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ICNU Comments on Regional Grid Operator Governance

Please find attached the Industrial Customers of Northwest Utilities' Comments on Regional Grid Operator Governance. Thank you.

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 the recent Joint State Agency Workshop on the Proposed Regionalization of the Independent System Operator (“Joint Agency Workshop”) and the California Independent System Operator’s (the “ISO”) *Revised Proposal Principles for Governance of a Regional ISO* (“Revised 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 and Transmission Access Charge 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.

To that end, ICNU commends the ISO for genuinely considering and responding to the prior comments on governance principles submitted by ICNU and many other stakeholders throughout the region. ICNU hopes that the ISO and other California entities will continue in this same spirit of engagement with stakeholders across the West, as the following comments include discussion on governance issues that still need to be resolved if a regional ISO is to become a realistic possibility.

A. Preservation of State Authority

ICNU appreciates the incorporation of direct stakeholder feedback in this principle of the Revised Proposal. Specifically, the ISO added explicit text stating that the regional governance documents will include binding provisions protecting and preserving state authority over “matters the ISO does not touch at all such as retail rate making.”^{1/} ICNU believes that this express stipulation may avoid considerable controversy in state regulatory

^{1/} Revised Proposal at 3 (July 15, 2016).

proceedings involving future PTOs of a regional ISO. At worst, this new provision will merely acknowledge the law, such that by electing to add this provision the ISO has positively demonstrated a legitimate regard for and a willingness to reflect stakeholder concerns.

B. PTO Withdrawal

Likewise, the ISO has improved upon future safeguards for potential PTOs by clarifying that the right of withdrawal from a regional ISO may be taken “unilaterally” and “regardless of the reason.”^{2/} ICNU understands that, under the ISO’s current Transmission Control Agreement, withdrawal is subject to contractual terms such as a two-year notice requirement and a good faith effort not to unduly impair the ISO’s control responsibilities.^{3/} But, so long as these contractual terms are met, customers of PacifiCorp and other potential new PTOs will be assured that a PTO will have the unfettered right to elect to withdraw from a regional ISO.

C. Transitional Committee of Stakeholders and State Representatives

Considerable detail has been added to the proposal for a transitional committee charged with implementing governance design principles for a regional ISO. However, ICNU has a serious concern with the potential omission of certain consumer advocacy groups from the list of nine stakeholder “sectors” that would represent the region on the transitional committee.^{4/} ICNU believes that this may not have been an intentional omission on the ISO’s part, or that perhaps the matter could be easily clarified. Accordingly, ICNU recommends either: 1) future clarification on this issue; or 2) the creation of one or more additional stakeholder categories, in order to make express provision for representation encompassing the full breadth of the consumer advocacy group sector.

As the Revised Proposal states, a transitional committee would be designed to “include a cross section of stakeholders from throughout the region.”^{5/} During the Joint Agency Workshop, however, one public commenter expressed concern that many customer groups would not be represented by the “State-Sanctioned Ratepayer Advocates” sector, based on an interpretation that “State-Sanctioned Ratepayer Advocates” traditionally represent only residential and small commercial ratepayers.^{6/} As explained in comments below, ICNU believes it is possible and preferable to interpret “State-Sanctioned” advocacy groups as distinct from and representative of a broader category than “state-chartered consumer advocates,” as that term is used by the ISO elsewhere. That said, ICNU would agree that “state-chartered” ratepayer advocates in the Pacific Northwest also focus narrowly on residential customer interests, often to

^{2/} Id. at 4.

^{3/} Presentation, Revised Proposal, Stacey Crowley, July 26, 2016 (“July 26th Presentation”) at 10.

^{4/} Revised Proposal at 5.

^{5/} Id. at 5.

^{6/} Carolyn Kehrein, Energy Users Forum, audio file of joint Agency Workshop at 4:10:40.

the exclusion of or in opposition to the interests of other ratepayer groups such as industrial, large commercial, or agricultural customers. Thus, ICNU is also concerned that a narrow interpretation of the “State-Sanctioned” advocacy sector could exclude representation from among these other ratepayer groups. Accordingly, clarification on this matter or the creation of one or more additional stakeholder sectors will be crucial to ensure that industrial and other non-residential customers are not completely unrepresented on the transitional committee.

Moreover, ICNU counts among its members many large electric customers that are also power producers. This makes representation of the large customer sector all the more critical, especially as the ISO has found the interests of “Independent Power Producers” important enough to justify a distinct sector with its own representation on the transitional committee.^{7/} As both consumers and power producers, industrial ratepayers have unique interests and added exposure to regionalization impacts which merit fair representation on the transitional committee. Finally, the ISO contemplates that the transitional committee would consider “[f]unding for consumer advocates.”^{8/} ICNU strongly supports such consideration, and believes that consumer advocates should have representation on the committee in order to determine future funding policy.

D. Establishment of a Western States Committee (“WSC”)

Once more, ICNU appreciates that the ISO has responded to stakeholder comments by making an explicit allowance for states to appoint non-regulator representatives to the WSC.^{9/} This addresses ICNU’s concern that various laws in PacifiCorp states may not allow regulators in those states to serve directly on the WSC. ICNU also supports the creation of a position for a federal power marketing administration representative on the WSC, especially given the integral relationship that BPA will have with a regional ISO.

1. Principle 6.5

Notwithstanding, ICNU is concerned with the proposed constraints of revised principle 6.5, which states that WSC “members may decide to allow staff from state commissions or energy offices and *state-chartered* consumer advocates to participate in meetings.”^{10/} ICNU has no issue with a provision to allow regulatory staff to participate in WCS meetings. However, ICNU strongly opposes explicit constraints on which consumer advocacy groups may participate in WSC meetings. As noted in the prior comment section, state-chartered consumer advocates do not represent the interests of all ratepayer groups.

^{7/} Revised Proposal at 5.

^{8/} July 26th Presentation at 23.

^{9/} Revised Proposal at 8-9.

^{10/} Id. at 9 (emphasis added).

Thus, to allow for participation by a limited subset of “consumer advocates” would not just be unfair, but would also implicate serious questions of partiality if a state representative were to only allow for a certain ratepayer advocacy group to participate in WSC meetings. For example, ICNU often works alongside state-chartered consumer advocates in the Pacific Northwest, but these groups are zealous *advocates* for particularized interests. The fact that they are “state-chartered” makes these groups no less partial to the interests of particular consumers than any other consumer advocacy groups. Indeed, the partiality of these groups is manifest in that they are “advocates,” and in that they exist and participate in proceedings apart from state regulatory staff, which fulfills the role of public impartiality. ICNU recommends, therefore, that principle 6.5 be revised, to either: 1) limit participation to neutral regulatory staff; or 2) remove any constraints as to which consumer advocacy groups may participate in WSC meetings.

2. Principle 6.7

On revised principle 6.7, ICNU appreciates that the ISO has responded to stakeholder feedback once again, in scaling back the original proposal to require an affirmative WSC vote of “members representing at least a majority of load in the regional footprint.”^{11/} As ICNU and several other stakeholders pointed out, such a provision would effectively operate as a California veto rule and would likely be unacceptable to most, if not all, states and stakeholders outside California.

Proposed principle 6.7 now states that the WSC voting rule for approval of policies within its primary authority “will, at a minimum, include some form of weighted voting based on load.”^{12/} ICNU suggests that the ISO reconsider whether the weighted load voting design needs to be determined in such absolute terms at this stage, and not rather be included as a simple stipulation that weighted load voting will, at a minimum, be considered by the transitional committee.

Several California commissioners made explicit statements at the Joint Agency Workshop in support of holding a hard line on weighted load voting. But, drawing firm battle lines now on the issue may prevent other states from ever proceeding beyond the design principles stage. In fact, certain public comments at the Joint Agency Workshop serve to heighten the concerns that outside stakeholders have about ceding weighted load voting power—e.g., that “California leads, it doesn’t follow”; or, the express concern over the ISO “being less California-centric.”^{13/} While ICNU understands that these comments may not represent all California stakeholders, such sentiment plainly exists. Accordingly, states and stakeholders

^{11/} Proposed Principles for Governance of a Regional ISO at 5 (June 9, 2016) (“Initial Proposal”).

^{12/} Revised Proposal at 10.

^{13/} Kevin Kelley, Imperial Irrigation District, audio file of joint Agency Workshop at 4:01:10.

outside California are understandably reticent at this early stage to support a WSC with prescribed voting rules which may allow for California dominance.

E. Stakeholder Processes and Stakeholder Participation

ICNU recommends clarification and potential modification of revised principle 7.1(c), regarding potential funding mechanisms for consumer advocacy groups participating in regional ISO processes. In short, ICNU believes that the principle subpart should provide for transitional committee consideration of funding for all consumer advocacy groups that actively represent PTO ratepayers on a state regulatory basis.

Initially, the ISO proposed that the transitional committee would consider “[w]hether there should be a funding mechanism to facilitate the participation by State consumer advocate bodies, and if so, who would qualify for such funding”^{14/} ICNU had interpreted the term “State consumer advocate bodies” broadly to include entities like ICNU, who regularly participate as intervenors in state regulatory proceedings of potential new PTOs. One reason for this broad interpretation is that the ISO expressly stated that the transitional committee would consider “who would qualify for such funding,” a determination that would be unnecessary were this category limited merely to “state-chartered consumer advocates,” as that term has been used elsewhere by the ISO.

However, the same principle subpart has now been revised to allow for consideration of “[w]hether there should be a funding mechanism to facilitate the participation by State-*sanctioned* consumer advocate bodies, and if so, who would qualify for such funding”^{15/} Although ICNU still believes that a broad interpretation should be applied here, given the need to consider “who would qualify for such funding,” the additional qualification of state “sanctioned” entities introduces a potential lack of clarity to this principle or even the exclusion of certain entities. That is, ICNU would interpret an intervenor, granted party rights to participate as a consumer advocate in regulatory proceedings, to be “sanctioned” by a state—such that the transitional committee would at least consider funding for the entity based on its participation in regional ISO processes. ICNU would also place importance on the distinction between a “state-chartered” consumer advocacy group and a “State-sanctioned” consumer advocacy group. Nevertheless, others might equate the two, thereby construing that the transitional committee may only consider funding for state-chartered entities.

To avoid future controversy, ICNU requests clarification of this principle subpart via supporting explanation or through modification of the text to specify that funding consideration will *not* be limited only to “state-chartered” consumer advocacy groups. Just as it would be unfair to allow only state-chartered groups to participate as advocates in regional ISO

^{14/} Initial Proposal at 5.

^{15/} Revised Proposal at 11 (emphasis added).

processes, it would be equally unfair to limit funding to only a narrow subset of consumer advocates.

Conclusion

The Revised Principles make several important and beneficial changes to the Initial Proposal, and ICNU once more commends the ISO for genuinely considering the concerns expressed by stakeholders throughout the region, and in responding promptly and decisively on many governance principles. While ICNU emphasizes that it has not and cannot make a determination on whether it will support the integration of PacifiCorp into the ISO until PacifiCorp publishes a full cost/benefit study,^{16/} the ISO's proactive and cooperative approach on governance design is a major step toward the possible realization of a regional ISO.

Nonetheless, significant and controversial governance matters need to be clarified and resolved. ICNU hopes the ISO will continue to earnestly consider the concerns raised here and by stakeholders throughout the region, in order to continue making progress on a fair and sustainable governance design.

^{16/} Cf. Senate Bill ("SB") 350 Study, Stakeholder Comment and ISO Responses from May 24-25, 2016 Preliminary Results Meeting at 94 (July 12, 2016). 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." (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.