



February 18, 2022

Comments to the Western Power Pool from the Northwest & Intermountain Power Producers Coalition on the January 2022 Governance Proposal for the Western Resource Adequacy Program

The Northwest & Intermountain Power Producers Coalition (NIPPC)¹ appreciates the thoughtfulness and thoroughness with which the Western Power Pool (WPP, formerly the Northwest Power Pool) has developed its most recent iteration of a governance proposal for the Western Resource Adequacy Program (WRAP). The WRAP's successive proposals have become more refined and, in NIPPC's view, have improved over time. These comments focus mainly on the new proposals or details included in the January 2022 Governance Proposal ("the Proposal").

Support for New Elements

NIPPC supports the following select new proposals and clarifications in the Proposal:

- An explicit intent to adopt criteria for Directors of the new WPP Board of Directors (BOD) that will eliminate conflicts of interest beyond merely direct financial conflicts, including indirect conflicts, outside activities that interfere with or materially decrease a Director's performance, and appearances of bias. (p. 3-4)
- The role of the Chief Executive Officer as an ex officio advisory member of the BOD rather than a voting member. (p. 9) NIPPC appreciates WPP having considered input from stakeholders on this topic.
- The explicit variety of diverse perspectives sought for Directors on the BOD (p. 17).
- The additional detail about a trigger to review voting thresholds to prevent a single Load Responsible Entity from holding veto power (with more than 25% of total non-coincident high-season P50 load) within the Resource Adequacy Participants Committee (RAPC). (p. 20)

¹ 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.

- The expectation of a simple majority threshold for votes within a working group, committee, or task force under the RAPC. (p. 21)
- The additional detail about the scope and cadence of program monitoring and review performed by an Independent Evaluator. (p. 24-25)
- Attendance by an assigned independent support staff member of the Committee of State Representatives (COSR) at closed meetings of the RAPC under a non-disclosure agreement. (p. 25)
- Agreement to file an alternative state-supported governance structure at FERC in the event that (1) the WPP seeks to expand the WRAP to include market optimization or transmission planning services and (2) the COSR does not support a revised governance structure approved by the BOD. (p. 26)

Board of Directors

At this time, NIPPC takes no position on the proposed requirement that the Nominating Committee (NC) must select one current Director (provided a current Director applies) for the reconstituted BOD. (p. 9) NIPPC recognizes the one-time nature of shifting the existing non-profit corporation and its responsibilities to a new structure and set of responsibilities, as well as the value of providing for some institutional continuity.

NIPPC understands the Proposal to mean that at least one of the five new Directors with voting privileges must be a current Director (provided a current Director applies), and that two additional current Directors must be selected as non-voting, advisory Directors (provided two current Directors apply) for one two-year term. This would bring the total number of Directors during the reconstituted BOD's first two years to seven—only five of whom would have voting privileges. If this understanding is not correct, NIPPC requests that WPP clarify the initial required makeup of the new BOD.

NIPPC suggests, as a topic for future review, that a term limit of three (three-year) terms rather than two terms (p. 8) may ensure greater institutional knowledge on the BOD, while still ensuring that fresh perspectives rotate through the BOD. But NIPPC does not object to the current proposed term limit.

NIPPC requests that WPP add to the list of illustrative skillsets and expertise (p. 17) someone with experience in the competitive power sector, such as a former executive or attorney with an independent power producer (IPP) or retail choice provider. Given the reliance of the WRAP on capacity resources supplied or developed by IPPs, and the formal participation of retail choice providers in the program, explicitly mentioning this background and expertise will ensure a stronger, more diverse pool of potential Directors.

NIPPC requests clarification on the approval threshold by the BOD for the slate of new Directors nominated by the NC. For example, if the NC nominates a slate of two existing Directors before the expiration of their terms, resulting in the recusal of those two

Directors, does the two-third quorum threshold and simple majority affirmation threshold (p. 13) still hold for the remaining three Directors? In other words, would four of five current Directors be required for a quorum, or all three of the non-recused Directors? And would three of the five current Directors be required to affirm the nominated slate (a unanimous vote of the non-recused Directors), or only a simple majority of the non-recused Directors (two of the three)?

Committee of State Representatives

NIPPC continues to believe that giving the COSR filing rights under Section 205 of the Federal Power Act is the best way to ensure an appropriate balancing of commercial and competitive interests within the program's footprint, as well as state regulatory oversight and participant-driven program design decisions. NIPPC does not believe there is any compelling reason not to extend this authority, subject to a variety of potential constraints that NIPPC has previously outlined,² given the longstanding Section 205 rights over resource adequacy of the Regional State Committee of the Southwest Power Pool and similar authorities in other regional transmission organizations.

Notwithstanding that continued view, NIPPC acknowledges that the Proposal's recommendation for a more involved COSR in the following circumstances is a positive development (p. 25):

- *Additional public review:* If the RAPC has approved a substantively different proposal than what the PRC (as reviewed by the COSR) had submitted to the RAPC, then the COSR may trigger an additional public review and comment opportunity before a RAPC decision goes to the BOD.
- *Dispute resolution process:* If the COSR opposes or appeals a RAPC decision to the BOD, then there will be a pause in the BOD's consideration of the proposal and the RAPC must initiate at least two discussions with the COSR "to reach a mutually agreeable solution."

The Proposal is not clear enough that the second circumstance listed above is intended (in NIPPC's understanding) to encompass any decision by the RAPC that the COSR opposes or appeals—not merely the narrow circumstance in which a proposal approved by the RAPC decision is substantively different than what the PRC submitted to the RAPC. This broader list of circumstances could include, for example, an expedited proposal that originated with the RAPC rather than the PRC, a RAPC decision that simply differs from a PRC recommendation, or a rejection of a PRC recommendation. NIPPC requests that WPP clarify the relevant language ("or appeals the RAPC's decision to the Board") on page 25.

NIPPC remains concerned that the COSR is not sufficiently empowered to ensure that all market participants are treated fairly by the WRAP, but the new elements of COSR

² NIPPC to Northwest Power Pool, November 12, 2021, p. 6-7, available at: <https://nippc.org/wp-content/uploads/2021/12/NIPPC-Section-205-comments-regional-RA-program-111221.pdf>.

authority in the Proposal are a material improvement over WPP's prior governance proposals. NIPPC does not at this time take a position on whether this "enhanced" process for state regulators is sufficient to ensure the program remains adequately balanced between the authority of state regulators over resource adequacy-related decisions and the self-regulatory authority of consumer-owned load responsible entities.

NIPPC does support requiring the COSR to have some kind of supermajority for an alternative governance structure for future expansions of the WRAP or WPP services, but does not support a FERC filing specifying what that supermajority threshold is (75% in the Proposal (p. 26)).

Program Review Committee

NIPPC does not oppose the meetings of the PRC, as a technical working group, being primarily closed to the public (p. 27). However, because the PRC will also be "the clearing house for all recommended design changes" (except exigent ones), NIPPC recommends that the PRC err on the side of scheduling one or more public meetings (or, alternatively, soliciting written public input early in the consideration of a WRAP design change) prior to issuing a formal proposal for public comment. Hosting a single meeting to review a proposal or to review public, COSR, and Program Operator comments on a completed proposal, may not draw sufficiently on expertise from market participants and the public in actually developing a given proposal.

NIPPC is concerned that the sector voting requirement (to the extent that operation by consensus is not possible) within the PRC falls short of a simple majority. Five sectors is only half the total sectors (ten) on the committee. NIPPC supports the suggestion that the PRC attempt to operate on a consensus basis, but recommends that a PRC proposal brought to a vote should move forward only if a majority of sectors support it. NIPPC does not oppose the specification that a majority of representatives within the sectors that have multiple representatives must favor a proposal in order for the sector as a whole to be considered supportive. (p. 28)

NIPPC recommends that the PRC be required to memorialize minority opinions (unless the minority waives such memorialization) to the RAPC, rather than leaving that discretion to the PRC. (p. 28) Similarly, NIPPC recommends that the RAPC be required to memorialize minority opinions (unless the minority waives such memorialization) to the BOD. Such memorialization provides a more complete record and basis for opinions by the RAPC, COSR, BOD, and Federal Energy Regulatory Commission (FERC).

NIPPC notes that the Proposal places significant emphasis on the PRC as the locus of program design reviews and potential changes, while making room for exigent exceptions such as those mandated by FERC, addressing immediate reliability impacts, or significantly impacting utility service. NIPPC agrees with the need to have a more expedited process in some circumstances. But the value of the PRC in the overall governance of the program is that it consists of a much broader group of sectors than

the RAPC. To the extent those exceptions become frequent, they will begin to minimize the role of the PRC in favor of the RAPC, and this value will be eroded.

WRAP Structure

Finally, NIPPC emphasizes again,³ because the point may be lost in the midst of launching this important new regional program, that the participant structure of the WRAP does not scale up beyond a seasonal RA compliance program. Expanded regional services offered by WPP that build on the WRAP or its governance structure must include generators and other market participants and stakeholders as formal member-participants.

Thank you for your consideration.

Sincerely,



Spencer Gray
Executive Director

³ Ibid., p. 3, and NIPPC to Northwest Power Pool, September 15, 2021, p. 2-3, available at: <https://nippc.org/wp-content/uploads/2021/10/NIPPC-RA-Program-2B-design-091521.pdf>.