

Joint Comments on WWGPI Specific Phase 1 Questions and Related Matters

The undersigned Joint Commenters are pleased to submit the following comments and clarifying questions to the West-Wide Governance Pathway Initiative (WWGPI) “Overview and Questions for Stakeholders” (Pathway), dated August 29, 2023. This Pathway document follows on the letter to the Western Interstate Energy Board dated July 14, 2023, from several states, commencing a dialogue on a new independently governed west-wide market (States Letter). Joint Commenters have attempted to provide specific responses and recommendations to the States as posed in the Pathway, and also offer suggestions on related matters. Direct communication on threshold issues is appropriate, given the pace at which this initiative is moving, and the importance of the matter at hand.

Specific Questions in the August 29 Pathway Document

1. The design of Phase 1 is being facilitated outside of any existing organization or decision-making process. What pros and cons do you see to continuing this approach in Phase 1? If you see challenges inherent in this approach, what solutions do you recommend?

We see certain advantages in this approach. It separates the discussion from existing market institutions and can enable a fresh look at certain structural and governance issues that have been examined in other contexts. However, the scope and heft of this effort should not be underestimated. This effort likely requires a dedicated project team to coordinate stakeholder discussions but also specific subject matter experts to marshal information and facts and enable action on any recommendations. Whatever structure is put in place to manage Phase 1 of this initiative must produce actionable results in a period of months. The States Letter outlines an actionable item as the formation of a new corporation. This will require specific work products including a set of bylaws, filing of corporate documents, a business plan, and related matters. This will take a dedicated team focused on this project and a decisional structure to resolve differences.

It is unclear whether the intention is for state representatives to manage this Phase 1 or to select a “Steering Committee”¹ or similar structure. We see advantages to a sector-based “Steering Committee” working in collaboration with the states as well-positioned to execute on the States vision. To be sure however, selection of this sector-based committee will take time out of formation efforts.

One suggestion may be to look to past efforts as potential guides, as briefly described below. For the formation of the CAISO, a trust was created that included a multi-sector decisional body. The decisional body wrestled with real-world issues like contracts with vendors, and also the initial design elements that made up the CAISO Tariff. The

¹ No inherent meaning is implied by “Steering Committee.” It could be an Interim Board or similar structure that is sector-based.

Western Resource Adequacy Program is a more recent example of stakeholder-led formation effort that was transitioned to an independent board.

In addition, the Western Interstate Energy Board (WIEB) may play an important convening and supporting role if it is willing to do so. WIEB is uniquely situated as an existing institution that can facilitate state leadership on energy issues.

2. What is most important to you about the structure and process for Phase 1? What solutions would you propose to address your structure and process-related priorities for Phase 1?

The Pathway initiative neatly spells out the immediate deliverables of a Phase 1 of this effort, which would be to determine the “form, mission, and scope of an entity with West-wide governance.” We agree that this likely includes the crafting of corporate documents and a business plan. It also involves understanding and agreeing on what the new corporation will do. It will be difficult to structure the new corporation in a vacuum and appoint a permanent governing body without knowing what the corporation will do as an initial matter. It is our working assumption that the first permanent board will be responsible for directing policy for the offering of market services provided under contract by the CAISO.

We are not convinced that founding board members should be selected within this truncated timeframe. To be clear, we interpret the “founding board” to mean the independent Board that will be the first permanent governing body of the new corporation. This selection process will likely take time and the selection process will be critical.

3. What do you like about the brief description of the Phase 1 scope and what would you change in the Phase 1 scope? Please provide your reasoning for any changes you propose.

For clarity, we understand that this question references the final paragraph on page one of the August 29th Pathway document carrying over in that same paragraph to page 2. This description includes the “form, mission, and scope of any entity with independent, West-wide governance. Additionally, the Phase 1 process would produce a charter to guide the operation of the independent entity, include milestones and a timeline, identify the founding board members and establish the new non-profit entity. We seek to finalize key elements of the independent entity’s governance by December 2023, and to identify and seat the founding board members by January 2024.”

As stated above and with additional detail below, we believe the mission of the entity must be determined and agree with that focus. The overall governance of the new corporation must be established. This would likely include within the governance structure a Nominating Committee. The act of corporate formation should be included in Phase 1. We do not see seating of the first permanent board as likely in this short period of time. The importance of that first permanent board will likely demand a

comprehensive search and selection process, led by the Nominating Committee that is part of the overall structure.

4. What stakeholder engagement model do you believe is best suited to simultaneously enable a broad stakeholder involvement in Phase 1 and future phases; and b. an ability to efficiently move through the work that must be completed in each of those phases?

We expect an open and transparent stakeholder process for Phase 1. Beyond that, we expect broad stakeholder engagement. It would be up to the Steering Committee or similar structure to provide that direction. However, it does not appear necessary to specify the form of that here; the stakeholder process organization is a key part of the long-term governance design.

Additional Comments and Concerns

Structure and Governance of New Entity

Much work has been done on how market structures in the West can be independently governed. We suggest using the multi-entity letter crafted earlier this year and supported by nearly 20 utilities as a starting point for governance discussions. It is attached hereto. This work-product is meant as a starting point, but it reflects a lot of the governance discussions that have occurred at the CAISO, the Western Resource Adequacy Program, and Southwest Power Pool's Markets+. In addition, the states agreed on Multi-State Governance Principles developed by Western regulators in 2022. Finally, the work of the Transitional Committee, the Governance Review Committee, and draft governance proposals developed through stakeholder input in 2016 in anticipation of CAISO expansion can also guide this effort.² There is no need to reinvent the wheel. There is considerable commonality among these efforts. Much of the above work-product is linked below.³

Our assumption is that the new entity will be the public utility with Section 205 filing rights under the Federal Power Act for services provided under its auspices. Key questions will be: (1) how the Board is selected; (2) the structure of the stakeholder process; and (3) the role of the states.

The States Letter envisions a contract between the CAISO and the new nonprofit entity. There will be important details regarding the scope of the contract and the

² https://www.caiso.com/Documents/StrawProposal-LongTermGovernance_EnergyImbalanceMarket.pdf;
<https://www.westerneim.com/Documents/EDAM-Governance-Final-Proposal-WEIM-Governance-Review-Committee-Phase-3.pdf>;
<https://www.westernenergyboard.org/wp-content/uploads/Multistate-Governance-Principles-4-25-22.pdf>
https://www.westernpowerpool.org/private-media/documents/WRAP_Tariff_12-12-22_W0327945x8DF47_2.pdf;
<https://www.spp.org/documents/67164/05232022%20governance%20straw%20proposal.pdf>

respective responsibilities of the organizations. We view those details as beyond the scope of Phase 1, but very important to ensure actual independence.

Functional Separation

A key issue will be what functions are transferred to the new entity. This cannot be completely avoided in Phase 1. It could shape governance and the composition of the initial board. Important questions will be:

- Will the initial role of the new corporation be as decisionmaker of the structure of market service offerings? That is what Joint Commenters are using as a starting assumption. If so, what impact does that have on near term governance of the WEIM and EDAM?
- What other services can be practically unbundled?
- Are there functions that cannot practically be unbundled?
- Does it make sense to phase over time consideration of what services may be under the direction of the new corporation? By separate letter, a broad coalition supported principles that include the ability of the new corporation to evolve over time up to and potentially including a Regional Transmission Organization. It seems prudent to create a structure that is flexible and can accommodate the organic evolution of markets.

California Legal Questions

The CAISO is a corporation chartered under California law. A key question will be whether the CAISO can fulfill its obligations under law, and in particular Section 345 of the California Public Utilities Code, while executing those duties under direction from a separate legal entity. Similar issues were discussed during the deliberations of the Transitional Committee and Governance Review Committee. Many stakeholders will view this as a threshold question. Therefore, analysis and discussion on this issue should begin immediately and some consideration be given to independent legal analysis of the matter as part of Phase 1.

Conclusion

Again, we appreciate the opportunity to provide these initial thoughts. The specificity of these responses is warranted given the timeline outlined in the States' Letter and the Pathways documents. We look forward to working with the states to realize the goals of this Initiative, support your efforts, and ready to help lead an action-oriented process with stakeholders throughout the West.

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Regional-Utility Western RTO Governance Joint Proposal

March 2023

This governance structure is not connected to any specific pending or future legislation, but instead is a collaborative effort across western utilities to sketch out a regionalization framework that could encourage the participation of multiple states.

Background and Our Support

- A west-wide Regional Transmission Operator (RTO) has the potential to offer significant benefits to customers and improve reliability.
- Acknowledging that independent governance is a foundational principle to any such multi-state grid operator, officers from western utilities (including IOUs, Federal and Public Power) have met since mid-2022 to develop an RTO governance framework for the West.
- The framework developed and discussed herein reflects best practices from a broad survey of RTOs in existence today and reflects changes needed to accommodate the unique characteristics of the West.
- The undersigned support the following as a possible, reasonable RTO Governance framework for the West. **We understand that before any Governance design is ultimately selected, it will need to go through a formal stakeholder design and approval process, and final details will need to be agreed to.**

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| <ul style="list-style-type: none">• Arizona Public Service (APS)• Avista• Balancing Authority of Northern California (BANC)• NV Energy• Pacific Gas & Electric (PG&E)• Pacific Power• Portland General Electric | <ul style="list-style-type: none">• Public Service Company of New Mexico (PNM)• Rocky Mountain Power• Salt River Project (SRP)• San Diego Gas & Electric (SDG&E)• Seattle City Light• Southern California Edison (SCE)• Tucson Electric Power (TEP)• Xcel Energy |
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Objectives/Constraints of the RTO Governance Proposal

- Objective:
 - Design a governance structure that appeals to a critical mass of potential RTO participants (including California) in the near-term, and accommodates additional participants in the longer-term
- The proposal recognizes certain constraints:
 - Sense of urgency due to several factors including
 - Long stakeholder and regulatory processes for RTO implementation
 - Several State legislative mandates for RTO participation by 2030
 - Achieving state carbon emission reduction and clean energy goals/mandates cost effectively by leveraging load and resource diversity in the west
 - Alternative market service options under development
 - Must present a compelling value proposition for all participants, including California since legislative change to CAISO governance is necessary for a transition to an RTO
 - Must have strong support from a critical mass of States and utilities

Key Governance Components

The governance components interact to properly represent both the interests of participants and the interests of states

- An Independent Board ensures actions are taken for the benefit of the RTO, rather than a single sector or participant
- The Board Nominating Committee includes both Participant Sectors and the BOSR to find and seat qualified Board candidates with broad support

Independent Board of Directors
(BOD) *Must conform with FERC
Independence requirements*

Board Nominating Committee

Body of State Representatives
(BOSR)

RTO Participant Sector
Committee

- BOSR has voting rules to recognize both the relative amount of load their state brings to the RTO, and the need for all states to have a voice
- RTO Participant Sector Committee provides a forum for Participants to provide advisory views on RTO proposals, and to petition the Board to address issues

Key Governance Components: Independent Board of Directors

Independent Board of Directors
(BOD) *Must conform with FERC
Independence requirements*

- Board consist of 7-11 members appointed by the Board Nominating Committee
- Board members must be independent, including no financial or participant interest in the RTO
 - Members must be experts with experience in areas such as economics, energy trading, IT, law, utility operations or related expertise needed for the RTO
- The Board makes decisions on the operation of the RTO including approving tariff rules - All tariff filing authority with FERC (205) authority rests in the Board
 - However, certain items described below must first receive approval from the Body of State Representatives (BOSR) before receiving Board consideration
- Each Board member has an equal vote. Items require a simple majority to pass.
- Length of Terms to be determined
- The Board must respect the policies of all member states
 - This includes individual state energy goals including carbon reduction goals from the generation fleet, GHG trading programs, renewable generation targets, and transmission objectives
 - Grid reliability and resource adequacy
- The Board must have “open meeting standards,” including public participation

Key Governance Components: Board Nominating Committee

Board Nominating Committee

Body of State Representatives
(BOSR)

RTO Participant Sector
Committee

Nominating Committee consists of:

- 1 BOSR member
 - At least 2 IOUs from diverse geographic regions
 - 2 Public Power reflecting diversity
 - Fed Agency
 - IPP/Power Marketer
 - Non-voting member of the RTO Board of Governors
 - Others TBD (if needed)
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- Nominating Committee consists of representatives from the sectors noted above
 - Board Nominating Committee selects candidates and votes to appoint new Board directors
 - Equal weighting of votes
 - Requires 2/3 majority of Nominating Committee to appointment a Board director
 - No more than 10 members total

Key Governance Components: Body of State Representatives (BOSR)

Body of State Representatives (BOSR)

- BOSR is made up of **two representatives from each participating state**
- Representatives are appointed by their Governor
 - Governor decides who is appointed (e.g., a PUC member, Advisor, Public Power, etc.)
- A representative of the BOSR is also a voting member on the Board Nominating Committee
- **BOSR has an “approval”** role over Transmission Planning/expansion, Transmission Cost Allocation and Resource Adequacy, and an opportunity for an advisory role everywhere else
 - Meaning that before a proposal on the above topics is presented to the Board (including relevant tariff changes), it must pass the BOSR vote
- BOSR uses a “House/Senate” voting structure
 - Each BOSR member casts a single vote
 - “House” is weighted based on relative size (annual RTO participating load) of each state, with the weight capped at 40% (and any residual weight shared pro-rata among the other states)
 - “Senate” – each member votes with equal weight
- For “approval” items to pass, they must receive 1) a simple majority from the “Senate” vote, **and** 2) a weighted majority “House” vote
 - Items that pass can proceed to the Board for a vote
- For other items, BOSR can present a non-binding advisory opinion to the Board at its discretion

Key Governance Components: BOSR (Transmission Planning)

Body of State Representatives (BOSR)

- The intent of the BOSR is to give member States a strong voice, especially where multiple entities/states are impacted
- The BOSR is not responsible for performing actual transmission planning or developing technical criteria; rather technical staff of the RTO (likely with assistance from the transmission owners) produces these items
 - Note that the transmission planning process, as well as cost allocation mechanics/principles will have to be worked out when developing the RTO's tariff
 - RTO tariff development in this area will be complex; such tariff rules are outside of the scope of this RTO governance proposal
- Ultimately, tariff rules will impact the degree of BOSR involvement
 - For example, if the tariff ultimately predefines cost allocation based on voltage level, BOSR would have a limited role
 - In contrast, if the tariff instead allocates costs based on "benefits as determined by the BOSR", BOSR would have a more extensive role
 - In principle, the BOSR should have a very limited/no role if project costs are born completely by the sponsor utility's customers

Key Governance Components: RTO Participant Sector Committee

RTO Participant Sector Committee

- Advisory role for all market and tariff related issues
- Formal structure with voting on RTO proposals before they proceed to the Board
 - Advisory Sector vote required for all (non-urgent) Board votes
 - This Sector vote is advisory information to the Board or the BOSR; Board makes ultimate decision
- The RTO Participant Sector Committee will select a Chair, and the Chair has the speaking role or delegation role on all relevant Board items
- Representative of certain sectors will also be on the Board Nominating Committee (see Nominating Committee slide)
- Sector Committee has ability to directly petition the Board to request initiation of stakeholder process for a rule change/addition

Sector Representation

- IOUs from diverse geographic regions
- Public Power (Muni, coops)
- Fed Agency
- IPP/Power Marketer
- Other sectors as appropriate
- No more than 10 sectors to allow broad participation, but keep the process workable