West-Wide Governance Pathway Initiative

Summary of Responses to the August 29, 2023, Overview Document

Overview

On July 14, 2023, a coalition of Western state public utility commissions and other officials submitted a letter to the leadership of the Western Interstate Energy Board (WIEB) and the Committee on Regional Electric Power Cooperation announcing an initiative — the West-Wide Governance Pathway Initiative — to create an entity, governed independently, that can deliver market services throughout the West, including California. Soon thereafter, on August 29, 2023, as part of the California Independent System Operator’s (CAISO) Extended Day-Ahead Market (EDAM) Forum, this same coalition released an overview document identifying questions for stakeholder input:

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?

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?

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.

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?

The facilitators for this effort, Carl Linvill of the Regulatory Assistance Project and Jennifer Gardner of Envision Energy, LLC, requested stakeholder responses by September 11, 2023.

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1 This summary was created by Carl Linvill with Regulatory Assistance Project and Jennifer Gardner, Envision Energy, LLC, as part of the West-Wide Governance Pathway Initiative. It is meant as a high-level summary of all stakeholder comments and does not propose to represent or support a particular position or positions of any utility, entity, organization, state or province. For specific positions, please refer to the publicly posted comments: https://www.westernenergyboard.org/september-2023-stakeholder-comments/.


Since that time, WIEB has created a landing page on its website for this effort where all stakeholder comments and communications, including this comments summary, will be posted. Based on the stakeholder feedback received thus far, the facilitators have also created an email distribution list to disseminate additional information regarding next steps for this initiative.

**Support for This Initiative and Recommended Changes**

Most stakeholders who submitted comments expressed their support for this initiative, indicating that it presents a “fresh start” outside existing organizations necessary to address the need for independent market governance. While there was general support for the Phase 1 approach outlined in the August 29 overview, a number of stakeholders raised questions or concerns with the approach, with many offering recommendations for improvements, as discussed below.

**Phase 1: Scope, Process and Schedule**

A number of commenters appeared to generally agree that developing the form, mission and scope for the independent entity were appropriate Phase 1 tasks. Additionally, most stakeholders agreed that the timeline for Phase 1 is ambitious. While many support such a timeline, particularly given the competing decision timelines for existing day-ahead market decisions in the West, many others are concerned that this initiative proposes to accomplish too much, too fast. There were also numerous requests that an achievable timeline, including milestones, be established for this effort.

Specifically for Phase 1, there is general agreement that a charter, mission and focus should be established for the independent entity. One commenter clarified that “to be successful [Phase 1] must focus on governance and structure of the new entity [rather than market rules].” While many commenters appreciated that this initiative could create a pathway for a regional transmission organization (RTO), they also desire to preserve the benefits of the Western Energy Imbalance Market (EIM) and not predetermine the result. One commenter suggested narrowing the scope for Phase 1, given the ambitious timeline and bandwidth concerns, and instead focusing on critical threshold questions first (as outlined in the following section).

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4 See: [https://www.westernenergyboard.org/wwgpi/](https://www.westernenergyboard.org/wwgpi/).

5 See: AEU Comments at 1-2; APS Comments at 2; CEBA Comments at 1; Interwest Comments at 1; Joint Commenters at 1; Joint Competitive Stakeholders at 1; Joint Entity Comments at 4; NV Energy Comments at 3; PGE Comments at 1; PG&E Comments at 1; PGP Comments at 1; PIO Comments at 1; SCE Comments at 1; Seattle City Light Comments at 1; SDG&E Comments at 1; Shell Comments at 1; UCS Comments at 1; Western Freedom Coalition Comments at 1; and WPTF Comments at 1.

6 See, e.g., AEU Comments at 3; Enel Comments at 2-3; Leap Comments at 2; NV Energy Comments at 2; and SCL Comments at 2.

7 See, e.g., BPA Comments at 1-2; SCE Comments at 1; and UCS Comments at 2-3.

8 See: SCE Comments at 1-2.

9 See: SRP Comments at 4.
Board of Directors

Stakeholders requested clarity on whether the entity formed in Phase 1 would be governed by a foundational or interim board or a more permanent, fully independent board that meets RTO independence requirements established by the Federal Energy Regulatory Commission (FERC).  

A number of stakeholders recommended that for Phase 1, a foundational board first be seated; such a board would still be independent but would not necessarily need to meet FERC independence requirements. Similarly, some stakeholders recommended that a more permanent board be established — potentially as part of Phase 2 — only once the independent entity is established and able to enter into contracts for market services. This permanent board would meet FERC independence requirements. As one stakeholder noted, there is not enough time to develop a final governance structure (as indicated by a fully independent, FERC-compliant board) within the next four months; therefore, a staggered approach, including an interim or foundational board prior to the permanent board, is preferable.  

Those submitting Joint Entity Comments agreed with establishing the nonprofit entity in Phase 1 but felt that seating a board should wait until Phase 2 and should follow a nominating committee process, similar to that used for the Western EIM. Similarly, Joint Competitive Stakeholders felt that a sound governance framework and good governance principles should be established in Phase 1 and then Phase 2 should focus on implementation, led by a founding board.  

Stakeholder Process

There is widespread agreement among the commenters that the stakeholder process developed for Phase 1 must be transparent, broad and inclusive and enable all stakeholders to work constructively on analysis and options and to reach consensus on key issues. However, many stakeholders also note that their bandwidth is constrained due to the many regional efforts underway, including CAISO’s EDAM, Southwest Power Pool’s (SPP) Markets+, and Western Power Pool’s Western Resource Adequacy Program (WRAP). Some also question whether a stakeholder process for Phase 1 that is slated to last only four months is capable of being transparent, broad and inclusive, and therefore recommend a 

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10 See, e.g., BPA Comments at 3; PIO Comments at 6-7.
11 See, e.g., AEU Comments at 2; PIO Comments at 6-7; SCE Comments at 1-2.
12 See: AEU Comments at 3.
13 See: Joint Entity Comments at 2.
14 See: Joint Competitive Stakeholders at 2.
longer timeline.\textsuperscript{15} Regularly scheduled open stakeholder meetings (virtual and in-person) were encouraged by nearly all stakeholders.

Most stakeholders recommend that this initiative not reinvent the wheel, but instead build upon prior stakeholder processes that have worked well to date, including those processes related to the EIM Governance Review Committee, WRAP and SPP’s Markets+.\textsuperscript{16} Some commenters indicated support for a stakeholder engagement model similar to that of CAISO, where working groups can engage to help develop draft proposals and welcome stakeholder feedback, which then informs final proposals. Others suggested the use of a sector-based voting model, similar to the process used in SPP’s Markets+ stakeholder process. Still others recommended consideration of a governance proposal developed by Southern California Edison and endorsed by over 20 Western utilities.\textsuperscript{17}

A number of stakeholders had specific recommendations for how the stakeholder process for Phase 1 should be structured, including the development of some form of smaller “core” group of stakeholders to more efficiently address issues, such as a members committee, a transitional committee or a steering committee. Some of these recommendations are summarized below:

- **Cal Advocates**: Establish a sectoral-based transitional members committee to approve nominations to and advise the founding board.
- **EDF Renewables**: Form a transitional committee first, then identify the founding board members and establish the new nonprofit entity.
- **Joint Entity Comments**: Form a steering committee that enables broad stakeholder engagement in Phase 1 and directs work in future phases.
- **Portland General Electric (PGE)**: Adopt a stakeholder model that utilizes consensus-based decision-making and a core group of working members facilitating open and public meetings.
- **Public Interest Organizations (PIOs) joint comments**: A sector-based nominating committee should oversee the work of electing an independent board; the executive committee should establish independence criteria, including conflicts of interest, for members of the independent board. Independence criteria may need to be more flexible at the outset in the interest of expediency, but it will necessarily evolve to be consistent with FERC requirements once the independent entity contracts for market services.
- **PNGC**: A founding board should develop Phase 1 materials as a smaller group and then share materials for review and comment during later stakeholder meetings; frequent “all

\textsuperscript{15} See: BC Comments at 1-2; EDF Renewables at 2.

\textsuperscript{16} See, e.g., APS Comments at 2; BPA Comments at 2; Cal Advocates Comments at 3; Interwest Comments at 3; and TEP Comments at 2.

stakeholder meetings” should be held to obtain feedback on Phase 1 deliverables. An advisory committee should be potentially created to support the founding board and to prepare necessary analyses.

- Shell: A nominating committee should be established in Phase 1 for purposes of seating the independent entity’s board.

**Need for Legal Analysis**

A majority of stakeholders requested some form of legal analysis to determine if what is being proposed represents a viable path forward. Some stakeholders characterized certain legal questions as “threshold” questions that require “immediate” attention. A number of stakeholders raised concerns that a contract-for-services model was previously explored by the EIM’s Transitional Committee and rejected and that the current proposal should therefore be distinguished. Other stakeholders raised concerns with CAISO’s ability to delegate certain authority to a separate, independent entity. As noted by the Utah Office of Consumer Services, identifying and addressing potential obstacles early in Phase 1 will be critical not only for enabling stakeholder engagement, but also to establish a foundation for the overall success of the effort.

As noted in the Joint Entity Comments, CAISO is a corporation chartered under California law. Assuming that the current proposal envisions an independent entity contracting for market services with CAISO, a key threshold question will therefore be whether 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. Stated another way, will CAISO be able to participate in the new entity? Additional questions that could be addressed in such an analysis include:

- How will the board of the new entity interact with the CAISO Board? With the EIM Governing Body?
- What CAISO regulations, bylaws, internal directives, governance documents, etc., would need to be changed?

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18 See, e.g., AEU Comments at 3; BPA Comments at 1; CEBA Comments at 2; Enel Comments at 2; ID PUC at 1; Joint Commenters at 3-4; NV Energy Comments at 1-3; PGE Comments at 1; PG&E Comments at 1-2; PGP Comments at 1; PPC Comments at 1-4; SRP Comments at 1-3; TEP Comments at 1; UT OCS Comments at 2; Western Freedom Coalition Comments at 1-2; and WPTF Comments at 2.

19 See, e.g., PGP Comments at 1, SRP Comments at 2.

20 See, e.g., PGP Comments at 1; SRP Comments at 1; and WPTF Comments at 2.

21 See, e.g., PPC Comments at 2-3.

22 “Solutions to such barriers should be addressed early on in the process, rather than spending resources (including stakeholder time and effort) developing technical elements, only to be stymied down the road by these identifiable obstacles.” See: UT OCS Comments at 2.

23 See: Joint Entity Comments at 4.

24 See, e.g., CEBA Comments at 2; SRP Comments at 2.
● What market services can be practically unbundled? Are there functions that cannot be practically unbundled?

● Will California investor-owned utilities/load-serving entities be able to join the new entity?

● Is legislative change required to effectively implement the proposed governance model? If so, what changes are required?

In addition to the legal analysis requested by a majority of stakeholders, one stakeholder requested a political analysis to establish that there is sufficient political support within California to secure the buy-in necessary for this effort to succeed.\(^{25}\)

**Other Comments**

Other comments in various topic areas were provided and are summarized below.

● British Columbia expressed concerns that this initiative, up to this point, does not represent broad stakeholder agreement or input, including from some states. It also requests that the organizers of the effort (states and provinces) be more clearly identified.\(^{26}\)

● The Utah Public Service Commission indicated that it cannot formally engage in this initiative until the following conditions are met: (1) statutory changes in California to enable CAISO to shift to a fully independent governance framework; and (2) a demonstration of net economic benefits to Utah customers.

● The Wyoming Public Service Commission indicated that it cannot formally engage in this initiative at this time but will reconsider once the statutory barriers in California to a truly independent governance structure are overcome. Conditions for participation once the statutory barrier is overcome include full disclosure of funding sources, a transparent process to establish initial staffing, and evidence of significant economic benefits to Wyoming ratepayers.

● The Idaho Public Utilities Commission also indicated that it cannot formally engage in this effort, for the following reasons: (1) the initiative has been less than transparent concerning its creation and funding; (2) there is no evidence that the initiative’s goal of independent governance is feasible without changes in California legislation; (3) the timeline of seating a board by January 2024 is premature and unrealistic; and (4) at its core, the initiative presumes economic benefits for Western states without justification or specifics.

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\(^{25}\) See: SRP Comments at 2.

\(^{26}\) See: BC Comments at 1.
• A few commenters recommended an institutional partner for this effort, in addition to the facilitators, and specifically recommended WIEB.27

• A number of entities indicated that this effort should not predetermine the market operator — that is, it should not presume that CAISO will be the market operator that the independent entity contracts with for market services.28

• Similarly, some commenters indicated that no “end state” should be assumed — that is, the goal is not necessarily to create an RTO, but to create an entity that can serve the needs of the West.29

• Relatedly, Portland General Electric noted that market participants should be able to transition at a pace that meets their customers’ needs by providing a “menu” of options for services that could be performed by the market operator (i.e., real-time and day-ahead markets, BPA services, RA, transmission planning, interconnection, tariff administration, etc.).

• At least a couple of stakeholders indicated that they do not find the joint authority governance model used for EIM and EDAM to be independent.30

• There were numerous requests that this effort be more transparent about its funding sources.31

27 See: AEU Comments at 2-3; Interwest Comments at 4-5; and Joint Commenters at 2.

28 See, e.g., APS Comments at 2; BC Comments at 1; BPA Comments at 2; SRP Comments at 1-2; and TEP Comments at 1.

29 See., e.g., Joint Commenters at 1.

30 See: BPA Comments at 2; PGP Comments at 2.

31 See, e.g., BC Comments at 1; NV Energy Comments at 2; Shell Comments at 2; and UT OCS Comments at 2.