/} Id., (emphasis added).

^{24/} Id., at 11.

^{25/} Summary of Stakeholder Comments to Revised Governance Proposal at 10.

As suggested at the most recent CEC workshop, “equally despised” and “begrudgingly embraced” compromises, which truly satisfy no one, may be the only realistic path forward on governance.^{26/}

That said, ICNU believes that regional ISO governing principles plainly preserving the authority of *all* states, such as the proposed clarifications to Principle 1.1, may do more to protect consumers/ratepayers of LSEs within a regional ISO than anything else. Thus, considering again the need for substantive compromise if regionalization efforts are not to be dead on arrival outside California, ICNU suggests that the proposed clarifications to Principle 1.1 could be seen as a possible give-and-take option strong enough to make the California veto rule in Principle 5.4 palatable to stakeholders in other states. At the end of the day, the ISO must be prepared to expand protections to other states by more definitive and explicit guarantees if there is to be any realistic expectation for acceptance of California primacy in voting design.

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.

ICNU appreciates the ISO’s revisions to Principle 6.5, in clarifying that WSC will generally perform its work in open session, thereby mooting concerns over selective involvement by limited consumer advocate groups.^{27/} Likewise, with significant membership served by the public power sector, ICNU appreciates the proposed expansion of public utility representation on the WSC via Principle 6.4.^{28/} Also, ICNU believes that Principle 6.8 would benefit by express definition as to what the “supermajority of the ISO board” would mean,^{29/} e.g., three-fifths, two-thirds, or three-quarters approval.

^{26/} CEC and California Governor’s Office Workshop (Oct. 17, 2016), audio recording at 1:25:05. Available at: http://www.caiso.com/Documents/Audio-CaliforniaEnergyCommissionAndCaliforniaGovernorsOfficeWorkshopOct17_2016.mp3

^{27/} See ICNU Comments on Revised Governance Proposal at 3-4.

^{28/} See ICNU Comments on Governance Proposal at 4.

^{29/} 2nd Revised Governance Proposal at 12.

Regarding the 75% load voting requirement proposed in Principle 6.7, however, ICNU reiterates the potential difficulties that stakeholders outside California may have in supporting a functional California veto, absent some material form of give-and-take like the express ratepayer protections afforded by additional clarifications to Principle 1.1, designed to assure the effectual preservation of authority for all states. To this end, ICNU finds support for Principle 1.1 clarification by the ISO’s decision “to work on addressing th[e WSC] ‘scope of authority’ issue *now*, rather than deferring it to the Transitional Committee, principally because this issue is closely related to the ongoing stakeholder efforts devoted to regional resource adequacy and transmission access charge options.”^{30/} The same reasoning applies to the RA and TAC issues identified by ICNU in prior comments as potentially leading to the diminution or impairment of state authority—namely, that such issues should be addressed now, rather than deferring them for future resolution. At a minimum, if Principle 1.1 clarifications are not added right away to a third revised governance proposal, the ISO could issue a discussion paper and receive comments, similar to the WSC primary authority paper.

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.

ICNU has previously expressed concern about the ISO’s decision to revise Principle 7.1, specifically in directing the Transitional Committee to consider funding for “participation by State-sanctioned consumer advocate bodies,” rather than simply “State consumer advocate bodies.”^{31/} Since ICNU has already explained why this revision invites controversy and could pose funding difficulties to many well-established consumer advocacy groups, the prior discussion is merely referenced here.^{32/}

Going forward, ICNU respectfully asks the ISO to revise Principle 7.1(c) before submitting these governance principles to the Governor and the California Legislature. The best solution may be to simply revert back to the original wording, i.e., dropping “sanctioned” as a hyphenated qualifier. The original wording would not preclude later discussion at the Transitional Committee level or subsequent limitation of funding eligibility to “sanctioned” groups—however that term may be defined. However, by retaining a term in the governance principles that is simultaneously undefined and limiting, the ISO’s current proposal would effectively narrow the allowable purview of future consideration by the Transitional Committee. That is, whatever “non-sanctioned” means, such groups should not be considered for funding if the Transitional Committee is to faithfully abide by the governance principles.

This last point concerning future fidelity to the governance principles raises an extremely important issue, and a conundrum based on present ISO positions. The ISO has acknowledged ICNU’s prior request to clarify the “State-sanctioned” terminology inserted into Principle 7.1 in order to avoid future controversy,^{33/} yet the ISO explains that it has chosen not to revise this principle on the basis that “the ISO commits to working with all stakeholders and with the Transitional Committee as it considers *the full set of*

^{30/} Id. at 11 (emphasis added).

^{31/} ICNU Comments on Revised Governance Proposal at 5-6 (emphasis added); compare 2nd Revised Governance Proposal at 13, with Governance Proposal at 5.

^{32/} ICNU Comments on Revised Governance Proposal at 5-6.

^{33/} Summary of Stakeholder Comments to Revised Governance Proposal at 15.

options to revise the current stakeholder process.”^{34/} Notwithstanding, the Transitional Committee cannot actually consider a “full set of options” regarding stakeholder funding so long as the very governing principles that are supposed to direct Transitional Committee work expressly limit the types of consumer advocacy groups eligible for consideration.

To be sure, the Transitional Committee could disregard the governing principles or interpret them as a sort of “loose directional guide.” But, this sort of thinking would erase all the purported protections in the governing principles which, presumably, the ISO and other proponents of regionalization are promoting as safeguards to induce stakeholders to support a regional ISO. For example, treating Principle 7.1 as a “loose guide” would mean that the provisions of Principle 1.1 would also be fungible, allowing new governance documents to include “not-so-binding provisions” protecting and preserving state authority. Thus, while ICNU believes the ISO was earnest in pledging a commitment to work with stakeholders and the Transitional Committee as a means of addressing concerns over the terminology used in Principle 7.1, the effect of this course is to ask stakeholders to trust the ISO that everything will work out, even to the extent of future action which contradicts the express terms of proposed governance principles. Hopefully, the ISO can appreciate the importance that stakeholders are placing upon the terms used in the governance principles, prompting the ISO to proactively address concerns such as the “State-sanctioned” limitation introduced into Principle 7.1. If not, stakeholders may lose confidence that the governance protections elsewhere actually mean what they seem to say, which would not augur well for future state approval proceedings outside California.

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.

ICNU has nothing further to add on this principle.

^{34/} 2nd Revised Governance Proposal at 13 (emphasis added).