

**Joint Comments on
West-Wide Governance Pathway Initiative
Overview and Questions for Stakeholders
September 11, 2023**

Submitted via email to clinvill@raponline.org and jennifer@envisionenergyllc.com.

Background and Introduction.

The Western Resource Advocates (WRA), Renewable Northwest, Western Grid Group, Sustainable FERC Project (S-FERC), Northwest Energy Coalition and Environmental Defense Fund, the “Joint Commenters,” appreciate the opportunity to provide comments on the West-Wide Governance Pathway Initiative Overview and Questions for Stakeholders, dated August 29, 2023 (“WWGPI Overview”).¹

The WWGPI seeks to create an entity, governed independently, that can deliver market services throughout the West, including California. This effort seeks to build on the benefits of the Western Energy Imbalance Market (WEIM), realize the potential benefits of an extensive footprint for the Extended Day-Ahead Market (EDAM), and enable a path forward for a potential West-wide fully organized market (a Regional Transmission Organization or RTO), should participants in this effort so choose. The Joint Commenters strongly support this initiative and its goals. A West-wide market and one that includes CAISO will maximize benefits for consumers, decreasing costs, increasing reliability and achieving carbon goals.

Multiple organized market participation studies demonstrate the most favorable electricity market for consumers is one that includes a single, large West-wide market footprint. For example, the State Led Market Study finds that:

- A new day-ahead markets could result in \$642 million per year of savings if existing market footprints are retained and market services are expanded.
- A west-wide day-ahead market results in \$247 million per year greater benefits than the scenario in which California operated as single-state RTO and the rest of the West operated in parallel with a separate RTO.
- A single RTO market system drives between \$187-569 million greater savings than the two-market configuration included in the study.
- The RTO scenario with the lowest benefits considered in the study was the one in which California operated as single-state RTO and the rest of the West operated in parallel with a separate RTO.²

The more recent Brattle study that models the specific EDAM design with a conservative footprint (CAISO, PacifiCorp East, West and West in Washington, Idaho Power, LADWP and

¹ The WWGPI Overview and Questions for Stakeholders is available at: <https://www.caiso.com/Documents/West-Wide-Governance-Pathway-Initiative-Overview.pdf>.

² These studies are directionally valuable. Energy Strategies, *State-Led Market Study: Exploring Western Organized Market Configurations: A Western States' Study of Coordinated Market Options to Advance State Energy Policies* (July 30, 2021) available at: <https://www.energystrat.com/new-insights-experience>.

BANC)³ finds significant benefits (reduced curtailment of clean energy resources and more efficient dispatch of resources) in a market that includes CAISO:

- Over \$800 million in annual cost savings to EDAM participants, with net benefits of over \$430 million (net is the difference of EDAM + EIM benefits and EIM base case benefits).
- 2.4 TWh in reduced renewable generation curtailments and reduced overall emissions.
- 25 TWh of additional reduced curtailments available for an expanded footprint.⁴

In addition, there is much more customer value at stake in the single versus two market outcome than these studies show on their surface, for example, reliability and reduction of market risks.⁵

The proposed timeline is ambitious but justified by the urgency of the situation as explained in the Question 1 response. It is also achievable. The WWGPI is only addressing governance; this is not the development of a third market option (the first two being market offerings by CAISO and SPP). Further, discussions about formal regional collaborations in the electricity sector have been going on for decades in the Western Interconnection and the governance for four entities directly relevant to this initiative have emerged or are close to completion, i.e., the Western Resource Adequacy Program (WRAP), WIEM and EDAM governance constructs, which are completed, and the Markets+ governance design which is under development. Therefore, this effort starts at an advanced position with this wealth of resources to draw from and intelligent stakeholders.

Our comments are guided by the following good governance principles:

- Independent Board and selection process for prospective Board nominees
- Transparency
- Meaningful, effective and diverse stakeholder engagement
- Significant role for state regulators and others who represent the public interest.

We view these principles as consistent with the Multi-state Electric Organization Principles and FERC's stakeholder involvement policy which is included in FERC Order 719.⁶ We also apply the principle of "adaptability"⁷ to guide our comments. Given the consequential shifts in the

³ PacifiCorp and BANC have officially announced that they will be joining CAISO in the EDAM.

⁴ Brattle Slide Deck, Brattle EDAM Simulations: PacifiCorp Results (April 2023), available at: <https://www.brattle.com/wp-content/uploads/2023/04/Brattle-EDAM-Simulations-PacifiCorp-Results.pdf>.

⁵ It is now widely accepted that the market studies so far underestimate the likely benefits, particularly for capacity and reliability, and that these benefits likely surpass the overall production cost savings for the energy component. While reliability and market risks are not easy to quantify, they are pivotal. Two recent examples include, the 2022 Western heat wave and last winter's extremely high west coast gas and commodity prices.

⁶ Multi-state Electric Organization Governance Principles (April 14, 2022) (endorsed by the following states: AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY) available at: <https://www.westernenergyboard.org/wp-content/uploads/Multistate-Governance-Principles-4-25-22.pdf> ("State Endorsed Governance Principles"); Federal Energy Regulatory Commission, Order No. 719: *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 and AD07-7-000, Oct. 17, 2008, available at: <https://www.ferc.gov/media/order-no-719> ("FERC Order 719").

⁷ See, e.g., Shelley Welton, *Rethinking Grid Governance for the Climate Change Era*, 109 Cal. L. Rev. 209 (February 2021) available at: <https://www.californialawreview.org/print/rethinking-grid-governance/>; Energy Freedom Colorado, Comments on Wholesale Market Options for Colorado Utilities, Colorado PUC Docket no. 161-08-16E (April 2, 2018) §3, available at: <https://energyfreedomco.org/puc-mwtg-efco-comment5.php>.

electricity industry in the last decade, it is likely the future of the electricity industry will continue to be very different. The governance design should provide stability but also reflect the need and ability to adapt to changes in the industry as well as changes in state policy. We also raise attention to the issue of “path dependency,” wherein a select number of large transmission or joint asset owning utilities can influence the decision-making process for the transmission-dependent utilities. A good governance structure should enable path-dependent utilities and customers to have a voice.

Questions on Phase 1.

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?

For designing Phase 1 outside an existing organization, we identified the following pros:

- Allows anyone interested to participate,
- Process can be nimble and fluid, and
- May support creative approaches for scoping a new governance process.

Cons include:

- There could be less buy-in by established entities if developed outside existing organizations and processes, and
- Some structure that offers transparency and fairness will likely need to be created to guide development of Phase 1, which will require time and attention.

We support the proposal to design Phase I outside an existing organization or decision-making process.

We note several governance models or amendments have been made to new and existing market structures from which to draw inspiration for creation of Phase 1 work. In addition to the EDAM governance proposal which builds on the WEIM governance construct, other governance models designed within the last two years include the Western Power Pool WRAP governance construct, which was approved by FERC (February 10, 2023), as well as the SPP Markets + governance proposal.

Significant work has been done throughout the region to address issues of market independence, appropriate decision-making processes, and effective stakeholder engagement. We recommend drawing from existing models to the extent possible while also maintaining independence from the market constructs from which these models have evolved.

The Joint Commenters are very supportive of this process. Governance is a key component of market design and can weigh heavily in the decision to join a specific organized market, as has historically been the case in the West. To date conversations around governance have been siloed within existing market development processes and may not be reflective of a west-wide

approach. We are pleased to see the WWGPI is prioritizing a process which is inclusive of the entire West, including market participants in the state of California.

The Joint Commenters support the governance changes that will be implemented concurrently with the EDAM market design.⁸ The EDAM governance structure evolves governance to be more multi-lateral and provides assurance to market participants outside of California that their perspectives will be appropriately weighed in the decision-making process and thus supports the sustainability of EDAM. However, we also support the eventual movement to a full RTO and we recognize that the governance structure as proposed for EDAM will not be sufficient to attract participants outside of California to become full participants in the ISO.

Some utilities have publicly stated that they will be including the potential path to an RTO in their decision to join a day-ahead market (DAM), even if their current position is to remain in a DAM. Statutes in Colorado and Nevada require regulated utilities to join RTOs by 2030.⁹ Decisions about joining a DAM are being made now and will likely be completed by many potential participants in early 2024. Therefore, there is a realistic sense of urgency to provide a path to an RTO for the WEIM participants and not lose the investments made thus far or the potential for benefits to ratepayers from West-wide market options that include California, such as EDAM or a West-wide RTO. This path must include an independent governance structure. Therefore, we view this effort as critical for that outcome.

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?

It is important to get the structure right before getting down the path too far and making too many decisions. Rushing to finalize a charter prior to establishing a sector based transparent process for electing Board members and finalizing a charter will likely attract criticism familiar to current market evolution efforts. It will be challenging to achieve all of the Phase 1 goals and seat a Board by January 2024. Therefore, we recommend developing two bodies that, to some extent, will *conduct their work concurrently*: 1) an Executive Committee; and 2) a Board Nominating Committee.

PIOs and other sectors that do not represent potential market participants should have an equal opportunity to fully participate on these committees; this includes voting. PIO's and other organizations that represent the public interest play an important role and bring value to the stakeholder process and ultimately to the decisions made.

⁸ California ISO, Western EIM Governance Review – Phase Three (EDAM), Governance Review Committee Revised Proposal (January 22, 2022) available at: <http://www.caiso.com/InitiativeDocuments/EDAM-Governance-Revised-Draft-Final-Proposal-WEIM-Governance-Review-Committee-Phase-3.pdf> (approved by the CAISO Board of Governors and WEIM Governing Body on February 1, 2023, *see* <https://stakeholdercenter.caiso.com/StakeholderInitiatives/Western-EIM-governance-review#:~:text=OUTCOME%3A%20In%20November%202021%2C%20the,of%20WEIM%20and%20the%20prop%20osed>). The proposal will become effective once FERC has conclusively accepted the CAISO's section 205 filing for the market design. *Id.* at 46-47.

⁹S.B. 21-072, 73rd Gen. Ass., First Reg. Sess. (Colo. 2021); S.B. 448, 2021 Leg., 81st Sess. (Nev. 2022).

Executive Committee. Key to this process is identifying who will make decisions and how they will be made. We propose a diverse, sector based Executive Committee. In addition to sectors representing potential market participants, public interest organizations (PIOs), state regulators and consumer advocates would be included. The purpose of an Executive Committee would be to review and approve the charter, establish independence and conflict of interest criteria for Board members, and any other agreements or processes that are finalized prior to seating of a fully independent Board. Once the Board nomination process has been completed, the Executive Committee can function as a sector-based committee used to prepare, review and approve proposals and agreements, drawing on some aspects of the RIF as it is used in the WEIM or the Market Participants Executive Committee (MPEC) in SPP Markets+.

Similar to how the CAISO RIF Sector Leads or WEIM Nominating Committee members are chosen, we recommend that sectors appoint their representatives to the Executive Committee. To seat the Executive committee quickly, one option is to reach out through the RIF. Similar to existing models, Executive Committee members would provide two-way communication with their sectors and would be asked to work in the interest of the region rather than their employing organization. The Executive Committee should represent geographic and sector diversity, as well as, diversity of perspectives that may result from different areas of expertise, ethnicity, gender and life experience.

The size of the Executive Committee should balance diversity of perspective with a manageable size that is conducive to effective decision-making.

Though consensus would be the goal, the Executive Committee should ultimately have a fair and representative voting process.

We would support a process that is efficient, transparent and allows for public participation. For example, we would support the Executive Committee working closely with experts/consultants to develop proposals for the work products included in the Phase 1 scope. The development of a charter for example can be led by consultants and reviewed/approved by the Executive Committee. Jennifer Gardner and Carl Linville are excellent choices for this role. Both have served on the WEIM Governing Body. In addition, Jennifer Gardner is an attorney with over 10 years of experience in the electric power sector, has served on the WEIM GRC and is a governance expert.¹⁰ Carl Linville is an economist with expertise in power sector markets and formerly a public utilities commissioner in Nevada and the economic and energy advisor to the Nevada Governor.¹¹ The process should include the opportunity for public comment that will be considered by the Executive Committee on key work products or at key junctures in the process. All comments should be made public and public meetings should be recorded and the recordings made available to the public.

Nominating Committee. We support establishing a diverse, sector based, nominating committee that would conduct the search for Board candidates and nominate the members. The Nominating Committee can propose a slate of Board members to the Executive Committee for

¹⁰ Jennifer Gardener's biography is available at: <https://www.westerneim.com/Documents/JenniferGardner.pdf>.

¹¹ Carl Linville's biography is available at: <https://www.raponline.org/staff/carl-linville/>.

approval. The Nominating Committee may be provided the support of a professional recruitment firm to conduct the important business of recruiting potential candidates if the budget allows. The WEIM Nominating Committee or the Western Power Pool WRAP Nominating Committees can serve as models. We recommend seating the Nominating Committee as soon as possible. While the Executive Committee might eventually be large enough to provide representation for all potential West-wide market participants, the Nominating Committee should be inclusive of one member of each sector.

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.

Initial tasks for the Phase 1 process are envisioned to include:

1. Decide on the form, mission, and scope of an entity with independent, West-wide governance;
2. Produce a charter to guide the operation of the independent entity, including milestones and a timeline;
3. Identify founding board members; and
4. Establish the new non-profit entity.

The proposed timeline is to finalize key elements of the independent entity's governance by December 2023, and to identify and seat founding board members by January 2024.

We agree that the timing is urgent and support the tasks included in Phase 1. The Phase 1 goals and scope are ambitious but achievable and, importantly, they form a solid foundation for an entity with an independent West-wide governance structure. We note that the charter was described as a high-level document and that details would be worked out in future phases (possibly as amendments to the charter or bylaws, for example). We agree with this top-down development approach. We also note that discussions and documents from the WRAP, Markets+, EIM and EDAM will provide a quick start to this work. It is critical that a sector based Nominating Committee oversee the work of electing an independent board, therefore schedule flexibility may need to be considered to implement this important step in the process.

An important consideration for the Executive Committee, as defined above is the establishment of independence criteria and conflicts of interest for members of the independent Board. While existing market and market evolution structures rely on FERC definitions of independence, this effort may need to be flexible to meet the proposed schedule. The Executive Committee will need to balance the definition and perception of "independence" with expediency and efficiency in order to meet the proposed timeline. Should the effort evolve to oversee market functions, the charter may need to consider how the independence criteria needs to evolve to be consistent with FERC definitions of independence. With several independent boards currently active in the region, it is becoming increasingly difficult to recruit and nominate board members with relevant experience, the bandwidth and financial stability to effectively serve. Since this effort is currently limited to governance and not establishing a market with financial transactions, the Executive Committee may consider adopting a looser definition of independence for expediency, allowing nominees who currently work for companies and organizations represented by sectors in existing markets in the region to broaden the pool of potential candidates. Charter language

which directs the entity to modify independence criteria should this process evolve into a market construct should also be included.

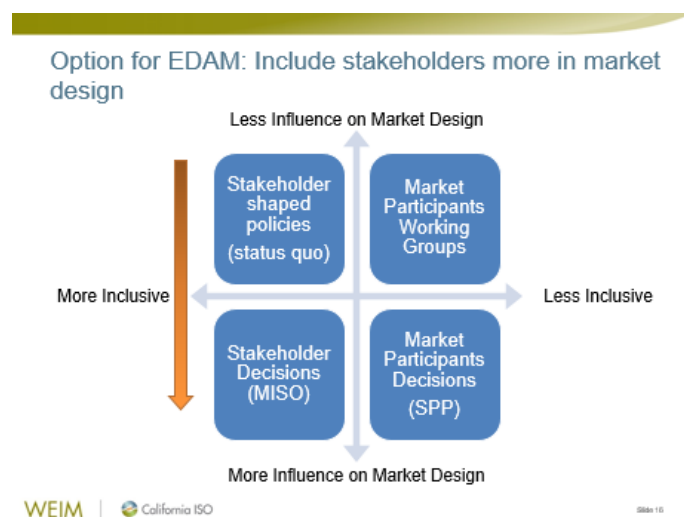
4. What stakeholder engagement model do you believe is best suited to simultaneously enable: a. broad stakeholder involvement in Phase 1 and future phases; and b. an ability to efficiently move through the work that must be completed in each of those phases?

Our specific recommendations for the Phase 1 governance and stakeholder process are included in question 2 and 3 above.

As we move forward and develop the permanent governance model for a West-wide market, which includes the stakeholder process, we make the following observations.

Organized wholesale energy markets operate as quasi-autonomous nongovernmental organizations; thus transparency, accountability, and fair representation are paramount.¹²

The graphic below, developed during the EDAM Governance Review process, captures the general participation models that exist in the organized markets in the country.¹³ This provides a useful framework and common metric for evaluating proposed participation models. The boxes on the left reflect models where all stakeholders have common access to the process, whereas the boxes on the right reflect models that give market participants, but not other stakeholders, specific avenues for engagement and, in some cases, greater influence over decisions. The boxes on the top reflect models that seek input, but decisions are retained by the boards of the organized markets. The bottom two boxes represent methods that provide decision-making authority or at least greater influence to stakeholders or market participants.



¹² Kavulla, Travis, Problems in Electricity Market Governance: An Assessment, R Street Policy Study No. 180 (August 2019) at 4-5, available at: <https://www.rstreet.org/2019/08/30/problems-in-electricity-market-governance-an-assessment/> (For example, the SPP governance has been characterized as “dominated by incumbents.”)

¹³ Western EIM Governance Review– Phase Three (EDAM) Governance Review Committee Straw Proposal (July 15, 2022), available at: <http://www.caiso.com/InitiativeDocuments/EDAM-Governance-Straw-Proposal-WEIM-Governance-Review-Committee-Phase-3.pdf> (“Straw Proposal”).

The Joint Commenters generally support stakeholder processes that fall in the upper left-hand side. The box in the upper left-hand side reflects the status quo of the CAISO stakeholder process. Specifically, the engagement process is open to all stakeholders and decisions are made by the Board and the Governing Body.¹⁴

The right-hand side reflects participant dominated governance models. Most RTOs are structured as private industry clubs in which industry members “vote” on the rules for regional electricity markets and grid operation; this arrangement often serves as an impediment to progress on clean energy and energy conservation measures that lead to lower costs.¹⁵ Research suggests that these types of RTO processes excel at producing reforms that serve incumbents’ business interests but struggle to effectuate reforms that enhance competition or shrink the demand for electricity.¹⁶

We support mining the existing Western governance models for best practices. Good information and process have come from the WRAP, SPP Markets+, WEIM and EDAM discussions. With or without a timing urgency, there is no reason to reinvent the wheel. This Initiative also provides the West with a unique opportunity to do governance better. A single western market does not have to follow the current monolithic RTO construct. We have the opportunity to develop something that is more inclusive and more flexible, that can provide, in a phrase, adaptive governance.¹⁷ With a new western market governance construct, we have the opportunity (and challenge) to align market function and public policy, in the context of technology, policy and market innovation, the need for equity and rate stabilization and creating and operating a more resilient grid under increasing climate variability.

We appreciate the opportunity to engage in the WWGPI. We look forward to ongoing engagement in this Initiative and with other stakeholders in the West.

/s/ Alaine Ginocchio

Governance Policy Consultant, Regional Markets
Western Resource Advocates
agpolsol@outlook.com

/s/ Vijay Satyal

Deputy Director, Regional Energy Markets – Clean Energy Programs
Western Resource Advocates
vijay.satyal@westernresources.org

¹⁴ Western EIM Governance Review– Phase Three (EDAM) Governance Review Committee Straw Proposal at 23 (July 15, 2022), available at: <http://www.caiso.com/InitiativeDocuments/EDAM-Governance-Straw-Proposal-WEIM-Governance-Review-Committee-Phase-3.pdf>.

¹⁵ Welton, 109 Cal. L. Rev. at 209, 216 (drawing from a review of dozens of clean-energy-related filings at FERC).

¹⁶ *Id.*

¹⁷ *See e.g., Id.*

/s/ Nicole Hughes
Executive Director, Renewable Northwest
nicole@renewablenw.org

/s/ Amanda Ormond
Director, Western Grid Group
amanda@westerngrid.net

/s/ Kelsie Gomanie
Advocate, Sustainable FERC Project
kgomanie@nrdc.org

/s/ Lauren McCloy
Policy Director, NW Energy Coalition
Lauren@nwenergy.org

/s/ Michael Colvin
Director, California Energy Program
Environmental Defense Fund
mcolvin@edf.org