

**Joint Comments of Western Resource Advocates and Sustainable FERC Project on
January 2022 Western Resource Adequacy Program (WRAP)
Governance Proposal**

Western Resource Advocates and Sustainable FERC Project appreciate this opportunity to submit comments on the January 2022 Western Resource Adequacy Program (WRAP) Governance Proposal (“Governance Proposal”). The governance proposal has evolved significantly since its original concept. We appreciate the WRAP’s hard work on this important program and commend them for conducting public stakeholder meetings and providing an opportunity for the broader stakeholder community to provide comments on the governance design.

Western Resource Advocates and Sustainable FERC Project have provided feedback at several junctures during the Stakeholder Advisory Committee (SAC) engagement and those comments continue to represent our views on the governance issues contained therein.¹ This includes the importance of the WRAP to the public interest community and other stakeholders. As the WRAP moves from a proposal to more detailed tariff provisions for Federal Energy Regulatory Commission (FERC) consideration and bylaws,² We offer the following specific comments. Some of these comments are in the form of clarifications to the Governance Proposal; others are in the spirit of requests to reconsider particular provisions of the governance design.

1. Transparency and Accountability.

Use of Executive Session. Open meetings are the cornerstone of accountability and transparency in decision making. Executive sessions (closed meetings) should be used sparingly. Section 1.1.3 of the Governance Proposal provides the standard applicable to Board of Governors (“Board”) meetings for resorting to executive session: “Matters for consideration in executive session include personnel, litigation, and proprietary, confidential or security sensitive information.”³ We commend the WRAP for including this standard to guide and limit the use of

¹ See e.g., Joint Letter to the Northwest Power Pool, re: Feedback on Detailed Design for the Western Resource Adequacy Program (September 15, 2021); Joint Letter to Leah Fischer, Public Generating Pool, re: the governance proposal presented to SAC members on July 22, 2021 entitled “NWPP Regional Resource Adequacy Program DRAFT Governance Provisions” (August 9, 2021); WRA Letter to Leah Fischer, Public Generating Pool, re: Comments to the Northwest Power Pool Resource Adequacy Sharing Program (April 20, 2020); available at: <https://www.nwpp.org/resources/?name=&workgroup=12>.

² It is not clear how each provision of the Governance Proposal will be memorialized. i.e., in the tariff or the organization’s bylaws. As relayed at the February 4 stakeholder meeting on the WRAP governance, the WRAP governance design team is working through this.

³ Governance Proposal, §1.1.3 (1).

closed meetings; however, the tariff or bylaw language should make it clear that this standard is not limited to Board meetings. We recommend the following:

- a. ***This standard for meeting in executive session set forth in §1.1.3(1) of the Governance Proposal should be applicable universally to all WRAP boards, committees, working groups and the like.*** This would be consistent with the information provided at the February 4, 2022 WRAP governance stakeholder meeting, that the WRAP anticipates discussions to be public unless the information being discussed is private or confidential.
- b. Although some use of executive sessions will be necessary, the public should have confidence that closed meetings are being applied for the right reasons and not over used. To provide this accountability and some transparency, the ***WRAP should consider providing the following for all executive session meetings: public notice for the meeting, including the time, place and agenda and meeting minutes to the extent that minutes do not violate the reason for closure.***

On the Record Voting. Board members, committee members and the like should be accountable for their positions on issues. Though, the proposal does not consistently specify whether voting by a given body, e.g., Board, RAPC, etc., will be public and on the record, at the February 4, 2022 meeting the WRAP design team stated that it is their intention that public, on the record voting will be the norm. ***This intention should be clearly set forth in the tariff and bylaws by explicitly stating that all voting will be public and on the record unless an exception applies, and exceptions should be explicitly identified in the tariff or bylaws.***

Additional Measures. Transparency can also be enhanced in other ways, including a ***commitment to provide access to meeting materials and agendas five days in advance of stakeholder meetings,⁴ providing access to meeting recordings for those that are unable to attend and providing sufficient detail in meeting minutes*** so that both members and public stakeholders can more effectively track initiatives making their way through the stakeholder process. The WRAP should consider applying these measures universally with limited adjustments for closed meetings.

2. Nominating Committee.

Nominating Committee Voting. The Nominating Committee has 14 members; 13 can vote.⁵ There are three members of the Nominating Committee that represent the public interest: public interest organizations (1); retail customer advocacy (1); and the Committee of State Representatives (COSR) (1). When the Nominating Committee cannot reach consensus, the

⁴ The Governance Proposal includes only a provision to post meeting materials “in advance of meetings” and this only applies to the Board and RAPC. See Governance Proposal, §§ 1.1.3(1) and 1.3.1(9)

⁵ The Board representative is the nonvoting member. Governance Proposal §1.2.3

Nominating Committee can approve a candidate by a 2/3 majority (nine votes if the Nominating Committee is fully seated). While the WRAP Nominating Committee procedures are largely based on the Western Energy Imbalance Market (EIM) Nominating Committee Procedures, the voting methodology is not. The Western EIM Nominating Committee, which is also composed of sector representatives and has proven successful, can only act on consensus.⁶ ***The WRAP should consider consensus-only voting. Under this approach minority voices do not get marginalized, minority opinions cannot be permanently cast aside, and there is more incentive to compromise, which can build trust and lead to better decisions. Approval by a larger number of votes, e.g., 3/4, can also promote these advantages to a lesser extent.***

If a candidate is not selected by consensus, the WRAP should consider notifying the Board of the vote along with the nomination.

Expanding the Search Criteria. A diverse Board of Directors will enhance decision-making of the organization and ensure independent oversight of the WRAP’s day-to-day operations. Board-level diversity brings competing perspectives to the organization’s decision-making, thereby protecting against groupthink and enhancing the Board’s independence. The WRAP should consider broadening and diversifying the qualifications of, and search criteria for, Board directors. The EIM Governing Body executive search criteria provides a relevant example.⁷ In many respects the WRAP criteria align closely with the EIM Governing Body criteria. However, the Governing Body executive search criteria also includes the following: “The Executive Search Firm should also consider candidates with senior executive experience in public interest organizations provided they otherwise have the relevant background described above.”⁸ ***The WRAP should consider diversifying its search criteria to include PIO experience or experience in integrating new or innovative grid technologies.***

3. Resource Adequacy Participant Committee (RAPC).

RAPC Subcommittees. The RAPC is a participant-only committee and can approve or reject proposed amendments to the WRAP Tariff prior to the filing of such amendments with FERC- and WRAP-specific program rules.⁹ As such, the RAPC has a very important role in the governance structure. Pursuant to § 1.3.1(5) of the Governance Proposal, the RAPC “will form and organize all the organizational groups under its responsibilities.” The Governance Proposal does not specify whether RAPC organizational groups (or subcommittees) are limited to RAPC

⁶ California ISO, Selection Policy for the EIM Governing Body (July 15, 2021) §3.4, (“EIM Selection Policy”), available at:

https://www.westerneim.com/Documents/SelectionPolicy_EIMGoverningBody.pdf.

⁷ [EIM Selection Policy](#) at 6-7.

⁸ Id. at 7.

⁹ Governance Proposal, §1.3.1(1)-(2).

members or members of RAPC member organizations. The bylaws or tariff should explicitly allow membership in RAPC subcommittees to extend beyond committee members and members of participant organizations. The RAPC would continue to have control over the makeup of RAPC subcommittees, but the tariff or bylaws should explicitly allow membership in RAPC subcommittees to extend beyond committee members, participants or members of participant organizations. ***The RAPC should have the authority to appoint members to its subcommittees with the necessary expertise, perspective, and diversity to conduct their work efficiently and competently. Restricting subcommittee membership, which limits the pool from which the RAPC can choose subcommittee members, would limit their ability to do so.***

Transparency and Accountability. There is very little detail in the RAPC section of the Governance Proposal¹⁰ regarding the use of closed meetings. Nor does the Governance Proposal explicitly state that RAPC voting is public and on the record, though information provided at the February 4 stakeholder meeting relayed the intent that voting would generally be public and on the record. ***The executive session and voting proposals in section 1 of these comments should apply to RAPC and RAPC subcommittees and this should be explicit in the tariff or bylaws.***

4. Committee of State Representatives (COSR).

205 Filing Rights: We support and agree with the position of the states on 205 filing rights.¹¹ However, given the WRAP's reservations, the clear and concise reopener clause proposed by the states¹² is a reasonable compromise in a good faith effort to move the program forward.

5. Program Review Committee (PRC).

Voting. There are 10 sectors represented on the PRC (each sector has one to four members on the PRC). Voting is by sector; each sector has one vote. Only three of the ten sectors would be considered public interest: PIOs; retail customer advocacy group; and the COSR. If consensus cannot be reached, an action can be adopted when at least five of the sectors approve. ***The WRAP should consider a voting scheme that requires a higher level of consensus for approval. See section 2 above.***

¹⁰ Governance Proposal, §1.3.

¹¹ See Joint Letter to Northwest Power Pool, re: Northwest Power Pool's Western Resource Adequacy Program Governance (October 15, 2021) at 5; see also Letter from Nicole Hughes, Renewable Northwest, to WRAP re: recommendations to consider in next stage of governance development (January 4, 2022).

¹² Joint Letter to Northwest Power Pool, re: Northwest Power Pool's Western Resource Adequacy Program Governance Straw Proposal for States' Role on the Committee of State Representatives (December 17, 2021) at 4.

Transparency and Accountability. *The executive session and voting procedures in section 1 of these comments should apply to the PRC.*

6. Expedited Review Process.

Pursuant to the Governance Proposal, an “expedited review process” would apply if there is a “time-sensitive design issue.”¹³ “Time-sensitive design issue” is not defined and the illustrative categories provided in the Governance Proposal are broad; for example, one category is “mandated by FERC.” Not every mandate by FERC is time-sensitive in such a way that an expedited process would be necessary. The expedited process, as depicted in Figure 4 of the Governance Proposal, bypasses much of the stakeholder process, yet it is not clear who makes the decision that a design issue is time-sensitive or the process for making that determination.¹⁴ ***At a minimum, the governance proposal should: provide a more explicit standard for “exigent design changes;” identify the entity or entities that will make the finding (e.g., the Board, RAPC, PRC, Program Operator, etc.); require the basis for the finding to be in writing; and provide an avenue for stakeholder feedback on the finding itself.***¹⁵ ***Given the rudimentary nature of this provision, further stakeholder process is warranted to design this feature.*** Based on information provided at the February 4 stakeholder meeting, it is unlikely the WRAP will conduct any additional public meetings on the governance proposal before drafting the tariff or bylaw amendments. If this is the case, the WRAP should consider addressing this issue as one of the earliest amendments to the governance procedures, assuming FERC approves the WRAP Tariff.

7. Additional Work Groups.

Pursuant to §1.6.3 of the Governance Proposal, committee-established work groups will meet and perform their work “in the manner of their choosing.” The Governance Proposal provides no guidance or minimum standards for the work groups, e.g., transparency. ***The WRAP should consider applying the executive session and voting proposals in section 1 of these comments to additional work groups. Further, the tariff or bylaws should explicitly allow membership in “additional work groups” to extend beyond committee members, participants or members of participant organizations. See section 3 of these comments.***

8. Durability and Review

¹³ Governance Proposal, §1.6.2, p. 29.

¹⁴ See Governance Proposal, Figure 4, p. 31.

¹⁵ Though not directly applicable, the EIM Governance Charter includes an expedited review process for program design changes that provides some insight. See California ISO, Charter for Energy Imbalance Market Governance (September 23, 2021) § 2.2.2 (i), available at: <https://www.westerneim.com/Documents/CharterforEnergyImbalanceMarketGovernance.pdf>.

Amending Governance Provisions.¹⁶ Just as governance is one of the most important elements of program design, governance stability is important for the healthy operation of the organization. For this reason, there is typically a higher threshold for amending governance documents than that for amending other areas of the program design. The amendment process for governance provisions is not explicitly addressed in the Governance Proposal. It appears that changes to the governance structure would flow through the same process as changes to the program design with one key difference: governance provisions that are memorialized in the organization’s bylaws would require a super majority Board vote (80%) to be adopted.¹⁷ Some Bylaw provisions require a unanimous Board vote.¹⁸ This interpretation of the amendment process is based on the current NWPP Bylaws and assumptions made because of the absence of explicit information in the Governance Proposal. Even if this is the correct interpretation of the amendment process for governance provisions, it is still not clear how it would apply because the WRAP design team is still working through which pieces of the governance proposal will be memorialized in the tariff and which will be memorialized in the bylaws. The stability of the governance structure is too important for the amendment process to be based on assumptions or otherwise lack clarity. *The tariff and bylaws should be explicit about the process for amending the WRAP governance structures and procedures. Further, these important details should be worked through in a stakeholder process.*

Governance Review. We commend the WRAP for providing an automatic full review of the governance structures and procedures in the event the WPP¹⁹ seeks to file at FERC for the expansion of the WRAP to include market optimization or transmission planning services.²⁰ *However, the WRAP should also consider an automatic full review if the market expansion does not materialize in four to five years.* The NWPP is standing up a new and original governance structure and procedures for the WRAP. It would benefit the program to conduct a review after gaining some experience with the governance structure.²¹

¹⁶ “Amending” in this section refers to amending, altering or repealing.

¹⁷ The NWPP Board voting requirements are as follows: Affirmative vote of not less than 60% of the directors in office required to take action at a meeting; affirmative vote of not less than 80% of directors in office to amend, alter or repeal any provision of the Bylaws; and unanimous vote to amend, alter or repeal limitations on the scope of board authority or the notice requirements for bylaw amendments. Bylaws of the Northwest Power Pool (as amended through December 8, 2020) §§ 4.13, 9.1 and 9.2, available by request to inquiries@NWPP.org.

¹⁸ Id., §9.1.

¹⁹ The Northwest Power Pool (NWPP) recently changed its name to the Western Power Pool to accurately reflect the footprint of its services. Carrington, Greg, NWPP Announces Rebrand to Western Power Pool, NWPP news webpage (Feb. 8, 2022), available at: [https://www.nwpp.org/news/nwpp-announces-rebrand-to-western-power-pool#:~:text=As%20a%20result%20of%20the,Western%20Power%20Pool%20\(WPP\)](https://www.nwpp.org/news/nwpp-announces-rebrand-to-western-power-pool#:~:text=As%20a%20result%20of%20the,Western%20Power%20Pool%20(WPP)).

²⁰ Governance Proposal, §1.6.1.

²¹ Pursuant to FERC Order 719, 718 CFR 835 (October 17, 2008), the Commission assessed each RTO/ISO’s commitment to continually evaluate their governance policies and stakeholder processes and consider how they may be improved.

9. Further Public Meetings (Tariff and Bylaw Amendments).

The WRAP and stakeholders have experienced the benefit of opening up the program design process and conducting public meetings as part of that process. ***The WRAP should consider conducting additional public meetings (or a public meeting) to explain and discuss the tariff and amendments to the organization's bylaws.*** The purpose of the meetings would be to explain the tariff and bylaw amendments necessary to implement the program including clarifications and deviations, if any, from the Governance Proposal. A “walk through” with the opportunity to ask questions would provide stakeholders with a better understanding of the documents and minimize any misunderstandings. This in turn would continue to build trust and could minimize potential FERC interventions.

We appreciate this opportunity to provide comments.

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