

**West-Wide Governance Pathways Initiative**  
**Phase Zero Comments Response & Phase One Straw Proposal**  
**September 29, 2023**

**Background**

On July 14, 2023, a coalition of western state public utility commissioners and other officials submitted a letter to the leadership of the Western Interstate Energy Board (WIEB) and the Committee for Regional Electric Power Cooperation (CREPC), announcing an initiative to create an entity, governed independently, that can deliver market services throughout the West, including California.<sup>1</sup> This effort, the “West-Wide Governance Pathways Initiative,” (Pathways Initiative or WWGPI) seeks to build on the benefits of the Western Energy Imbalance Market (Western EIM), realize the potential benefits of an extensive footprint for the Extended Day-Ahead Market (EDAM), and enable a path forward for a potential Regional Transmission Organization (RTO), should participants later so choose.

Recognizing the critical need for stakeholder engagement early in the initiative, on August 29, 2023, the coalition of states (states) requested input on several questions regarding Phase 1 of the initiative. Thoughtful and comprehensive comments were received from 35 entities or coalitions, spanning the length and breadth of the Western Interconnect. Stakeholder comments and other background materials related to the Pathways Initiative are now available on the WIEB website.<sup>2</sup>

**Pathways Initiative Purpose and Vision**

The comments pose a range of clarifying questions and differing perspectives on what the initiative should seek to create. The states offer this elaboration of the concept in an effort to respond to questions and incorporate stakeholder feedback.

**Problem statement:** The states are primarily responding to concern from some entities regarding the timeframe and pathway to independent governance for the regional market services provided by the California ISO (CAISO).<sup>3</sup> There was broad stakeholder agreement that joint authority was a sufficient approach for the governance of the Western EIM, and while many stakeholders felt that joint authority was also adequate for EDAM, the level of agreement was not as broad. Additionally, many entities are not considering joining an RTO. For these entities, the evaluation of EDAM is relatively straightforward as both the tariff and governance are known. However, some entities have stated publicly that their day-

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<sup>1</sup> Letter from Western State Regulators and Energy Officials to Chair Megan Decker, Cabinet Secretary Sarah Cotrell Probst, Commissioner Andrew McAllister, and Laura Rennick (July 14, 2023) (available at: <https://www.westernenergyboard.org/wp-content/uploads/Leter-to-CREPC-WIEB-Regulators-Call-for-West-WideMarket-Solution-7-14-23.pdf>).

<sup>2</sup> WIEB has offered to host a webpage for the initiative to support transparency, as this initiative is not organized under the structure of an existing institution. (Available at: <https://www.westernenergyboard.org/september-2023-stakeholder-comments>).

<sup>3</sup> The CAISO is currently a balancing authority (BA) and provides market services to other BAs through the Western EIM and EDAM. To more clearly differentiate which role is being referenced, this response paper will refer to the CAISO BA and the Western EIM and EDAM or Western market services.

ahead market decision includes the value they place on independent governance for the day-ahead market or requires the potential for independent governance for any market services beyond EDAM.

The states recognize that repeated studies of markets in the Western Interconnect demonstrate customer benefit is maximized when the largest footprint is optimized. The benefits of the Western EIM have grown as the load and resource diversity has expanded and studies show this pattern is likely to continue in a day-ahead market. There also appear to be reliability benefits in a larger footprint, as entities across the West manage extreme conditions. Customers have also already funded extensive development and implementation costs to create the Western EIM. As some entities weigh their decisions, states saw the need to catalyze a pathway to independent governance to create the broadest customer benefits.

**Proposed Solution:** In response to this problem statement, this initiative is focused on creating an entity that could allow the independent governance of the Western EIM and EDAM. The ideal structure would enable and prioritize:

- the autonomy and independence of all participating entities,
- equitable representation among all Balancing Authorities (BAs) and states, and
- flexibility to allow participants to add or participate in services as and when they desire.

Concretely, the states propose creating an entity that all BAs, including the CAISO BA, relate to in a similar manner. Today, the CAISO BA is intertwined with the Western EIM and EDAM markets within the CAISO tariff and institutional structure. Other BAs can choose to join and leave the markets. There are sound historical reasons for this approach and the joint authority model of both EIM and EDAM balances the ways in which the BAs are differently situated. However, a pathway towards independent governance of the Western EIM and EDAM markets must fundamentally change how the BAs are positioned so that no one BA has structurally more power or faces more impacts than another.

The states recognize there are many complex details in such a future project. However, the independent governance structure would be in place to undertake that work, should the participants decide that it would deliver customer benefits.

**Development:** As was made clear in the comments, there are a range of structures that could deliver on this vision and while states are well-informed about past roadblocks, states have not sought to narrowly dictate ‘how’ the entity should be structured going forward. Instead, the states are creating a process where stakeholders can work closely with policymakers to craft a structure and scope that can accomplish this vision.

The states note convergence in the comments on several principles that should shape the entity, including:

- Independence and transparency
- Equitable treatment for all participants
- Local resource decision-making and respect for state policies
- Enhanced reliability and lower system costs

The states add that the entity’s central aim should be to maximize public benefits and that the entity should incorporate the “Multi-state Electric Organization Principles” that states across the Western Interconnect published in 2022.<sup>4</sup>

Commenters raise questions about the scope of the independent entity, with some suggesting contracting for services alone is an insufficient solution. Some commenters frame scope as a question regarding which entity oversees the tariff, while others describe an interest in more deeply bifurcating the current CAISO organization. The work of Phase 1 is evaluating these variations on scope and form alongside the practical and legal questions that they each raise. Commenters have already raised many of the detailed questions that will need to be resolved, and we acknowledge that additional questions are likely to arise. Ultimately, these varying scenarios need to be explored in light of the goals described above.

Additionally, some commenters propose the entity conduct an RFP for market services prior to contracting. The states note the extensive sunk cost in developing the Western EIM and EDAM. Thousands of hours have been invested in understanding and tuning the optimization that 80% of the load in the Western Interconnect currently utilizes intra-hour. Customers have already paid to develop and utilize the complex and costly market infrastructure. While an independent entity is, by definition, independent and could therefore incorporate an RFP into implementation, if necessary, states are beginning this initiative with the narrower scope of addressing the problem statement – creating a pathway to independent governance for the Western EIM and EDAM so that maximum benefits can flow to customers.

### **Viability and Legal Analysis**

Many stakeholders raised questions about the viability of the solution put forward by states. This was important to stakeholders for many reasons, including the EIM Transitional Committee’s prior work on a similar proposal, the resources required to participate in Phase 1, and the differing perspectives regarding the scope of the solution.

The states envision that the Phase 1 Launch Committee’s work is to refine and answer many of the specific questions raised in the comments. Scope and viability are interrelated issues and can be understood as ‘scenarios’ to be explored. One scope or approach may be viable and yet not considered ‘independent enough’ by some, while a differing approach might be functionally impractical, even if legally viable. The work of Phase 1 is to create a concrete solution that meets entities’ needs by addressing these intertwined issues.

As an initial issue, the states understand that the EIM Transitional Committee’s final report references legal advice that suggests that CAISO’s ability to contract is limited in terms of scope (i.e., what services are being contracted) and authority (i.e., who has authority over the FERC filings related to those

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<sup>4</sup> Available on the WIEB website: <https://www.westernenergyboard.org/wp-content/uploads/Multistate-Governance-Principles-4-25-22.pdf>

contracted services).<sup>5</sup> The states note that CAISO currently contracts with entities to provide advisory day-ahead setup and has delivered the Reliability Coordinator function for many entities in the West, which is a service beyond the legislated CAISO BA services. Neither of these new roles was contemplated in 2015. In this instance, the question does not appear to be a legal determination whether the CAISO can contract to provide services but may instead be:

- Whether the CAISO BA could join that independent market, in a manner similar to other BAs; and
- Whether the contracting for services approach offers sufficient independence for entities (i.e., whether the entity contracting for market services has sufficient authority over those market services, including the ability to make all necessary filings at FERC).

The proposal envisions that the CAISO BA, with its current governance framework, could choose to participate in an independent Western EIM and EDAM – as other BAs have chosen to. As a result, the proposal does not contemplate starting with changes to California legislation. However, the Launch Committee will track any necessary legislative changes and may uncover other hurdles as they evaluate the detailed questions stakeholders raised in their comments and as the new entity evolves. It is clear that any legal analysis is intertwined with preferences about the scope of work the new entity takes up.

States are committed to working with stakeholders to quickly understand roadblocks and seek meaningful and timely solutions.

## **Schedule**

While many support the ambitious proposed timeline, particularly given the timelines for existing day-ahead market decisions, many are concerned that this initiative proposes to accomplish too much, too fast.

The states are also extraordinarily stretched, having invested effort in developing joint authority and EDAM and seeking to constructively engage in advocating for customers in Markets+. However, the participating states are concerned that customer benefits maybe be eroded in the near and long term by the continued persistence of the governance issue.

To help reduce time pressure, the states adopt the recommendation of many commenters and propose standing up the Nominating Committee later in 2023 and seating the initial (or foundational) board by spring of 2024.

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<sup>5</sup> Several commenters raised different aspects of the Transitional Committee’s finding in their final proposal in 2015 that, “Creating a new market, legally separate from the ISO, could jeopardize the cooptimization that is a key feature of EIM. The existence of two entities, moreover, would require investments that could undermine the easy-entry/easy-exit that is central to the EIM’s value proposition.” (accessed at: [https://www.westerneim.com/Documents/Decision\\_EIM\\_GovernanceProposal-Proposal-Aug2015.pdf](https://www.westerneim.com/Documents/Decision_EIM_GovernanceProposal-Proposal-Aug2015.pdf)). The states do not seek to create a duplicative market but to evolve governance of the existing Western EIM and EDAM market to a new entity, preserving the investments made by the CAISO and utilities. Past work, such as analysis by the Governance Review Committee, underscored that it is difficult to separate the existing tariff into functions, though the scope of joint authority model suggests it can be done to the satisfaction of many entities.

Additionally, to support scheduling, transparency and engagement, states will publish a schedule of monthly stakeholder sessions, to be used by the Launch Committee as they require. Virtual participation will be available for all meetings and meeting recordings will be publicly posted.

## **Transparency**

Like stakeholders, states prize transparency. To support transparency in this initiative, states have worked with WIEB to create a landing page to post meeting announcements, associated documents, and stakeholder comments for this phase of the initiative.<sup>6</sup>

States also encourage interested parties to sign up for the distribution list by contacting Carl Linvill at [clinvill@raponline.org](mailto:clinvill@raponline.org) and marking their calendars with the scheduled monthly stakeholder sessions.

This effort, to date, has been supported by the Regulatory Assistance Project (RAP) through a \$50,000 allocation from a pre-existing budget of 501(c)(3) funds earmarked to support western market development. It should be noted that RAP's support for state engagement in the SPP Markets+ effort came from the same source of funds and the amount expended to support those activities to date has exceeded \$50,000. The states propose that the Launch Committee decide how to fund Phase 1 and to create options to fund Phase 2.

## **Next Steps**

Organizations that seek to volunteer to help form the Launch Committee should notify the states by October 6. Volunteers should be interested and motivated in helping to successfully launch the West-Wide Governance Pathways Initiative as expeditiously as possible.

Volunteers should contact Carl Linvill at [clinvill@raponline.org](mailto:clinvill@raponline.org). RAP will organize a two-hour meeting the week of October 9 with the volunteers.

The volunteers will deliberate the week of October 9 and settle on the sectoral and geographic composition of the Launch Committee.

The volunteers will seek to fill out as much as possible of the slate by October 20, and the volunteers will present a full or partial slate of the proposed Launch Committee members at the Pathways Initiative Stakeholder Check-in Meeting on October 20.

The volunteers will work to fill out any remaining vacancies on the Launch Committee by October 27.

The Launch Committee will meet the week of October 30 and will identify:

- The highest priority tasks to address first;
- The working groups needed to address the highest priority tasks;
- Leadership for the working groups; and
- A process for staffing the working groups.

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<sup>6</sup> See: <https://www.westernenergyboard.org/wwgpi/>.

Working groups that may be important to establish early include:

- A stakeholder engagement working group
- A charter development working group
- A founding board nomination committee working group
- A human resource and funding working group
- A technical and legal analysis prioritization working group

The November 17 Pathways Initiative Stakeholder Check-in should include:

- A report out on working groups formed and leadership established;
- A report out by working groups that have established goals and milestones for Phase 1; and
- Identification of issues where the Launch Committee requests stakeholder comment and input.

## **Phase 1 Straw Proposal**

### **Scope of Phase 1**

Phase 1 aims to decide the key elements of independent entity so that it can be successfully launched with a foundational board.

- Form the Launch Committee and the Nominating Committee.
- The Launch Committee will oversee the development of the analysis of options, will utilize a working group structure, and will facilitate a stakeholder process.
- The Launch Committee will set out the charter and other foundational documents in order to launch the independent entity.
- The Nominating Committee will seat the foundational board, which will implement the pathway to independent governance in Phase 2.

### **Launch Committee**

The Launch Committee is envisioned as a stakeholder-comprised committee that can direct the work in Phase 1. It will be representative of all stakeholder sectors and be geographically diverse. Membership should include representation from western states, California utilities, utilities outside of California, independent power producers and power marketers, public power and consumer-owned utilities, federal Power Marketing Administrations, consumer advocates, and public interest organizations.

The Launch Committee's tasks include:

1. Agree on a timeline and milestones for Phase 1
2. Agree on a funding and staff support strategy for Phase 1
3. Utilizing independent legal advice, determine the feasibility, pros, and cons of different 'scenarios' - corporate structures and scopes
4. Decide on the form, mission, and scope of the independent entity
5. Develop the charter to guide the initial work of the independent entity
6. Seat the Nominating Committee near the end of Phase 1

To successfully deliver these outcomes, the Launch Committee will be empowered to form working groups of stakeholders and to work directly with industry subject matter experts and consultants, as needed. The Launch Committee will strive for consensus-based decision-making, but where consensus cannot be reached, sector-based voting should be utilized, with each stakeholder sector having one vote and the majority vote prevailing.

Where working groups are formed on specific issues, issue proposals will be developed. These proposals will be vetted with the Launch Committee and shared with stakeholders. Public comment should be welcomed throughout the process. The Launch Committee will be responsible for coordinating stakeholder engagement around these proposals and will be assisted by the RAP facilitators for the

Phase 1 effort. As noted by stakeholders in their Round 1 comments, the stakeholder engagement model utilized by the Launch Committee should be transparent, flexible, inclusive, and adaptive.

Given the short time frame stakeholders articulated for their day ahead market evaluation and the lack of an existing decision-making structure, seating the Launch Committee is an urgent step. The states ask stakeholders to volunteer to help with the formation of the Launch Committee by October 6, 2023. The states will organize a meeting the week of October 9 for the volunteers to gather in order to:

- Settle on the sectors that should be represented on the committee
- Identify the geographic representation of sectors that makes for a strong regional committee
- Reach out to sectors for suggestions on whom should serve

The volunteers will be asked to present the sectoral and geographic composition of the Launch Committee on October 20 at the Pathways Initiative Stakeholder Check-in. The volunteers will present a slate of members to all stakeholders on October 20, or as much of a slate as can be formed. The members of the proposed slate will be:

- Senior decision-makers that can represent the needs of their entities and sectors
- Experienced in the issues the Launch Committee must undertake
- Have the capacity to meet virtually to accomplish the tasks outlined
- Have staff or other 'in kind' capacity to bring to the effort

To the extent that certain seats are vacant, the Launch Committee will seek stakeholder input on completing the slate and will seek affirmation from stakeholders that the slate is reasonable.

States will assign Commissioners to the committee to participate as peers in the Launch Committee's work. Those representatives will coordinate with the states in the coalition and continue outreach to states currently not participating.

## **Legal Analysis**

Beyond the foundational documents necessary for establishing the non-profit entity, one of the critical tasks for Phase 1 will be the development of scenarios and phasing of next steps and identification of advantages and tradeoffs of different aspects of each scenario. A scenario is the combination of a scope of work and a corporate structure or form for the new entity. Legal, technical and practical factors should be taken into account, and the Launch Committee can determine that consultants or legal counsel would be useful in developing the analyses of scenarios. The Launch Committee should also consider pathways for the evolution of the independent entity and issues related to the pathways, such as:

- What is needed for viability and feasibility of a contract for services model? The current proposal does not envision two markets or a separate operation of the EIM and therefore avoids the duplication present in the contract for services model set forth in the EIM Transitional Committee report. Nevertheless, other hurdles exist and should be explored and weighed.



- The current proposal envisions retaining the CAISO balancing authority with its current board structure. The states believe that the CAISO BA can participate in the independent Western EIM regional market, in a way that is similar to any other BA. As a result, the proposal does not contemplate starting with California legislation to revise the governance structure of CAISO. Other changes in law may be needed, however, depending on how the model develops and what the full scope of functions performed by the independent entity eventually include.

The Launch Committee is empowered to undertake legal analysis as needed to understand options and propose the implementation pathways that best addresses entities needs and the hurdles that may exist.

### **Nominating Committee**

The Nominating Committee will be established toward the latter part of Phase 1 and will begin the candidate search process for the foundational board at the beginning of Phase 2. The composition of the Nominating Committee should reflect that of the Launch Committee - i.e., it must be representative of all stakeholder sectors and be geographically diverse. Membership should include representation from western states, California utilities, utilities outside of California, independent power producers and power marketers, public power and consumer-owned utilities, federal Power Marketing Administrations, consumer advocates, and public interest organizations.

The Nominating Committee may require the assistance of a search firm for purposes of seating the foundational board. Additionally, it should identify selection criteria for candidates and establish a process for identifying candidates, thoroughly vetting candidates, and obtaining stakeholder feedback on potential candidates. As with the Launch Committee, the Nominating Committee will strive for consensus-based decision-making, but where consensus cannot be reached, sector-based voting should be utilized, with each stakeholder sector having one vote and the majority vote prevailing. The states will participate on the nominating committee in the same way they currently participate in nominating committees in the Western EIM and the WPP WRAP, as a peer sector representative. The Nominating Committee will seek the Launch Committee's agreement on the foundational board selection.

The above referenced process will ensure that the foundational board's membership is independent, has the support of the wider stakeholder community, is diverse both geographically and professionally, and possesses the necessary expertise. The size of the foundational board should also strike the right balance - i.e., it must be large enough to ensure the desired level of diversity and expertise, but it must also be nimble enough to efficiently make decisions. A five member board, as utilized for the Western EIM and the Western Power Pool, respectfully, seems to strike the right balance.

### **Foundational Board**

The foundational board will be seated as part of Phase 2. Similar to the process used for the Western Power Pool's foundational board for the Western Resource Adequacy Program (WRAP), it will be a preliminary board and will therefore not be required to meet FERC independence requirements for RTOs

and ISOs until the independent entity contracts for market services.<sup>7</sup> At the time of this “triggering event,” the foundational board will presumably need to transition to a fully independent board that satisfies FERC’s independence requirements.

One of the foundational board’s first tasks will be to establish the non-profit entity and to begin negotiations necessary to enable the non-profit entity to contract for market services or otherwise operationalize the pathway decided by the Launch Committee. This will include the creating and implementing an initial funding and staffing model.

Once the independent entity is established, the foundational board will need to pivot to developing the fine-grained governance for market services. Building on the foundational principles that the Launch Committee has established and utilizing both the existing Western EIM stakeholder approach and the extensive work already done in the West on governance, the foundational board will adopt the stakeholder processes, dispute resolution processes and other details of decision making in preparation for overseeing tariff decisions.

The final task for the foundational board will be seating the permanent, fully independent board, in anticipation of the contract for market services being fully executed or another triggering event. To accomplish this, the foundational board will be responsible for hiring a search firm necessary to seat the fully independent, permanent board, and will also oversee a stakeholder process to obtain feedback on potential candidates - similar to the Nominating Committee process used to seat members of the Western EIM Governing Body (and similar to the Nominating Committee process used to seat the Foundational Board members in the beginning of Phase 2).

## **Proposed Timeline and Milestones**

### **Phase 1 = September 2023 - January 2024**

- Seat Launch Committee at the beginning of Phase 1.
- Launch Committee facilitates stakeholder process, with assistance from RAP facilitators.
  - Through the stakeholder process, the form, mission, scope of the independent entity, as well as the independent entity’s charter, is finalized.
- Establish the Nominating Committee near the end of Phase 1.

### **Phase 2 = January 2024 - May 2024**

- The Nominating Committee process kicks off at the beginning of Phase 2.
  - Identify qualified candidates, interview candidates, and select final candidates for the independent entity’s foundational board.
- Seat Foundational Board by March 2024.
- Establish the non-profit entity by April 2024

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<sup>7</sup> “Independence” in this sense includes financial independence from market participants in order to ensure that board members cannot be unduly influenced by these entities.