



September 15, 2021

**Comments from the Northwest & Intermountain Power Producers Coalition (NIPPC)<sup>1</sup> on the July 2021 Detailed Design Document (“Design Document”)<sup>2</sup> for the proposed Western Resource Adequacy Program (WRAP or “program”) provided by the Northwest Power Pool (NWPP)**

**I. General Comments**

NIPPC continues to support the creation of a well-designed regional Resource Adequacy (RA) program that covers the Northwest and adjacent regions. NIPPC appreciates the extensive time and thoughtful effort invested to date by NWPP’s leadership, the NWPP Steering Committee for the WRAP, other stakeholders, and state regulators and other policymakers. Much of the core design architecture of the WRAP<sup>3</sup> appears sound, but important design elements require modification or clarification in order for the program to be successful, legally defensible, and useable by the diverse mix of power market participants. NIPPC’s comments here are not exhaustive but instead selective. They focus on program governance, transmission and deliverability requirements, participation requirements affecting non-utility load-serving entities (LSEs), and several qualifying capacity contribution (QCC) methodology issues.

NIPPC plans to continue engaging with NWPP through the upcoming stages of WRAP implementation to provide further feedback on these and other matters. As a practical matter, following the end of the current comment period on the Design Document, NIPPC recommends that NWPP establish a public list of program elements whose final design is not settled yet but rather still under active consideration. This list should be subject to input from stakeholders and program participants during the upcoming Stage 1 of the program. NIPPC comments here indicate elements that should be on that list.

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<sup>1</sup> NIPPC represents competitive power participants in the Pacific Northwest. NIPPC members include owners, operators, and developers of independent power generation and storage, power marketers, and affiliated companies. Collectively, NIPPC represents over 4,500 megawatts of operating generation and an equal amount permitted or under development.

<sup>2</sup> Numbers in parentheses in these comments refer to page numbers of the Design Document.

<sup>3</sup> After the release of the Design Document, NWPP adjusted the name of the RA program to be the “Western Resource Adequacy Program,” given the potential footprint of the program across Western North America. NIPPC’s comments therefore use this name.

## II. Governance

NIPPC submitted detailed governance recommendations to NWPP on June 24. Those recommendations are attached here in Appendix A. Rather than repeating or summarizing them here, these comments focus on the governance proposals that still deserve further discussion and refinement. As a general matter, NIPPC appreciates the responsiveness of NWPP to stakeholder and regulator input on governance matters and supports the broad governance framework proposed in the Design Document, including:

1. Reconstituting NWPP with a single independent Board of Directors overseeing WRAP and all other NWPP programs. (23)
2. Establishing a multi-sector Nominating Committee to nominate a slate of directors for the board, following the model of the Western Energy Imbalance Market (EIM). (29)
3. Establishing a single principal technical committee (the Program Review Committee) to originate and review proposed program changes, with voting rights for each sector beyond merely the formal members (“Participants”) of the WRAP. (40)
4. Establishing an independent committee of state regulators and state energy offices. (40)
5. Establishing an independent evaluator function. (39)

NIPPC acknowledges that purely on the basis of RA compliance, the proposed WRAP structure of limiting formal program membership to “load responsible entities” (LREs, encompassing LSEs as well as entities acting as agents for one or more LSEs) is logical. LSEs are directly responsible for ensuring that an adequate supply of generating resources will meet the load they serve. LREs will directly pay for the cost of implementing this program and will be subject to deficiency penalties if they fail to meet the program’s requirements. The WRAP is not a market; it is a seasonal compliance program. Nevertheless, NIPPC notes that laying costs, penalties, and principal control over the program with LREs creates a load-centric structure that will not be sustainable beyond the narrow confines of the WRAP.

Changing the paradigm in the West for RA will not merely change the obligations and commercial practices of utilities and other LREs. It will also fundamentally change the paradigm for generators in the region. The effects on generation procurement and contract performance expectations, including the assumption of financial risk for underperformance, will impact generators, and some generators will also share in the benefits of the changing paradigm. Leaving generators that lack an LSE affiliate out of the primary decisionmaking forum by not permitting them to be WRAP Participants with a final say on proposing program changes, including tariff filings at the Federal Energy Regulatory Commission (FERC), is not an appropriate template for governing an actual market. The multi-sector representation and voting rights on the Nominating Committee and Program Review Committee are essential features in the Design Document that mitigate—but only partially—the effect of limiting program membership (and program costs) to LREs. (29, 41)

To the extent that NWPP evolves to become the platform for new programs beyond the WRAP, this proposed governance structure, empowering load service over generation and, similarly, vertically-integrated generators over independent generators, will need to be revisited and reformed. For example, should NWPP seek to evolve the WRAP into a centralized platform for buying, selling, and trading RA products, or seek to add new transmission or power market operations to the services it offers, then this critical aspect of governance must be adjusted. In other words, NIPPC does not believe this core aspect of program governance is scalable beyond the WRAP.

*CEO voting rights:* Beyond this general observation, NIPPC continues to believe that the NWPP Chief Executive Officer (CEO) should not have voting rights on a reconstituted Board of Directors. (24) As a matter of corporate governance, voting rights should be reserved for independent directors who are not employees of NWPP, including members of NWPP management. Recusal by the CEO from voting solely on matters affecting the CEO's own compensation and employment (25) is not sufficient. Establishing the CEO as a peer among others on a decisionmaking body—peers by virtue of having the same executive function: one person, one vote—will negatively affect the independence and the appearance of independence of the Board. NIPPC has no objection to the presence of the CEO on the Board as an *ex officio* member without voting rights.

*Board of Directors role:* NIPPC notes that the proposed role of the Board of Directors is fairly passive. (27) Resting primary decisionmaking authority with the Resource Adequacy Program Committee (RAPC) has precedent in the authority held by the primary member committees of some Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs), but the WRAP may benefit from a more proactive role by the Board. Having RAPC decisions passively “deemed approved” by the Board in the absence of a stakeholder appeal disempowers the Board. This design element deserves further active consideration during Stage 1.

*Board of Directors term limits:* NIPPC previously recommended a maximum of three terms for directors on the board. The Design Document proposes a maximum of two terms. (23) NIPPC believes the option to serve a third term on the board would be consistent with most RTO/ISOs and would help maintain a greater depth of knowledge on the Board.

*Committee of states:* NIPPC continues to support providing a committee of state regulators with a meaningful oversight function, including at minimum the provision of filing rights under section 205 of the Federal Power Act and an independent staff. NIPPC continues to support a representative of the committee of states having a vote (and not merely a tie-breaking vote (30)) on the Nominating Committee.

*RAPC voting structure:* NIPPC notes that the Design Document's proposed House/Senate voting structure (35-36), adapted from the Southwest Power Pool's Western Energy Imbalance Service market, is quite conservative. It embeds two major points of resistance to change within the WRAP: (1) separate “bi-cameral” votes on an

equally-divided basis and a load-weighted basis and (2) a 75% supermajority threshold (except for resolutions approved by the Program Review Committee that will be subject to a lower 67% threshold). The “bi-cameral” approach appropriately balances decisionmaking between participating electric load and program participants writ large. The supermajority threshold may encourage consensus decisionmaking but may also prevent the WRAP from adapting to changing market conditions or evolving business models among market participants. A lower threshold (a 51% simple majority or a 60% supermajority) may better serve the region. NIPPC recommends including the 75% and 67% supermajority thresholds on a list of program elements to receive further active consideration during Stage 1.

*Dispute resolution mechanisms:* NIPPC recommends evaluating the dispute resolution mechanisms adopted recently by the California ISO (CAISO) Board of Governors and the EIM Governing Board<sup>4</sup> as a starting point for potential resolution of disputes between the RAPC and the Board of Directors as well as potentially between the RAPC and the Program Review Committee. This topic should be subject to active consideration during Stage 1.

*Non-LRE voting rights:* NIPPC appreciates that the Design Document allocates votes widely among different sectors on both the Nominating Committee and the Program Review Committee. Consistent with the comments above about the overall load-centric nature of the program’s governance, if NWPP considers adding new services or functions beyond the WRAP, the specific allocation of voting rights should be revisited.

*Transparency protocols:* NIPPC also seeks greater detail about how NWPP will adopt best practices related to transparency of the WRAP, including spelling out a finite list of matters that may be addressed in closed-door executive sessions and protocols for consistent publicly-available recordkeeping. The Design Document does not contain this level of detail. (28)

*Data sharing:* NIPPC suggests making non-confidential WRAP program data available to stakeholders and regulators to inform their perspectives. The program data will be a new and important tool to inform the region’s forward-planning matters.

## **II. Transmission and deliverability**

Of the many program elements described in the Design Document, the principal transmission requirements may be the most problematic.

NIPPC does not dispute the importance of LREs indicating—in some way—that capacity is actually deliverable to load. An effective RA program must be able to count on supply capacity reliably reaching load. At the same time, a program should not

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<sup>4</sup> “ISO Board of Governors & EIM Governing Body approve new shared-authority framework aimed at strengthening regional cooperation” (August 20, 2021), *available at* <https://www.westerneim.com/Documents/ISO-Board-of-Governors-EIM-Governing-Body-Approve-New-Shared-Authority-Framework-Aimed-Strengthening-Regional-Cooperation.pdf>.

expressly or inadvertently limit the availability or liquidity of RA across a region due to the concentration of transmission asset ownership or control among only a few participants or the inability to secure transmission capacity in advance due to contractual or seams issues.

The Design Document's proposed source-to-sink 75% firm or conditional firm forward-showing requirement (NERC priority 6 or 7 service) lacks sufficient justification, is likely to prove difficult to achieve for LREs, IPPs, and marketers who are not themselves transmission providers, and may prove to be discriminatory. The Design Document does not contain supporting analysis of why the figure of 75% was chosen, which entities hold firm transmission rights in the region, how market participants would be affected by those existing rights, nor the actual availability of firm or conditional firm transmission available for a forward showing. Furthermore, a robust discussion has been ongoing in the region with respect to RA imports into CAISO that has addressed these issues in detail and that bears on the WRAP design. The Design Document does not address this discussion.

In its sixth revised straw proposal on RA enhancements, CAISO proposed transmission delivery requirements that would establish a firm requirement on only the last transmission leg to the CAISO (the "last line of interest").<sup>5</sup> RA imports could be delivered on all other transmission legs down to monthly non-firm service (NERC priority 5 service), subject to curtailments being treated as outages for unforced capacity (UCAP) calculations. While this proposal is not yet settled with respect to an updated standard for RA imports into California, the fact that it is ongoing, informed by robust public debate, and relates to a proposal that differs materially from how the WRAP would treat transmission obligations argues for further discussion of the WRAP proposal. Furthermore, the potential resulting seams issue between CAISO and the rest of the West deserves to be addressed as well. Of particular note, the CAISO recognized through stakeholder input the contractual and seams issues related to the constraints on procuring firm or conditional firm for advanced showing on the Bonneville Power Administration (BPA) network.

NIPPC acknowledges that the Design Document does not ignore the eventuality that a 75% firm/conditional firm showing will, in some cases, be impossible. But the proposal to have the Program Operator (PO) evaluate those instances on a case-by-case basis (88) is insufficient. These instances are likely to occur on a programmatic basis, and a default standard with case-by-case petitions for exceptions is the wrong solution. The second type of exception contemplated in the document ("a particular path or circumstance where short-term firm transmission is consistently available but not posted on a long-term basis") is likely to be endemic, particularly on the BPA network. The WRAP should instead anticipate this outcome and incorporate into the program design the salient features of transmission scheduling in the region, such as BPA's *de minimis*

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<sup>5</sup> Summarized in "RA Enhancements Draft Final Proposal and Sixth Revised Straw Proposal" (January 5-7, 2021), 21, available at <http://www.caiso.com/InitiativeDocuments/Day3Presentation-ResourceAdequacyEnhancements-DraftFinalPropsoal-SixthRevisedStrawProposal.pdf>.

ATC calculations, release of short-term ATC, and the limited ability to execute re-directs far in advance.

BPA's system is particularly prone to these issues due to the *de minimis* thresholds on numerous transmission cut planes (it is particularly acute across the South of Allston flow gate, as well as the North of Echo Lake, West of Garrison, and the Cross Cascades North and South flow gates) and the existence of grandfathered transmission rights that pre-date FERC's open access requirements. Even long-term firm rights on BPA's network are at risk of curtailment during a small percentage of hours. Despite these factors, BPA's network is generally unconstrained and sufficient across most flow gates in the Day Ahead and Real Time windows (when grandfathered rights are released) during almost all hours.

The timely release of unused transmission will be a fundamental challenge of meeting obligations under the WRAP. In addition, some potential WRAP Participants enjoy competitive advantages due to how their systems are set up and modeled. For example, entities with resources and load spread across a wide geographic area but modeled as an aggregated generation system or load (i.e., requiring transmission rights with one point of receipt or delivery for the whole system) have material advantages under the program compared to entities with off-system resources requiring multiple transmission segments from specific points of receipt or delivery. As proposed, the forward-showing transmission requirement could allow some transmission providers and firm transmission rights holders to exercise market power by preventing other market participants from accessing transmission and supply power. This may result in a lack of RA supply, artificially high RA prices, and anti-competitive outcomes.

Potential alternative solutions to the Design Document's proposed transmission requirement could include limiting the requirement to one or more specified upstream or downstream delivery legs or exempting wheeled service across BPA's system. For example, demonstrating firm or high priority non-firm (7FN or 6NN) on the final leg of delivery at the time of flow, as well as a reasonable expectation of buying or re-directing the required path, could be a sufficient forward showing for the WRAP. CAISO's proposed import RA approach described above could be another option.

An additional complementary option could be to allow some amounts of non-firm transmission from generation to load located within the same zone. If there were transmission curtailments of this intra-zonal non-firm delivery in realtime, then non-delivery penalties could apply. This penalty risk would be on each entity to weigh. Delivery risks associated with non-firm transmission are generally more muted for intra-zonal delivery. For example, a hypothetical generator at Mid-C supplying a hypothetical load in the Tri-Cities with RA on non-firm transmission would be at far lower risk of non-delivery than a hypothetical generator located at Palo Verde serving the same load with multiple segments of non-firm transmission.

NIPPC is not alone in identifying the potential competitive advantages created by a transmission requirement affected by long-term firm transmission rights and the timing

of release of unused transmission. The CAISO Department of Market Monitoring has stated that it “agrees with other stakeholders that the processes for release of firm transmission rights that are specific to different [Balancing Authority Areas (BAAs)] should be considered further to understand whether the ISO’s proposal would create competitive advantages for entities that hold significant long-term firm transmission rights.”<sup>6</sup>

NIPPC encourages NWPP to subject this topic to a robust public dialogue and to solicit input from affected stakeholders. This dialogue would necessarily need to carry into the pendency of Stage 1 of the program, just as the dialogue about governance will.

### **III. Retail choice LSEs**

Non-utility LSEs in the West operate under separate and distinct laws in each of the states that allow some level of retail power supply choice. State rules differ materially in terms of whether enrollment in retail choice remains open or closed, which customer classes are eligible for retail choice, existing RA requirements, the scope of non-bypassable charges that regulated utilities providing delivery service may charge, and other terms and conditions applied to retail choice providers and eligible customers.

Retail choice providers (i.e., retail marketers) and their customers are a key segment of LSEs and loads in the West. Their share of load relative to investor-owned utilities in the Northwest and adjacent states with retail choice ranges from approximately 7 percent in Washington to 40 percent in Montana.

Among other measures of success, the WRAP will be successful to the degree it recognizes and incorporates some of the unique features of this subsector into its program design. The subsector will have to evolve in some important respects in order to secure and demonstrate its share of RA in the emerging capacity-short West. But all else being equal, the WRAP must avoid harming the retail choice business model merely because it doesn’t mirror the operations, regulatory structure, or cost recovery mechanisms of utilities and government marketers. The program must also respect the decisions individual states have made about fostering retail choice and competition.

Over the course of Stage 1, program participants will gain insight into how the program as currently designed maps onto existing practices in the region, including the bilateral market for capacity, the availability of transmission capacity, and the scheduling paradigm for transmission, particularly on the Bonneville Power Administration’s transmission network. Based on these insights, the program may need to be adjusted to ensure that a variety of competitive business models can thrive in the West.

The following comments relate to program elements that directly affect LREs participating in the program:

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<sup>6</sup> California ISO Department of Market Monitoring, “Comments on Resource Adequacy Enhancements Working Group September 15 and 17” (October 1, 2020), 3, available at <http://www.caiso.com/Documents/DMMComments-ResourceAdequacyEnhancementsWorkingGroupSept15and17-Oct12020.pdf>.

- By the nature of retail choice, the amount of load served by a retail marketer, at least as a percentage of the marketer's total load, changes more frequently than load served by utilities. Retail customers eligible to choose a power supplier can and do shop around to meet their needs. This reality means that a static 5-year "look-back" to establish a retail marketer's P50 load will likely be inaccurate compared to a utility. While an accurate snapshot of total program P50 load is necessary, the program should allow for manual adjustments as retail choice load changes suppliers. Doing so is also critical in order to avoid double-counting load. Retail marketer LREs could supply data related to recent additions or removal of load in order to refine the P50 load calculations.
- Additional detail is needed about the process and timeline for the PO to evaluate, critique, and recommend improvements to WRAP Participants' load forecasts, including eventual minimum standards of sophistication and accuracy for all Participants' load forecasts. (57)
- The Design Document does not specify that the PO, in exercising its discretion to deny an entity's request for any early release of held-back capacity in the operational program (169), must provide a rationale for such a denial. This should be amended to require the PO to provide its reasons for denying such a request.
- As a general matter, BAA services "donated" by any Balancing Authority (BA) to the program, including with respect to the use of centroid/scheduling hubs (171), could lead to unfair leverage exercised over other program participants by that BA. NIPPC recommends considering use of a competitive solicitation process for the supply of BAA services related to the use of centroids in the operational program.
- NIPPC supports maintaining multiple energy transfer options in the operational program: transfers may be scheduled to and from a centroid (or centroids) or may be on a direct-delivery basis (176). A surplus entity and a deficient entity may directly negotiate the best way to complete a transfer.

#### **IV. Qualifying Capacity Contributions**

NIPPC recognizes that the WRAP is a capacity RA program, not an energy RA program, and that sufficient fuel supply is therefore evaluated to some extent in the QCC methodology of different resource types. NIPPC recommends that NWPP consider further in Stage 1 how best to account for the firmness of fuel supply of the different resource types and generators, such as energy-constrained hydroelectric ("hydro") plants affected by dry water years and thermal plants affected by fuel pipeline rights and operations.

NIPPC also seeks clarifications about the following calculations of hydro QCC that will affect the accuracy and overall regional need for capacity identified by the WRAP:

- How will the inclusion of the past 10 years of hydro generation history (101) account for the inclusion of 7 years in which mid-Columbia River projects were fully coordinated under an hourly coordination agreement (115)? This inclusion could skew the QCCs for hydro looking forward.
- A 10-year lookback for hydro's QCC is likely adequate for short-duration (e.g., 1-5 hour) capacity. But as other stakeholders have noted, for long-duration (e.g., 80-hour) capacity, including more hydro history (50-100 years) would be prudent in order to capture low water years. For example, a 10-year look-back would not include very low water years such as 2001.
- How are project encroachments treated when modeling hydro QCCs?
- How is NWPP evaluating hydro's disproportionate use in the Northwest to provide ancillary services and, conversely, the challenge to using the resource for pure capacity? Historically, it has been challenging to drain hydro storage and to use the full nameplate capacity of a project. In the absence of more comprehensive coordination across hydro projects, energy from hydro projects set aside for contingency and control may not be available to Participants in need.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Gray', written in a cursive style.

Spencer Gray  
Executive Director  
Northwest & Intermountain  
Power Producers Coalition