

Comments of the Heartland Consumers Power District Regarding the Joint Outreach Team Draft Recommendations

The Heartland Consumers Power District (“Heartland”) submits these comments in response to the November 19, 2012 Draft Recommendations of the United States Department of Energy (“DOE”) and Western Area Power Administration (“Western”) Joint Outreach Team (“JOT”).

Introduction

The Draft Recommendations represent the latest stage in a process that originated on March 16, 2012, with DOE Secretary Steven Chu’s issuance of a memorandum calling for the way the Power Marketing Administrations, including Western, are administered. Heartland has actively participated in this process to protect the rights of its customers as “preference customers” of Western. The Draft Recommendations represent some movement off of positions that were wholly untenable to the vast majority of participants in this process. However, several aspects of the Draft Recommendations continue to cause Heartland great concern as will be explained in the comments below.

Description of Heartland and its Relationship with WAPA

Heartland is a public corporation and political subdivision of the state of South Dakota created in 1969 under the Consumers Power District Law. Heartland provides low-cost, reliable power to municipalities, state agencies and one electric cooperative across South Dakota, Minnesota and Iowa. Heartland serves as a partial, supplemental or full requirements power supplier to customers. Heartland has also invested in extensive wind development and energy efficiency programs. Heartland is empowered by the Consumers Power District Law to finance, own and operate anywhere, singly or jointly, any electric light and power plants, lines or systems for the generation, transmission or transformation of electric power and energy. Heartland is authorized to sell, transmit and deliver electric power and energy at wholesale to distributors within and outside the boundaries of South Dakota.

Western was created in 1977 to perform the power marketing and transmission function previously performed by the Bureau of Reclamation for the Secretary of Interior. Western markets federally-generated hydroelectric power within the Pick-Sloan Missouri Basin Program-Eastern Division (“PSMB-ED”) from eight power plants located in Montana, North Dakota, and South Dakota. Most Heartland customers are power customers of Western, with Heartland providing transmission service, supplemental power supply and power management services to its customers. Western also owns and operates an extensive system of high-voltage transmission facilities in the PSMB-ED. Western’s transmission facilities are included within an integrated transmission system called the Integrated System (“IS”) along with portions of the transmission facilities of Heartland and Basin Electric Power Cooperative. Western operates these facilities on behalf of the three IS owners.

Comments

As an initial matter, Heartland has had an opportunity to review, agrees with, and has joined with a number of other organizations in separate “Limited Joint Comments” submitted today addressing legal considerations raised by the JOT Draft Recommendations (“Joint Legal Comments”). The Joint Legal Comments are intended to remind the JOT of Western’s core principles and its statutory obligations. First among these principles and statutory obligations is that preference in the sale of federal hydroelectric power and energy by Western is to be given to public bodies and Cooperative “preference customers”. Second is the principle/statutory obligation that Western must provide power and energy at the lowest possible rates to consumers consistent with sound business principles. Third is that Congress has prohibited the reallocation of certain project costs without Congressional approval. Fourth is the “beneficiaries pay” principle. Heartland believes that some of the Draft Recommendations could violate these principles and obligations. In particular, Heartland believes that carrying out the following Draft Recommendations could violate WAPA’s core principles/statutory obligations:

Draft Recommendation No. 4: Rate Consolidation:

Heartland believes that consolidation of transmission rates intra-regionally, inter-regionally or Western-wide would violate the beneficiaries pay principle by allocating some costs to those who do not benefit from the expenditure. Additionally, carrying this recommendation out may re-allocate costs previously allocated by Congress without congressional approval.

Draft Recommendation No. 6: Integrated Resource Planning Program (“IRP”):

Heartland believes that carrying out this recommendation may run afoul of the principle/statutory obligation to provide power and energy at the lowest possible rates to consumers consistent with sound business principles. The IRP is an integral part of the resource planning of customers. However, a “one size fits all” IRP approach is not appropriate since both specific goals and results will vary by customer. Federal hydropower allocations are the foundation on which customers are able to build an expanding non-carbon resource portfolio. The IRP process will be most effective in recognizing energy efficiency, demand response, and non-carbon resource expansion programs aimed at reducing reliance on conventional fossil resources while maintaining current federal hydro power allocations. The JOT has not made clear what inadequacies in the current program necessitate spending additional time and resources on implementing a quality control program. Micro-management of the IRP process from Washington, D.C., or even at Western, is a mistake. Heartland has aggressively pursued an “all of the above” strategy including energy efficiency and wind power. Any suggestion that hydropower allocations would be cut conditioned on the IRP would be met with litigation.

Draft Recommendation No. 9: Transitioning from Contract-Path to Flow-Based:

Heartland believes that movement to a flow-based transmission system would be inconsistent with Western’s obligation to market power to preference customers at cost.

Draft Recommendation No. 13: Energy Imbalance Market (“EIM”) Initiatives:

Heartland believes that conducting further studies on an EIM would not be beneficial, particularly since the Western/preference customer regional study process has indicated that an EIM would provide no benefit to preference customers. Further work on this proposal without preference customer support could violate Western’s principle/statutory obligation to provide hydroelectric power and energy at the lowest possible rates to consumers consistent with sound business principles. Heartland believes that further work on the EIM is a mistake.

Before moving forward with studies on these recommendations, Western should conduct a thorough legal review to ensure carrying out these recommendations would not violate Western’s statutory obligations. If implementation of these recommendations would require legislation, Western should defer further study until Western has consulted with customers about the advisability of pursuing legislation and reached agreement on a course of action.

In addition to concerns about the legality of carrying out several of the recommendations, Heartland has concerns that the recommendations duplicate efforts already underway. Duplication of ongoing efforts would result in waste of time and money. Therefore, in developing its final recommendations, the JOT should include with each recommendation a brief description of ongoing Western studies, efforts, etc., that are already addressing the matter.

Like many Western customers, Heartland is also concerned about the cost of carrying out the JOT recommendations and the costs incurred thus far in the process. This includes the financial cost as well as the strain on the time of talented and overextended Western staff. Heartland is concerned that carrying out these recommendations may compromise Western staff’s ability to meet its core mission and responsibilities. Therefore, Heartland believes that in its final recommendations, the JOT should include cost estimates for pursuing each recommendation, including estimates of the time required of Western staff to carry out the recommendation, and the budget impacts of those cost estimates.

Heartland is also concerned that this process sets a dangerous precedent that will lead to the centralization of decision making in Washington, D.C., and away from the PMAs. The Western regions differ in their needs and what may work in one region, may not work in another. Movement to a “one-size-fits-all” paradigm through the final recommendations would be a grave mistake for not only preference customers, but WAPA, DOE and the nation. The top-down, settle-on-a-solution before identifying a problem goals set out in the Chu memo continue to trouble the preference customers. Although the Draft Recommendations have omitted some of the most egregious goals of the Chu Memo, their reliance on extreme minority views expressed over the objection of the hundreds in the workshops and listening sessions in support of the more controversial proposals is problematic. The needs and issues of the Upper Great Plains Region are different than other regions in the western United States.

Finally, Heartland and its customers have a long history of working well with Western and Western staff. Western recognizes the unique needs and issues of its regions. For these

reasons, Heartland believes that further development of any JOT recommendations should be conducted by Western in collaboration with its customers.