

October 15, 2021

Northwest Power Pool

7505 NE Ambassador Place, Suite R

Portland, Oregon 97220

Re: Northwest Power Pool's Western Resource Adequacy Program Governance

Dear Northwest Power Pool Steering Committee:

The signatory states to these remarks appreciate the opportunity to submit comments on the governance of the Northwest Power Pool's (NWPP) Western Resource Adequacy (RA) Program. These comments are the result of a series of NWPP-State/Provincial Governance Workshops and State/Provincial Meetings to discuss the NWPP's draft governance provisions for the Western RA Program. Eleven western states and the province of British Columbia participated in these workshops and meeting discussions. We appreciate the time and effort the NWPP has committed to working with the participating jurisdictions to define the important role of states and to refine governance details for the Western RA Program.

Maintaining resource adequacy is a critically important issue to regulators and policy makers in the West. States have historically been responsible for making determinations about reserve margins and resource capacity contributions; determinations that, indirectly, respond to state policies. It is important now that the NWPP and the Western states continue to work in collaboration toward the continued success of the Western RA Program and with a clearly defined role for how states will contribute to and participate in this effort. Effective engagement of policy makers in the Western RA Program will help to ensure the Program's long-term stability in light of diverse and rapidly evolving state policy choices regarding resources and markets.

These comments are submitted to the NWPP by representatives of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming, in an effort to share with the NWPP their concerns with, and suggestions to improve, the Draft Governance Provisions and to better define the role of states in the Western RA Program.

#### **NWPP BOARD OF DIRECTORS**

##### **The Board's Role in Decision-Making**

Signatory states to these comments (hereinafter referred to as "Signatories") feel strongly that the NWPP's Western RA Program Governance Provisions must empower the Board of Directors to function as a truly independent Board. The NWPP proposes to restructure its Board to be comprised of independent Directors that are "independent of any participant or stakeholder in the RA Program, either

by employment or affiliation.”<sup>1</sup> Additionally, the NWPP proposes Director term limits, providing that Directors may serve up to two three-year terms.<sup>2</sup>

Signatories agree that the NWPP Board must operate independently of RA Program participants and stakeholders and believe that term limits would further support original thinking and independence amongst Directors. However, Signatories are concerned that, as drafted, the Governance Provisions do not establish a truly independent role for the Board. Instead, the Governance Provisions create the perception, if not actuality, that the Board is merely a rubber stamp for actions approved by the RA Participants Committee (RAPC), giving the RAPC primary control over decision-making for the RA Program. As provided in the Detailed Design Document, “[i]f the RAPC approves an action and such action is not appealed to the [Board], the action is deemed to be approved by the [Board][.]”<sup>3</sup>

The Board should not be presumed to have approved items that have not come before it. Nor should the Board be presumed to have approved items that may not have been presented clearly or that, for other reasons, have not been appealed to the Board. Signatories feel strongly that the NWPP RA Program Governance Provisions should not contemplate such a passive role for the Board. Instead, the Governance Provisions should provide a framework in which: 1) actions approved by the RAPC are brought before the Board as initiatives or agenda items; and 2) the Board will actively and effectively engage in consideration, decision-making, and approval of all RA Program actions. The Governance Provisions should empower the Board to deliberate on RA Program actions, to consider various stakeholder perspectives, and to actively engage in informed decision-making processes regarding the RA Program before approving actions and authorizing the NWPP to submit related regulatory filings.

Further, while not in agreement with the proposed decision-making/appeal process, Signatories recognize that a formal process to appeal decisions-made by the RAPC is necessary and appropriate. Signatories are concerned that an appeals process is not clearly detailed in the draft governance documents. Signatories recommend that the NWPP continue to work with the states, other stakeholders, and program participants to draft an appeals process specifying, among other things, who has standing to appeal decisions of the RAPC or Board, when an appeal must be filed and with whom, what process the NWPP will use to respond to appeals, and who will make a final determination on decisions appealed.

### **The Board’s Relationship to the RA Participant Committee**

Signatories feel strongly that the NWPP RA Program Governance Provisions must empower the Board to hold the RAPC accountable for discharging its responsibilities. The RAPC is responsible for developing and recommending RA Program policies, procedures, and system enhancements.<sup>4</sup> The RAPC can approve or reject proposed amendments to the RA Program Tariff and can also consider, approve, or reject RA Program rules.<sup>5</sup>

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<sup>1</sup> NWPP Regional Resource Adequacy Program DRAFT Governance Provisions (Draft Governance Provisions)(July 22, 2021), 1.

<sup>2</sup> NWPP Resource Adequacy Program – Detailed Design (Detailed Design Document)(July 2021), 23.

<sup>3</sup> Detailed Design Document, 36.

<sup>4</sup> Id. at 34.

<sup>5</sup> Id.

As provided in the Detailed Design Document, “[t]he [Board] will provide independent oversight of NWPP’s administration of the RA Program[.]”<sup>6</sup> In doing so, the Board must also provide effective oversight of the RAPC.

Signatories feel strongly that the NWPP RA Program Governance Provisions should empower the Board—in its role of providing independent oversight of the RA Program—to hold the RAPC accountable for its actions or inactions in fulfilling these responsibilities.

### **Closed Executive Sessions of the Board**

On the matter of Closed Executive Sessions of the Board, Signatories feel strongly that the NWPP RA Program Governance Provisions must be clear as to what matters will be addressed in closed Board sessions. The Detailed Design Document provides that “[Board] meetings for the RA Program will be open and noticed to all stakeholders for all meetings except when in executive session. Executive sessions (open only to Directors and to parties invited by the Chair) will be held as necessary upon agreement of the [Board] to safeguard confidentiality of sensitive information.”<sup>7</sup>

Signatories recognize that issues will arise that can only be appropriately addressed in closed sessions of the Board; issues such as personnel and legal matters. However, we request that the Governance Provisions provide more clarity, creating some parameters and identifying more specifically the matters to be addressed in closed session.

## **BOARD OF DIRECTORS NOMINATING COMMITTEE**

### **Membership & Voting**

Signatories feel strongly that the Committee of State Representatives (COSR) should have a meaningful vote in selecting members of the independent Board. As proposed in the Draft Governance Provisions, the Nominating Committee (NC) will be comprised of 12 individuals and will be responsible for recommending a nominee (or nominees) for open positions on the [Board]; the COSR will have one non-voting member that would, however, vote in the event of a tie.<sup>8</sup> Further, the Draft Governance Provisions provide that the NC will be “patterned after the NC framework used for the Western [Energy Imbalance Market (EIM)].”<sup>9</sup>

Signatories appreciate and support the NWPP’s proposal to pattern the NC after the EIM NC. The EIM NC strives to achieve consensus in its decisions and recommendations and, although once comprised of both voting and non-voting members, has extended voting privileges to all EIM NC members. This model has proven successful in identifying strong candidates for an effective and independent EIM Governing Body.

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<sup>6</sup> Id.

<sup>7</sup> Detailed Design Document, 28.

<sup>8</sup> Draft Governance Provisions, 1-2.

<sup>9</sup> Id. at 1.

Like the EIM NC, Signatories expect that the NWPP NC will also strive to reach consensus in selecting and recommending a nominee(s) for open positions on the Board. Further, as with the EIM NC, Signatories feel strongly that all NWPP NC members—including the states—should have the same level of influence as other members of the NC, as well as a meaningful voice in helping to select members of the independent NWPP Board. We recommend that the governance documents be revised to reflect that all members of the NWPP Board NC will have a vote—specifically noting that the COSR Chair or Vice Chair will act as a *voting* member of the NC—and that the NC will strive to reach a consensus position in its decisions and recommendations.

## **COMMITTEE OF STATE REPRESENTATIVES**

### **Appointment to the RA Participants Committee**

Signatories recommend that the COSR be able to appoint at least one representative to the NWPP’s RA Participants Committee (RAPC). In the Draft Governance Provisions document, “[t]he NWPP proposes to create a [COSR] to advise the NWPP and the [Board] on the governance and design of the Regional RA Program.”<sup>10</sup> The RAPC is responsible for developing and recommending RA Program policies, procedures, and system enhancements.<sup>11</sup>

The COSR would be best positioned to effectively engage in these areas and to advise the NWPP and the Board on the governance and design of the Regional RA Program if it were able to appoint a COSR representative to the RAPC; a COSR-RAPC member with a role and vote in the design process. In the Midwest Independent System Operator (MISO), for example, states hold four voting seats on the MISO participants committee (the equivalent to the NWPP RAPC). A similar governance structure for the NWPP would better support COSR engagement on the governance and design of the RA Program.

Further, Signatories feel strongly that appointing a COSR representative to the RAPC would provide greater transparency and important insight into RAPC actions and efforts. The Detailed Design Document provides that, “[m]eetings of the RAPC are open to all interested parties . . .”, however, “the RAPC may limit attendance during specific portions of a meeting by an affirmative vote of the RAPC in order to discuss issues that require confidentiality.”<sup>12</sup>

The RAPC holds significant control over the performance and direction of the RA Program. Signatories feel that active participation in RAPC actions and efforts is important and that, for the sake of transparency, the COSR should have some view into RAPC activities. Engagement with the RAPC when significant discussions are underway is more effective than commenting after the fact on a recommendation or decision on which participants have agreed. However, at this time, the Detailed Design Document provides that “[p]articipation in RAPC is limited to Participants.”<sup>13</sup> For purposes of effective engagement with, and transparency into, actions of the RAPC, we recommend that the

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<sup>10</sup> Draft Governance Provisions, 2.

<sup>11</sup> Detailed Design Document, 34.

<sup>12</sup> Id. at 36.

<sup>13</sup> Id.

Governance Provisions provide that the COSR be entitled to appoint at least one representative to the RAPC.

### **FERC Section 205 Filing Rights**

Regarding the issue of COSR Section 205 Filing Rights, Signatories feel strongly that this is an issue that is important now and that may become even more important over time as the Regional RA Program continues to evolve. Section 205 of the Federal Power Act provides that “[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission . . . shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.” With Section 205 filing rights, the states could file a rate or tariff change proposal at FERC.

States have historically been responsible for determining both reserve margin requirements for utility system planning and capacity contributions of various resources. These state decisions bear heavily on regulators’ state-authorized and state-mandated duties, in various agencies, to ensure that utility customers are protected, pay just and reasonable rates, and receive reliable service in accordance with state policies. The Western RA Program will introduce a regional element, as well as FERC jurisdiction, into such determinations and may alter, or at least supplement, the processes through which such determinations are made going forward. As the Western RA Program is established and begins operations, it is important to ensure that states can continue to fulfill their responsibilities to utility customers as defined by state legislatures with an appropriate ability to influence the Western RA Program’s effect on such determinations. Having Section 205 filing rights from the start will give states a clear voice in doing so. Both the Southwest Power Pool (SPP) and the Midwest Independent System Operator (MISO) utilize shared Section 205 filing rights between the participants committee and the states committee. In SPP, decisions such as those proposed to be made by the NWPP’s RAPC are delegated entirely to the states committee, which holds primary Section 205 filing rights. In MISO, the states committee holds four voting seats on the participants committee—the primary body charged with policy decisions—as well as complementary Section 205 filing rights.

Signatories feel strongly that Section 205 filing rights are important as the RA Program begins, favoring the use of Section 205 filing rights as a backstop mechanism, helping to ensure continued state authority over issues associated with state policy. Further, Signatories feel that Section 205 filing rights will continue to be important in the future, as the RA Program continues to evolve and potentially develop into a fully organized Western electricity market.

### **Designating COSR Members**

Signatories feel strongly that the appropriate designation of representatives to serve on the COSR should be decided upon on a state-by-state basis. We appreciate NWPP’s effort to reflect feedback already received on this issue in the Draft Governance Provisions<sup>14</sup>, which provide that, “[t]he [COSR] will be comprised of one representative from each state with a Load Responsible Entity (LRE) participating in the

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<sup>14</sup> Draft Governance Provisions, 2.

Regional Resource Adequacy Program, either from the public utility commission, a state energy office at each state’s discretion or a state-funded consumer advocate.”

States operate under different legal frameworks and may be positioned differently with respect to the responsibilities assigned and authorities granted to different agencies for energy regulation and policy. They also may be positioned differently with respect to staff and financial resources. Accordingly, the states are in the best position to determine how their representation can be best accomplished on the COSR. Signatories feel that the NWPP RA Program Governance Provisions should provide states with the flexibility necessary to identify the individual most appropriate and able to engage in performing this work, designating its COSR representative from the commission, the energy office, the office of the consumer advocate, or other state agency.

### **COSR Staffing and Funding**

Signatories feel strongly that staff support for the COSR is an important issue that warrants further discussion. The NWPP has noted in the Detailed Design Document, “[t]he [COSR] will likely need support from staff” to remain informed and effectively engage on Regional RA Program matters.

Regarding staff support and funding, Signatories believe that: 1) engaging an independent staff to support COSR efforts in the RA Program is important; and 2) considerations should be made of associated costs that will be incurred and the reliability benefits that will be experienced by utility customers. The Signatories recognize that state participation in the RA Program is important and that staff support would be extremely beneficial and ensure that the COSR is able to engage early and more effectively in RA Program initiatives and efforts. It is important that the COSR have the staff support necessary to proactively track RA Program initiatives and activities and to effectively engage on these matters without further taxing limited state staff resources. Effective staffing means staff that can attend meetings, highlight important issues for consideration, and facilitate meaningful discussions on important RA Program matters. Still, Signatories recognize that the cost of staffing the COSR, regardless of the mechanism, will ultimately be passed on to utility customers.

Taking these observations into consideration, the Signatories agree that the Western Energy Imbalance Market Body of State Regulators (EIM-BOSR) provides a good model for engaging an independent staff, without the added costs associated with creating a new organization to perform this work. The EIM-BOSR once found itself in a similar situation; needing dedicated, independent staff resources to support an increased level of activity and engagement as the wholesale electricity market continued to rapidly expand through the West. The issues there were the same. The EIM-BOSR, needing independent support staff to effectively engage in the evolving EIM and recognizing that ratepayers would ultimately bear the cost of this support, elected to engage an existing regional organization with a focus on energy matters to conduct this work. This is an issue ripe for further discussion. The Signatories appreciate the NWPP’s acknowledgement that this is an important issue<sup>15</sup> and look forward to continuing this discussion and to collaborating with the NWPP to identify a path forward that is in the best interest of utility customers.

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<sup>15</sup> Detailed Design Document, 40.

## **Maintaining State Authority and Decision-Making**

With regard to state participation in the Regional RA Program, Signatories feel it is essential that the NWPP RA Program Governance Provisions expressly state that federal preemption of state authority is neither intended or sought.

During the State/Provincial Meetings, participants discussed concerns that state participation in the Regional RA Program could potentially lead to a preemption of state authority and decision-making. As noted in the Draft Governance Provisions and Detailed Design Document, “[t]he [COSR] will advise the NWPP and the [Board] on the governance and design of the Regional RA Program”<sup>16</sup> and provide “states’ perspectives on matters such as integrated resource planning, reserve requirements, emerging policies concerning renewable generation, storage, efficiency and demand resources, and rules for retail choice . . .”<sup>17</sup>

Signatories feel strongly that it is important to engage in Regional RA Program processes and to provide an informed perspective on the overall Program. However, the states want to be clear that, in this process of engaging and having a say with respect to the Regional RA Program, they are not agreeing to federal preemption of state authority. Therefore, we ask that the governance documents include a clear statement that federal preemption is not intended or desired as a consequence of establishing a strong state role in the NWPP’s Regional RA Program.

## **INFORMATION AND DATA SHARING**

Signatories feel strongly that transparency, including sharing of information and data, is an important issue that warrants further discussion and deliberation. Western state regulators and energy offices need to have full confidence in the Western RA Program; assurances that Program participants are not only participating in the RA Program but are compliant with program requirements.

The Western RA Program will have interconnection-wide implications including for SPP, the California Independent System Operator (CAISO), and Canadian components of the overall Western Interconnection (WI) adequacy picture. Robust, time-relevant communications across the “seams” between adjacent RA programs, and with regional system operators, will be critical for maintaining a high level of situational awareness across the WI, especially in times of extreme west-wide weather events. The recent memo on Western RA Program Information Sharing recognizes in general terms this critical function of the Program Operator. We suggest that the Western RA Program contemplate co-development of and participation in a clearinghouse function for the entire WI, specifically for generation resources and their deliverability.

The Detailed Design Document proposes a role for an Independent Evaluator to “provide an outside, independent assessment of the performance of the program” and notes that “[e]very effort should be made to aggregate data in order to preserve confidentiality, while still effectively communicating program results to stakeholders.”<sup>18</sup>

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<sup>16</sup> Draft Governance Provisions, 2.

<sup>17</sup> Detailed Design Document, 40.

<sup>18</sup> Id. at 39.

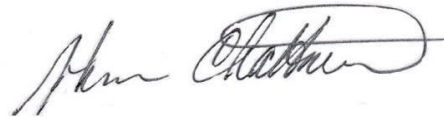
The Independent Evaluator function must serve to balance commercial sensitivities with the need to provide assurances to regulators and energy offices of participating jurisdictions that the program is able to deliver as expected. Signatories appreciate the need to protect sensitive data but feel strongly that information compiled by the NWPP and the Independent Evaluator provide sufficient detail to support any assurances or concerns that the Regional RA Program is functioning as intended and supports regional cooperation across RA program seams.

Signatories would like to continue to discuss the issue of information and data sharing with the NWPP in an effort to better understand the current design and scope of the Independent Evaluator role, to determine what additional sharing of data or information is necessary and appropriate to achieve confidence in RA Program deliverables, and to define appropriate access to that information without compromising confidentiality.

We sincerely appreciate the effort NWPP has made to engage Western representatives in a meaningful dialogue regarding the Western RA Program Governance Provisions and the role of states in this important Program. With these written comments, Signatories endeavor to reflect comments shared with the NWPP at the September 10th NWPP-State/Provincial Governance Workshop. We trust that the NWPP will receive and consider the comments provided in this letter as a continuation of this dialogue.



**Lea Márquez Peterson**  
Chairwoman  
Arizona Corporation Commission



**John Chatburn**, Administrator  
Idaho Governor's Office of Energy & Mineral  
Resources

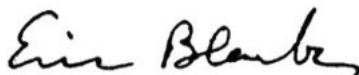


**J. Andrew McAllister**  
Commissioner  
California Energy Commission

**On behalf of the Idaho Public Utilities  
Commission:**



**Paul Kjellander**  
President  
Idaho Public Utilities Commission



**Eric Blank**  
Chairman  
Colorado Public Utilities Commission



On behalf of the Montana Office of the Governor:



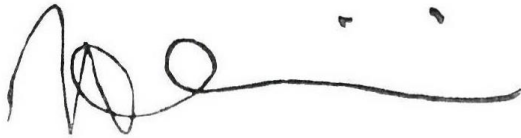
**Michael Freeman**  
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On behalf of the New Mexico Public Regulation Commission:



**Cynthia Hall**  
Commissioner  
New Mexico Public Regulation Commission

On behalf of the Oregon Department of Energy:



**Hayley Williamson**  
Chair  
Public Utilities Commission of Nevada



**Janine Benner**  
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**C.J. Manthe**  
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Public Utilities Commission of Nevada

On behalf of the Oregon Public Utility Commission:



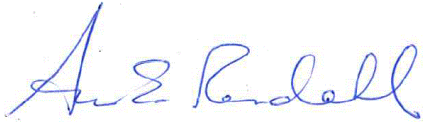
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**Chris Petrie**  
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**Jay Balasbas**  
Commissioner  
Washington Utilities and Transportation  
Commission

Note: unless otherwise indicated, signatories have signed on in their individual capacity.