

## Integrating Western Parties into SPP's RTO: Terms & Conditions

### Comments of Public Interest Organizations

June 30, 2021

#### Introduction

On November 12, 2020, the Southwest Power Pool (“SPP”) announced its “RTO West” market proposal. If successful, RTO West will involve the current Western Energy Imbalance Service (“WEIS”) members joining SPP’s existing RTO, with the potential for additional western utilities to join in the future.<sup>1</sup> Unlike its previous effort to expand its RTO westward (in partnership with the Mountain West Transmission Group of utilities), this proposal does not currently envision the creation of an entirely separate governance and participation framework for SPP’s Western Interconnection participants.<sup>2</sup> Rather, it is presumed that the RTO’s future western participants would join SPP under its current participation and governance framework, with the opportunity to make minor necessary changes to the tariff to enable their seamless integration into the SPP market.<sup>3</sup>

Since November, SPP’s Strategic Planning Committee has overseen a New Member Integration Process designed to provide a forum for stakeholder discussions during SPP’s negotiations with the RTO’s prospective new members.<sup>4</sup> SPP has also established a Members Forum and a State Commission Forum to provide stakeholders and members opportunities to engage in this process.<sup>5</sup> Most recently, on June 24, SPP Staff released its Draft Terms and Conditions for RTO West (“Terms & Conditions”).<sup>6</sup> If approved by the SPP Board of Directors at their July meeting, SPP and interested western utilities will officially move forward with negotiations necessary to stand up RTO West by March 1, 2024.<sup>7</sup>

After reviewing the Terms & Conditions, Public Interest Organizations (“PIOs”)<sup>8</sup> offer the following comments and recommendations for the members of SPP Staff, Management, Regional State Committee and Board of Directors to consider. These recommendations are submitted on behalf of the following

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<sup>1</sup> Southwest Power Pool, “Press Release: SPP and stakeholders will consider RTO expansion to the west; study anticipates \$49M in annual savings for current and new members” (Nov. 12, 2020) at: <https://www.spp.org/newsroom/press-releases/spp-and-stakeholders-will-consider-rto-expansion-to-the-west-study-anticipates-49m-in-annual-savings-for-current-and-new-members/> (last visited June 30, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* “If they pursue membership [...] they would become the first members of SPP’s [RTO] to place facilities in the Western Interconnection under the terms and conditions of SPP’s Open Access Transmission Tariff.”

<sup>4</sup> Southwest Power Pool website, “RTO West” at: <https://www.spp.org/western-services/rto-west/> (last visited June 30, 2021).

<sup>5</sup> Southwest Power Pool, Presentation to the Members Forum (Jan. 5, 2021) at: <https://spp.org/documents/63728/members%20forum%202021%2001%2005.pdf> (last visited June 30, 2021).

<sup>6</sup> SPP indicated its preference that stakeholders provide comments by June 30 and did not provide a comment extension at the earlier request of PIOs.

<sup>7</sup> Terms & Conditions at 26.

<sup>8</sup> For purposes of these recommendations, “Public Interest Organizations” includes environmental and clean energy non-profit organizations as well as clean energy trade associations.

organizations: Natural Resources Defense Council, Northwest Energy Coalition, Renewable Northwest, Sierra Club, Sustainable FERC Project, and Western Resource Advocates.

## Comments and Recommendations

### 1. Stakeholder Process and Timeline

PIOs note that the RTO West public stakeholder process, which has taken place via monthly meetings of the Members Forum, has offered limited opportunity for stakeholder participation and engagement. The various task forces and work groups meeting and deciding on critical areas of RTO West's market design and governance, with one exception, do not have public meetings.<sup>9</sup> At the monthly Members Forum meetings, these various task forces and work groups present high level updates to stakeholders, with substantive details often lacking. Despite the relative lack of substantive information, PIOs have participated in each Members Forum meeting (including offering public comment) and have submitted governance-focused written recommendations to SPP Staff and Management.<sup>10</sup>

In addition to the lack of transparency with interested stakeholders, PIOs note the expedited approval timeline for RTO West's Terms & Conditions. Released on June 24, SPP requested stakeholder comments by June 30 (but indicated a preference for receiving comments by June 28).<sup>11</sup> Less than a full week to digest important elements of market design and governance for RTO West is not adequate time for stakeholders, including PIOs, who strongly support market development in the West and desire to meaningfully engage in the formation and operation of these markets.

Going forward, PIOs recommend that the monthly Members Forum meetings provide more substantive updates to stakeholders. The DC Ties Task Force has made a practice of this, and as a result, it is an area in which stakeholders are well informed. Additionally, it holds open, public meetings, further enhancing the transparency of its work products and recommendations. Further, to enable stakeholders to offer meaningful recommendations on RTO West-related policy proposals moving forward, PIOs recommend that SPP post draft materials two to three weeks in advance of the stakeholder comment deadline. Such is the practice at other RTOs and ISOs where PIOs routinely engage.<sup>12</sup> As an added benefit, this helps to ensure that major policy proposals such as RTO West are well vetted before they arrive at FERC, reducing the likelihood of expensive and time-consuming litigation.

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<sup>9</sup> The DC Ties Task Force is the exception – this work group started off meeting in closed session, but began having public meetings in April. See Southwest Power Pool website, “New Member Integration Meeting Materials: DC Ties Task Force” at: <https://www.spp.org/spp-documents-filings/?id=252258> (last visited June 30, 2021).

<sup>10</sup> Sustainable FERC Project, “Comments of Public Interest Organizations to SPP's RTO West Leadership Team Regarding RTO Governance” (March 2021) available at: <https://sustainableferc.org/public-documents/> (last visited June 30, 2021).

<sup>11</sup> Comments of Bruce Rew, SVP of Operations at Southwest Power Pool at Members Forum Meeting on June 25, 2021.

<sup>12</sup> See e.g., CAISO website, “Stakeholder Center: Stakeholder Initiatives” at: <https://stakeholdercenter.caiso.com/StakeholderInitiatives> (last visited June 30, 2021).

## 2. Governance

PIOs previously submitted governance-focused recommendations to SPP Staff and Management on March 3, 2021. PIOs will not repeat those recommendations here, but instead include them as Attachment A to these comments.<sup>13</sup>

In addition to these earlier governance-related recommendations, PIOs note concerns with an apparent lack of information sharing between SPP and western utility regulators. As noted by SPP, the State Commission Forum is a forum for utility regulators to “give guidance and assist” SPP in performing its due diligence related to RTO West.<sup>14</sup> Additionally, as provided in the Terms & Conditions, the State Commission Forum is comprised of staff and commissioners that comprise the existing Regional State Committee (“RSC”) – i.e., the Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, Texas and South Dakota state regulatory commissions.<sup>15</sup> According to the Terms & Conditions, “during January through June 2021, the forum received regular updates on the integration of West parties and outreach to western states’ regulatory agencies.”<sup>16</sup> Details regarding SPP’s outreach to western utility regulators have not been provided, but PIOs remain concerned that western utility regulators – particularly from states such as Colorado and Wyoming that are included in the future RTO West market footprint – are not members of the State Commission Forum.<sup>17</sup>

PIOs recommend that SPP and the RSC consider offering western utility regulators the opportunity to not only participate in the State Commission Forum, but also, ex officio membership in the RSC.<sup>18</sup> Although RTO West is not yet “live,” western regulators are very much engaged on issues of market design and expansion, as evidenced by the numerous markets-focused investigatory proceedings in the states of Nevada, New Mexico and Colorado over the past five years.<sup>19</sup> State commission involvement earlier rather

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<sup>13</sup> Sustainable FERC Project, “Comments of Public Interest Organizations to SPP’s RTO West Leadership Team Regarding RTO Governance” (March 2021) available at: <https://sustainableferc.org/public-documents/> (last visited June 30, 2021).

<sup>14</sup> Southwest Power Pool website, “RTO West”, at: <https://www.spp.org/western-services/rto-west/> (last visited June 30, 2021).

<sup>15</sup> Terms & Conditions at 9.

<sup>16</sup> *Id.*

<sup>17</sup> Both the Colorado Public Utilities Commission (PUC) and the Wyoming Public Service Commission (PSC) have jurisdiction related to certain elements of the RTO West proposal. See generally Code of Colorado Regulations, 4 CCR 723-3, Rules Regulating Electric Utilities (2021) available at: [https://drive.google.com/file/d/0B8qvU2knU8BkcEJneE93YkNRQmM/view?resourcekey=0-XGWvr\\_3zVqbuKs9q1SpG1Q](https://drive.google.com/file/d/0B8qvU2knU8BkcEJneE93YkNRQmM/view?resourcekey=0-XGWvr_3zVqbuKs9q1SpG1Q) (last visited June 30, 2021). ; also see generally Wyoming Statutes Annotated Title 37 – Public Utilities (2021) available at: <https://wyoleg.gov/statutes/compress/title37.pdf> (last visited June 30, 2021) and Wyoming Administrative Procedure Act Title 16 - Chapter 3 (2021) available at: <https://wyoleg.gov/statutes/compress/title16.pdf> (last visited June 30, 2021).

<sup>18</sup> See Southwest Power Pool Bylaws, Section 7.2 Regional State Committee (2021): “A Regional State Committee (RSC), to be comprised of one designated commissioner from each state regulatory commission having jurisdiction over an SPP Member, shall be established to provide both direction and input on all matters pertinent to the participation of the Members in SPP. This direction and input shall be provided within the context of SPP’s Organizational Group meetings as well as Board of Directors meetings. Staff will assist the RSC in its collective responsibilities and requests by providing information and analysis...” available at: <https://www.spp.org/documents/13272/current%20bylaws%20and%20membership%20agreement%20tariff.pdf> (last visited June 30, 2021).

<sup>19</sup> See generally Colorado Public Utilities Commission Proceeding No. 19M-0495E on Colorado Transmission Coordination Act, available at:

than later not only provides a critical information-sharing function, but also builds trust with the decision-makers that will ultimately have to approve their utilities' participation in the RTO. Additionally, looking ahead, active engagement of western state regulators will be critical to enable market expansion opportunities and support continued growth of SPP's market in the region.

### 3. GHG Accounting

Noticeably absent from the RTO West Terms & Conditions is that of a greenhouse gas ("GHG") accounting framework. While such a mechanism does not currently exist in SPP's RTO, it does exist in varying forms in other RTOs and ISOs, including the California ISO, the New York ISO, and PJM.<sup>20</sup> Such a mechanism is becoming increasingly important to western states, as most of these state are either currently considering or have already adopted statutory requirements that focus on a broad range of topics, including energy efficiency, low carbon fuels, transportation electrification, and reducing emissions from the electricity sector.<sup>21</sup>

As recently noted by the Center for the New Energy Economy, "to ensure that state policies are achieved and implemented effectively, systems for accounting, tracking and demonstrating compliance are needed."<sup>22</sup> Depending on the program and state preferences, accounting may be needed for electricity and/or emissions produced or consumed.<sup>23</sup> For its part, FERC has long recognized that costs can include environmental compliance costs such as cap-and-trade allowance costs.<sup>24</sup> For example, in 2014, FERC approved the California ISO's revisions implementing the California application of a carbon price to imports attributed to the Western EIM's least-cost dispatch algorithm.<sup>25</sup>

PIOs recommend that SPP initiate a public stakeholder process to examine possible GHG accounting frameworks for RTO West. Ideally, such a framework will be capable of accomplishing the following:

- Advance the measurement and achievement of state or regional goals and enable compliance with state policies;

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[http://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=19M-0495E](http://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=19M-0495E) (last visited June 30, 2021).; also see generally New Mexico Electric Grid Modernization Advisory Group, "Whitepaper Series #5: Establishing a New Mexico RTO Task Force" (2021), available at:

[http://www.emnrd.state.nm.us/ECMD/GridModernization/documents/RTOTaskforce\\_1.29.21.pdf](http://www.emnrd.state.nm.us/ECMD/GridModernization/documents/RTOTaskforce_1.29.21.pdf) (last visited June 30, 2021).; and see generally Nevada Governor's Office of Energy website, "Governor's Committee on Energy Choice" available at: <https://energy.nv.gov/Programs/TaskForces/2017/EnergyChoice/assd> (last visited June 30, 2021).

<sup>20</sup> See CAISO website, "Emissions" at: <http://www.caiso.com/todaysoutlook/pages/emissions.html> (last visited June 30, 2021); also see NYISO "Generator Fuel and Emissions Reporting Guide" (August 2020) available at: <https://www.nyiso.com/documents/20142/3625950/UG-17-GFER-UG.pdf/7729b367-b2ff-d257-19ba-835c4e102e25> (last visited June 30, 2021); also see EA Monitoring Analytics "Carbon Pricing in PJM" (May 2020), available at: <20200519-item-04c-monitoring-analytics.ashx> ([pjm.com](http://pjm.com)).

<sup>21</sup> Colorado State University Center for New Energy Economy, "Final Review Draft WIRED GHG Accounting Working Group Report" (Nov 2020) available at: <https://cnee.colostate.edu/wp-content/uploads/2021/01/final-review-draft-WIRED-GHG-accounting-work-group.pdf> (last visited June 30, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Order No. 579, 60 Fed. Reg. 22,257 (1995).

<sup>25</sup> 147 FERC ¶ 61,231 at P 238 (2014).

- Reduce barriers to the development of renewable and other non-emitting generation, as well as barriers to reducing GHG emissions from emitting resources;
- Balance the rigor and accuracy of accounting with the incentives to increase renewable energy production, reduce GHG emissions, and lower overall compliance costs;
- Harmonize with electricity market design and operations; and
- Use of simple, cost-effective solutions where possible and avoidance of administratively burdensome, complex accounting approaches.<sup>26</sup>

#### 4. Seams

“Seams issues” can be described as inefficiencies that impact the economic transfer of capacity and energy between neighboring markets.<sup>27</sup> In addition to interregional transmission planning, improving coordination between neighboring RTOs and ISOs is important for incenting resource development across the seams.<sup>28</sup> Typically, neighboring market operators will enter into what are known as “joint operating agreements” in an effort to reduce or eliminate these inefficiencies.<sup>29</sup> With the “go live” of the WEIS, a market seam immediately formed between the WEIS and the Western EIM. Once RTO West is operational, another seam will exist. Additionally, seams between Reliability Coordinator (“RC”) footprints in the West already exist – with some utilities taking RC services from the California ISO and other taking RC services from SPP.

The Terms & Conditions does not address the issue of seams in great detail, but does acknowledge that seams agreements will eventually be necessary and further, that SPP will follow a process previously established by SPP’s Seams Steering Committee in developing these agreements.<sup>30</sup> PIOs are concerned that such an agreement is not already in place between SPP and the California ISO, particularly since WEIS has been operational since February. PIOs strongly recommend that SPP prioritize the development of a joint operating agreement with the California ISO, taking into account market seams that already exist between the WEIS and the Western EIM and seams that will (or could) exist in the future between RTO West and the Western EIM, as well as RTO West, WEIS and the California ISO’s currently contemplated Extended Day-Ahead Market, or EDAM.

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<sup>26</sup> Colorado State University Center for New Energy Economy, “Final Review Draft WIRED GHG Accounting Working Group Report” (Nov 2020) available at: <https://cnee.colostate.edu/wp-content/uploads/2021/01/final-review-draft-WIRED-GHG-accounting-work-group.pdf> (last visited June 30, 2021).

<sup>27</sup> Southwest Power Pool, “Seams White Paper for Organization of MISO States (MISO) and SPP Regional State Committee (RSC) Liaison Committee” (Nov 2018) at 5, available at: [https://www.spp.org/documents/59006/spp-miso\\_rsc\\_oms\\_response\\_spp\\_miso\\_final\\_v3.pdf](https://www.spp.org/documents/59006/spp-miso_rsc_oms_response_spp_miso_final_v3.pdf) (last visited June 30, 2021).

<sup>28</sup> Great Plains Institute, “Patching Up the Seams: Reducing Regional Obstacles in Electricity” (Nov 2014), available at: <https://www.betterenergy.org/blog/patching-seams-reducing-regional-obstacles-electricity/> (last visited June 30, 2021).

<sup>29</sup> Southwest Power Pool, “Seams White Paper for Organization of MISO States (MISO) and SPP Regional State Committee (RSC) Liaison Committee” (Nov 2018) at 5, available at: [https://www.spp.org/documents/59006/spp-miso\\_rsc\\_oms\\_response\\_spp\\_miso\\_final\\_v3.pdf](https://www.spp.org/documents/59006/spp-miso_rsc_oms_response_spp_miso_final_v3.pdf) (last visited June 30, 2021).

<sup>30</sup> Terms & Conditions at 18.

## 5. DC Ties

As noted in the Terms & Conditions, the DC Ties Task Force is continuing to evaluate options for DC tie use, including cost allocation, in the market.<sup>31</sup> While a final proposal will not be ready until October, at this stage, PIOs offer support for the following principles:

- The mechanism for recovering costs associated with the DC ties from the market is to be roughly commensurate with the benefits;
- The DC ties will be utilized by the market for maximum overall market benefit and dispatched on a five-minute basis; and
- The market design will not include a DC tie hurdle rate between interconnections for entities that utilize DC ties for transmission service.<sup>32</sup>

The economic benefits stemming from RTO participation are vast and include increased economic efficiency from eliminating pancaked transmission rates, eliminating pancaked transmission loss charges, sharing operating reserves, and coordinating maintenance and scheduling of generation and transmission.<sup>33</sup>

## 6. Operating Reserves

One of the economic benefits stemming from RTO participation is the sharing of operating reserves across a larger footprint. However, as noted in the Terms & Conditions, the sharing of operating reserves is not currently contemplated between the existing SPP footprint and RTO West.<sup>34</sup> As a result, the RTO West Balancing Authority will be required to join the Northwest Power Pool's Reserve Sharing Group, while the existing SPP market will continue providing reserves for its RTO footprint in the Eastern Interconnection.

Generally speaking, operating reserves impose costs by forcing system operators to keep partially loaded spinning generators available to respond to system contingencies and random variations in demand.<sup>35</sup> From a system perspective, the need for reserves can result in higher generation costs because keeping generators at "part load" increases the number of plants that are online.<sup>36</sup> These additional online units have equal or higher production costs than the generators that were backed down to provide the reserves.<sup>37</sup> This, in turn, results in higher operational costs (more fuel use and more unit started) per unit of actual energy produced.<sup>38</sup> To PIOs, this seems like a missed opportunity to realize important economic benefits stemming from RTO participation and we strongly recommend that SPP reconsider the issue of

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<sup>31</sup> *Id.* at 12.

<sup>32</sup> *Id.* at 13.

<sup>33</sup> Tabors Caramantis & Associates, "Evaluating the Benefits and Costs of RTOs and Membership in RTOs" (June 2002) at 7, available at: [https://www.ces-us.com/download/Reports\\_and\\_Publications/Infocast%20RTO%202.pdf](https://www.ces-us.com/download/Reports_and_Publications/Infocast%20RTO%202.pdf) (last visited June 30, 2021).

<sup>34</sup> Terms & Conditions at 14. "Operating reserves will not be optimized across the DC ties, but rather, within each Balancing Authority footprint."

<sup>35</sup> Hummon, Denholm, Jorgenson, Palchak, Ma, and Kirby, National Renewable Energy Laboratory, "Fundamental Drivers and Price of Operating Reserves" (July 2013), available at: <https://www.nrel.gov/docs/fy13osti/58491.pdf> (last visited June 30, 2021). (see Abstract).

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

sharing operating reserves in the context of RTO West and additionally, provide clarification regarding why the sharing of reserves is not currently contemplated.

## 7. Reliability Coordinator

As explained in the Terms & Conditions, the RTO West will continue to provide RC services for the new market footprint, as well as providing contract RC services for current West RC members not joining RTO West or participating in the WEIS.<sup>39</sup> PIOs raise the following preliminary questions and concerns:

- Will SPP be providing these RC services separately or will the entire combined footprint (RTO West, WEIS and West RC) be monitored as one footprint? Bifurcating RC services raises the possibility of reliability impacts.
- Related to our seams coordination comments in section 4 above, what kind of information sharing agreements will SPP put in place to ensure information sharing with CAISO?<sup>40</sup>

## 8. Market Design

The Terms & Conditions document proposes to integrate the western entities into SPP's Integrated Marketplace with minimal changes to the existing Marketplace rules. Only "necessary modifications to incorporate a western Balancing Authority into the existing market and to optimize the DC ties within the expanded market footprint" will be considered.<sup>41</sup> Under the "copy and paste" market framework contemplated in the Terms & Conditions, pre-existing price distortion problems and market design issues will be imported from the East to the West.

For example, the issue of uneconomic self-scheduling has been raised by SPP's MMU in the East RTO.<sup>42</sup> As noted by SPP MMU, self-commitment currently represents a significant portion of the transaction volume in the Integrated Marketplace, resulting in distorted price and investment signals. The costs to ratepayers of uneconomic self-scheduling practices in the east are significant, and the impacts on customers in the western footprint under the proposed framework are a concern. Effective regulation and monitoring of self-scheduling could mitigate ratepayer impacts and reduce costs, but there has been little to no discussion of this in the Members Forum to date.<sup>43</sup>

PIOs recommend SPP and its members work with stakeholders to support further discussion and development of market rules and business practices necessary and appropriate for extension of the Integrated Marketplace into the Western Interconnection to address the unique resource needs, diverse geography and customer demand in the West.

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<sup>39</sup> Terms & Conditions at 14.

<sup>40</sup> The issue of information sharing and SPP's role as an RC versus a market operator was also raised in the WEIS docket at FERC. (Docket No. ER21-3-000)

<sup>41</sup> Terms & Conditions at 15.

<sup>42</sup> See generally Southwest Power Pool Market Monitoring Unit, "Self-committing in SPP markets: Overview, impacts, and recommendations" (Dec. 2019) available at: <https://spp.org/documents/61118/spp%20mmu%20self-commit%20whitepaper.pdf> (last visited June 30, 2021).

<sup>43</sup> See PIO Letter to SPP BOD and RSC on Uneconomic Self-Scheduling (Nov 2020) available at: <https://sustainableferc.org/public-documents/page/2/?category&years&sort=DESC> (last visited June 30, 2021).

## **9. Transmission Planning**

### *A. Generation Interconnection*

Similar to our comments regarding the import of market design and price formation challenges from the East to West, PIOs are concerned that SPP’s generator interconnection (GI) queue backlog in the East will cause unreasonable and unnecessary delays to renewable generation resources coming online in the West. Although both the Terms & Conditions document and SPP staff have stated the lofty goal of addressing the GI backlog in the East before the 2024 “go-live” date, a realistic view of the challenges SPP is currently facing in the East warrants further discussion and analysis of options by the Members Forum. Furthermore, whether SPP would be able to obtain a “waiver” from FERC to treat the GI queue in the West separately from the East is not a foregone conclusion. The mechanics and timing of such a waiver must be fully vetted by stakeholders and should be presented to members and stakeholders for further discussion and evaluation.

### *B. Local Planning Coordination*

The Terms & Conditions document envisions a single regional planning process, the Integrated Transmission Planning (“ITP”) assessment, across both the eastern and western footprints. PIOs note that existing Order 1000 planning processes in the West will be impacted by SPP’s ITP assessment and raise the following questions:

- What steps will SPP take at FERC to address coordination with other western Order 1000 transmission planning regions?
- What role will western states, PIOs and the public have within this planning process?

## **10. Resource Adequacy Analysis**

SPP plans to perform a Loss of Load Expectation (“LOLE”) study of the West footprint to evaluate the possibility of adopting a minimum planning reserve margin for the Western Interconnection that is different from the planning reserve margin currently approved, and the need for a separate analysis for accreditation of generation resources in the West region.<sup>44</sup> According to the Terms & Conditions document, the RSC will consider the Supply Adequacy Working Group’s (“SAWG”) recommendations on the planning reserve margin based on the LOLE study results for the West BA.

However, as noted above, many western states are not currently represented on the RSC and western entities are not represented in the SAWG. PIOs recommend SPP involve western states and public stakeholders in the development of the LOLE study and engage in a robust stakeholder process to evaluate the need for a separate analysis for crediting resources in the West.

## **11. Membership Commitment Agreements and RTO West Development Costs**

The costs of integrating western members into SPP’s RTO will be rolled into SPP’s Schedule 1-A rates, which are to be applied to members in both the SPP and RTO West.<sup>45</sup> These costs will then trickle down to consumer retail rates in both regions. PIOs request additional information and detail on both the

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<sup>44</sup> Terms & Conditions at 18.

<sup>45</sup> Terms & Conditions at 19.



estimated costs and timing of the effort to integrate new members in the West, as well as the potential rate impacts on end-users across regions.

## Conclusion

PIOs appreciate the opportunity to provide comments regarding SPP's proposed Terms & Conditions for expanding RTO membership into the Western Interconnection.<sup>46</sup> We support the development of regional markets in the West as an opportunity to advance renewable energy development, reduce costs through market efficiencies, and support system reliability, flexibility and resilience through coordinated planning and operations. However, at this time, PIOs feel that the process for development of the RTO West proposal has been rushed and lacks clarity around many important areas, including governance, operations, and market design – issues that should be addressed through a robust stakeholder process. We urge SPP staff, leadership, the RSC and SPP's Board of Directors to take more time to work with western states, PIOs and the public to develop a robust proposal that meets the needs of both the eastern and western regions.

Respectfully submitted,

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<sup>46</sup> Submission of Western Energy Imbalance Service Market Tariff, Western Joint Dispatch Agreements, and the Western Markets Executive Committee Charter, Docket Nos. ER21-3-000 and ER21-4-000 (October 1, 2020) (WEIS Proposal). Unless otherwise noted, all references herein to the WEIS Proposal shall be to the filing letter submitted in Docket No. ER21-3-000.

## ATTACHMENT A

### **Southwest Power Pool's RTO West Market Proposal Public Interest Organizations' Principles for Good RTO Governance**

*Submitted to the SPP Members Forum on March 3, 2021*

#### **Governance Principles**

Stakeholder governance processes in RTOs are critical for the efficient development of market rules. When done right, these processes offer stakeholders not only an important educational and engagement opportunity, but also, the ability to influence the development, amendment and proposal of RTO market rules and tariffs for approval.<sup>1</sup> Given the multifaceted obligations of RTOs, tensions will naturally arise between ensuring that these organizations are responsive to the legitimate concerns of the market's participants, but also, that they are adequately considering the larger public interest (including long-term grid reliability, environmental impacts, and the economic interests of non-participants).<sup>2</sup>

Ensuring that the following principles of "Good RTO Governance" are observed and implemented will significantly enhance the ability of SPP's RTO to adequately consider the larger public interest and to appropriately leverage all stakeholder input to achieve maximum market efficiency. While these recommendations will serve to enhance the efficacy of SPP's existing RTO, they will prove particularly important as SPP continues to pursue westward expansion of its market services.

#### **Principle #1: Decision-making at all levels of the stakeholder process should be as transparent as possible.**

As a threshold issue, decision-making within the RTO's stakeholder process must be transparent. Without sufficient transparency at all levels of the stakeholder process, lack of accountability remains a lingering concern for many public stakeholders and interested parties.<sup>3</sup>

Within the context of SPP, this means that wherever possible, stakeholder meetings must be open to the public – particularly given the difficulties many stakeholders face in trying to become members of SPP. For example, today's business practice of frequently closing previously open stakeholder meetings for "members-only discussions" creates a serious lack of transparency in SPP's stakeholder process. "Executive sessions" or "closed door meetings" should be used sparingly and only when applicable law requires it – i.e., to discuss issues pertaining to certain personnel matters, to consider legal advice on a matter still under discussion, to deliberate potential or actual emergencies, etc. As noted by an industry expert, executive sessions should be used thoughtfully – they should never give the appearance that the

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<sup>1</sup> MARK JAMES ET AL., HOW THE RTO STAKEHOLDER PROCESS AFFECTS MARKET EFFICIENCY 11 (2017) (available at: <https://2o9ub0417chl2lg6m43em6psi2i-wpengine.netdna-ssl.com/wp-content/uploads/2018/04/112-1.pdf>).

<sup>2</sup> Michael H. Dworkin & Rachel Aslin Goldwasser, Ensuring Consideration of the Public Interest in the Governance and Accountability of Regional Transmission Organizations, 28 ENERGY L.J. 543, 600 (2007).

<sup>3</sup> MARK JAMES ET AL., *supra* note 8, at 13.

Board or committee is doing something behind the backs of management, the public or other stakeholders.<sup>4</sup>

Additionally, transparency can be enhanced in other ways, including a commitment to provide access to meeting materials and agendas at least five days in advance of stakeholder meetings, as well as providing access to meeting recordings for those who are unable to attend. While SPP has long allowed for remote participation in its meetings and maintains most meeting materials on its website, providing recordings of stakeholder meetings would further enhance transparency in its decision-making.

Furthermore, as reflected in SPP's 2020 Board of Directors Evaluation Results ("Board of Directors Survey"), another means for enhancing transparency is to provide more detailed meeting minutes so that both members and public stakeholders can more effectively track initiatives working their way through SPP's stakeholder process.<sup>5</sup> Providing recordings and more detailed minutes for meetings would be particularly helpful for smaller organizations or companies, understaffed state agencies, and other stakeholders who cannot afford to have sufficient staff or consulting assistance necessary to cover all meetings.

***Principle #2: Membership must be reasonably available to all interested stakeholders, including public interest organizations.***

- A. *Under the current SPP stakeholder governance structure, membership in SPP is essential for meaningful participation by PIOs.*

Under SPP's governance framework, to truly have a "meaningful voice" in its stakeholder process, one must be a member of the organization. Membership offers a number of key opportunities for influence that public stakeholder status alone does not, including: (1) the ability to elect members to the SPP Board of Directors; (2) the potential for appointment to key committees and working groups; (3) the ability to vote on SPP initiatives and appeal decisions of organizational groups to the Board of Directors; (4) the ability to submit Revision Requests and policy proposals necessary for making changes within the SPP member working groups and committees; and (5) the ability to participate in certain executive sessions (only members are eligible to sign the NDAs required to participate in these sessions for RTO West).<sup>6</sup> Because the current SPP Bylaws do not provide for non-member PIO appointment and formal

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<sup>4</sup> Jeremy Barlow, *Open Meetings, Closed Sessions: Executive Session as a Tool*, BOARD EFFECT (Nov. 22, 2016), <https://www.boardeffect.com/blog/open-meetings-closed-sessions-executive-session/>.

<sup>5</sup> As noted by an SPP member: "I don't care for the abbreviated format of the meeting minutes as it doesn't allow for inclusion of important details from the meeting and discussion." Another member made a similar remark: "I wish the meeting minutes were in a little more detail related to the conversations and thoughts presented to provide better reflection later." SOUTHWEST POWER POOL COMMUNICATIONS, 2020 BOARD OF DIRECTORS EVALUATION RESULTS 17 (Nov. 18, 2020) (available at:

<https://www.spp.org/documents/63632/bod%20mc%20minutes%20and%20attachments%2020201207.pdf>) ("Board of Directors Survey").

<sup>6</sup> See SPP Bylaws Section 3.1 (2021): "3.1 Structure. Member input on decision-making shall be accomplished primarily through Membership participation in Organizational Groups. Members are expected to provide representation to Organizational Groups as requested. Unless otherwise provided in these Bylaws, Organizational Group representation will be appointed by the Board of Directors, who shall consider the various types and expertise of Members and their geographic locations, to achieve a widespread and effective representation of the Membership. Organizational Group representation will be reviewed annually for compliance with the Bylaws by the Corporate Governance Committee. The Chair of any Organizational Group may appoint any ad hoc task forces as

representation in SPP's organizational groups, consumer, environmental and other PIO perspectives are notably underrepresented, if not almost entirely absent, in SPP's stakeholder process.

*B. SPP's membership withdrawal deposit requirements continue to prevent PIOs from becoming members.*

Although SPP's membership requirements changed last year following the outcome of a Section 206 challenge at FERC, they still present a significant financial barrier to the ability of most PIOs to join SPP's membership.<sup>7</sup> The \$6,000 annual membership fee can be waived subject to approval by the SPP President and review by the Board of Directors.<sup>8</sup> However, it is the membership "withdrawal deposit" that creates the real barrier. If a PIO joins SPP as a member today and at a future date needs to exit as a member (e.g., organizational dissolution), the PIO (just like any other member) would be subject to the withdrawal deposit. This deposit is treated as a pre-payment of a portion of the costs SPP incurs to process the member's withdrawal from the RTO.<sup>9</sup> For a non-LSE (a member category that includes PIOs), this amount is \$50,000. Whatever amount is leftover after processing the member's withdrawal is returned to the member. However, most PIOs lack the financial resources of utilities and larger organizations and cannot afford to be potentially liable for such a significant amount of money. Additionally, it remains unclear why such a fee would even be needed in the case of a departing PIO member, when any "costs SPP incurs to process [their] withdrawal" would be de minimis, at best. This requirement not only conflicts with cost causation principles, but additionally, is premised on an unreasonable estimate of the potential costs resulting from a PIO's departure from the organization.

SPP has previously argued that "non-members understand that by declining to assume [the financial burdens of SPP's RTO], their participation in SPP stakeholder initiatives will not come with voting rights."<sup>10</sup> PIOs disagree with this fundamental assumption and point to many other examples of RTOs and ISOs where PIOs are treated as "members" in the stakeholder process without simultaneously being required to take on the financial burdens of the RTO.<sup>11</sup> Instead, in these other organized markets, the value of having the collective PIO voice at the table is well understood and appreciated. After all, these organizations represent the "public interest," which includes consumer interests, environmental

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*necessary to fulfill its mission. Task force appointments shall be made with due consideration of the various types and expertise of Members and their geographic locations. Criteria for serving on an Organizational Group will be determined in the group's scope. Except for any full representation group, an appointment to an Organizational Group is for an individual, not a corporate entity. Participation in certain sessions of Organizational Group meetings where market sensitive issues are discussed may be restricted to persons representing entities that have executed ERO's Confidentiality Agreement. Representatives on all Organizational Groups will be documented in the SPP directory maintained by Staff. Organizational Group vacancies will be filled on an interim basis by appointment of the President unless otherwise provided for in these Bylaws."*

<sup>7</sup> See generally FERC Order on Compliance Filing, Docket No. ER19-2522-002 (July 2020).

<sup>8</sup> See SPP Bylaws Section 8.2 (2021).

<sup>9</sup> *Id.* at Section 4.2.

<sup>10</sup> *Am. Wind Energy Ass'n and The Wind Coalition v. Sw. Power Pool, Inc.*, 169 FERC ¶ 61227 at PP 26 (2019) (Order on Rehearing, Compliance, and Section 205 Filing).

<sup>11</sup> See generally *Stakeholder Initiatives*, CALIFORNIA ISO, <https://stakeholdercenter.caiso.com/StakeholderInitiatives> (last visited March 2, 2021) (where all stakeholders treated as equals in the stakeholder process); see also *Stakeholder Engagement*, MISO, <https://www.misoenergy.org/stakeholder-engagement/> (last visited March 2, 2021) (10 stakeholder voting sectors, including "Environmental & Others" and "Public Consumer Groups", with each stakeholder sector holding a certain number of votes – i.e., "weighted" voting).

interests, and clean energy interests. Consumers both benefit from and pay for electricity service provided by RTOs. Similarly, consumers *and* PIOs benefit from enhanced market efficiencies that result from truly collaborative market rule development decisions and pay for such decisions in the form of external or societal costs when stakeholder input is *not* duly considered.

Particularly as SPP considers expansion of its RTO market services into the Western Interconnection, where seven states have enacted some form of GHG emissions reduction target, two states have enacted state carbon pricing policies, three states have enacted low carbon fuel standards, and nine states have some form of clean energy goal, standard or RPS, removing barriers to PIO membership in SPP will become increasingly important.<sup>12</sup> Indeed, PIOs have not only influenced the development of these policies, but also possess significant and relevant subject matter expertise.

- C. *PIOs suggest changes to the SPP Bylaws to remove the overly burdensome and discriminatory withdrawal deposit requirement in order to create a path forward for PIO membership in SPP's RTO.*

PIOs offer the following suggested changes to the SPP Bylaws (suggested language in red) to clarify what types of organizations qualify as “public interest” and to remedy the \$50,000 withdrawal deposit requirement as applied to PIO members:

#### *“8.2 Annual Membership Fee*

*All SPP Members will be subject to an annual membership fee in the amount of \$6,000, or other amount established by the Board of Directors. Unless otherwise agreed, Membership fees for new Members are due at the execution of the Membership Agreement. Membership fees are not subject to refund. The Board of Directors shall determine the annual membership fee for the upcoming year in advance of the last meeting of Members in a calendar year. **Legitimate-Public interest organizations** (e.g., consumer advocates, environmental groups, **clean energy trade organizations**, citizen participation groups, **or community-based organizations**) may seek a waiver of the annual membership fee. The request for waiver must be directed to the President in writing ninety calendar days in advance of the start of each fiscal year. If granted, the waiver will remain in place, subject to an annual review of the **organization's** legitimate public interest by the Board of Directors.”*

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#### *“4.2 Termination Procedures and Effective Dates 4.2.1 Notice of Voluntary Withdrawal ...*

*(b) Withdrawal Deposit. A Member submitting a written notice of its intent to withdraw from this Agreement must simultaneously submit a cash withdrawal deposit to SPP, as set forth in the table below. SPP will not accept a notice of intent to withdraw without a withdrawal deposit. SPP will treat the withdrawal deposit as a pre-payment of a portion of the costs SPP incurs to process the Member's withdrawal from SPP, as set forth in Section 4.3.2(d) of this Agreement, or the costs associated with*

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<sup>12</sup> *State Climate Policy Maps*, CENTER FOR CLIMATE AND ENERGY SOLUTIONS, <https://www.c2es.org/content/state-climate-policy/> (last visited March 3, 2021).

reintegrating the Member into SPP if the Member subsequently rescinds its notice of intent to withdraw and SPP incurs costs to reintegrate the Member. Withdrawal deposits are as follows:

<i>Member Category</i>	<i>Withdrawal Deposit</i>
<i>Load Serving Entity</i>	<i>\$ 150,000</i>
<i>Non-Load Serving Entity</i>	<i>\$ 50,000</i>

*If the cost of processing the Member’s withdrawal as calculated by SPP pursuant to Section 4.3.2(d) of this Agreement exceeds the withdrawal deposit, the additional amount shall be included in the invoice SPP provides to the Member under 4.3.2(e) of this Agreement. If the Member rescinds its notice of intent to withdraw and the cost of processing the Member’s withdrawal and subsequent reintegration into SPP exceeds the withdrawal deposit, SPP shall invoice the Member for the amount of the cost that exceeds the deposit, and the Member shall provide payment to SPP within thirty (30) days of receipt of the invoice. If the withdrawal deposit exceeds the costs of processing the Member’s withdrawal and/or reintegration, SPP shall refund the difference to the Member. Notwithstanding the foregoing, a Federal Power Marketing Agency **and an organization deemed to be a public interest organization upon entry as a Member (as defined in Section 8.2 of these Bylaws)** shall not be required to make a withdrawal deposit and shall only be responsible for paying SPP costs after they are incurred and appropriately invoiced pursuant to 4.3.2(e).”*

**Principle #3: Minority positions must be recognized and actively considered throughout the stakeholder process.**

SPP’s membership will grow as it expands its market services into the Western Interconnection, bringing with it a diversity in viewpoints that will shape future SPP stakeholder processes. In instances where members are not in total agreement on a particular issue, minority positions must be fairly considered and addressed throughout the stakeholder process and most importantly, communicated to the Board of Directors at the same time as majority positions.<sup>13</sup>

- A. *Amending SPP’s Bylaws to include non-member appeals of SPP organizational group actions to the SPP Board of Directors would support consideration of minority positions and prevent unnecessary and costly litigation at FERC.*

Under SPP’s current bylaws, formal appeals of actions taken (or not taken) by SPP organizational groups to the Board of Directors are limited to SPP members and/or groups of SPP members.<sup>14</sup> This limitation effectively precludes non-members from raising concerns to the Board of Directors for independent

<sup>13</sup> Order No. 710, 122 FERC ¶ 61,262 (March 21, 2008).

<sup>14</sup> See SPP Bylaws Section 3.10 (2021): “3.10 Appeal. Should any Member or group of Members disagree on an action taken or recommended by any Organizational Group, such Member(s) may, upon written request to the Corporate Secretary, appeal and submit an alternate recommendation to the Board of Directors prior to the next regularly scheduled Board of Directors meeting following such Organizational Group action or inaction.”

review prior to a filing at FERC. This results in more costly and time-consuming litigation at FERC. Removing limitations on non-member appeals of actions by SPP organizational groups to the Board would both enhance the effectiveness of SPP's stakeholder process and could help to avoid unnecessary litigation at FERC. Furthermore, if a valid path to SPP membership continues to be elusive for PIOs, such a change would be comparatively easy to implement and would serve to enhance the voice of all stakeholders now.

PIOs suggest the following changes to the SPP Bylaws (suggested language in red):

### *"3.10 Appeal*

*Should any Member, group of Members, and/or any interested stakeholder(s) disagree on an action taken or recommended by any Organizational Group, such Member(s) and/or interested stakeholder(s) may, upon written request to the Corporate Secretary, appeal and submit an alternate recommendation to the Board of Directors prior to the next regularly scheduled Board of Directors meeting following such Organizational Group action or inaction."*

- B. Dissenting viewpoints and non-member stakeholder positions should be afforded the opportunity for full consideration within the SPP stakeholder process.*

Within SPP's current stakeholder process, each member is allotted one vote to cast on decisions within the stakeholder process. Other than Board votes taken during executive session, SPP's bylaws instruct the Board to solicit and consider a straw vote from the Members Committee as an indication of the level of consensus among members in advance of taking any actions.<sup>15</sup> Though technically not a requirement, SPP typically asks those submitting a "no" vote to provide a written explanation for the minutes.<sup>16</sup> Instead of submitting a "no" vote, many times, members seem to prefer to abstain from voting altogether when they do not support a decision.<sup>17</sup> And, in rare cases, decisions are approved with a minority of support due to these abstentions. As noted in the Board of Directors Survey, some members have indicated that while dissensions and abstentions are recognized throughout the stakeholder process, there is not adequate time to discuss and potentially resolve dissenting viewpoints before matters go to the Board and then to FERC (where those with dissenting views can and do initiate legal challenges).<sup>18</sup> Additionally, the Board's frequent use of a consent agenda as a means for approving decisional items limits the opportunity for robust debate.<sup>19</sup>

SPP should consider enhancements to its stakeholder process to explicitly invite dissenting viewpoints and ensure that those viewpoints are shared with the Board at the same time as majority viewpoints

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<sup>15</sup> See SPP Bylaws Section 4.1 (2021): *"The Board of Directors shall at all times act in the best interest of SPP in its management, control and direction of the general business of SPP. The Board of Directors shall solicit and consider a straw vote from the Members Committee as an indication of the level of consensus among Members in advance of taking any actions other than those occurring in executive session."*

<sup>16</sup> EDWARD GARVEY, AN RTO COMPARISON: SPP AND MISO'S CONTRASTING APPROACHES 5 (AESL Consulting 2016).

<sup>17</sup> *Id.*

<sup>18</sup> For example, one member stated in the survey: "There isn't an effective way to resolve issues that don't reach a consensus." Board of Directors Survey, *supra* note 12, at 37.

<sup>19</sup> See, e.g., Southwest Power Pool Board of Directors/Members Committee Meeting, Meeting Materials (Jan. 28, 2020), available at: [https://www.spp.org/documents/61367/bod-mc%20materials%2020200128%20\\_pgd.pdf](https://www.spp.org/documents/61367/bod-mc%20materials%2020200128%20_pgd.pdf).

(rather than treating dissenting opinions as mere abstentions). The more robust the discussion around both majority and minority positions that is available to the Board at the time of its decision-making, the more informed that decision-making will be.<sup>20</sup> For its part, the Board should limit its use of consent agendas for approving matters and should instead make time to hear from the membership and non-member stakeholders (those in support and those opposed) before taking a final vote.

***Principle #4: The Board of Directors must be diverse and independent and should actively consider the concerns of its membership, while not being beholden to market participants.***

As FERC noted in Order 2000, the principle of independence is the bedrock upon which an RTO must be built.<sup>21</sup> FERC has reaffirmed the principle that an RTO must be independent “in both reality and perception”.<sup>22</sup> Additionally, board-level diversity brings competing perspectives to the organization’s decision-making, thereby protecting against groupthink and enhancing the board’s independence. Although FERC has generally declined to impose specific requirements on RTO governing boards (other than the general requirement that their decision-making process should be independent of any market participant or class of participants), the Commission has emphasized that:

*“Where there is a non-stakeholder board, we believe that it is important that this board not become isolated. Both formal and informal mechanisms must exist to ensure that stakeholders can convey their concerns to the non-stakeholder board. Where there are stakeholder committees that advise or share authority with a non-stakeholder board, it is important that there be balanced representation on the stakeholder committees **so no one class dominates its recommendations or its decisions** [emphasis added].”<sup>23</sup>*

- A. *A diverse Board of Directors will enhance decision-making of the organization and ensure independent oversight of SPP’s day-to-day operations. Regarding its Board of Directors search criteria, SPP should consider expanding the categories of desired professional expertise in an effort to further diversify its Board.*

SPP’s Board of Directors is comprised of ten (10) members which are nominated by the Corporate Governance Committee and elected by a vote of the SPP membership for terms of three (3) years. According to SPP’s Bylaws, Directors “shall have recent and relevant senior management expertise and experience in one or more of the following disciplines: finance, accounting, electric transmission or generation planning or operation, law and regulation, commercial markets, and trading and associated risk management.”<sup>24</sup> Directors are subject to financial and conflict of interest prohibitions while serving on the Board.

Diversity can be satisfied in numerous ways – including geographic, gender and racial diversity. Yet another way is to expand the consideration of professional expertise and background types among the organization’s board members. Specifically, PIOs recommend that SPP add a category of desired professional expertise to include experience in the public interest sector (including experience in state

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<sup>20</sup> See generally *Core Values, Ethics, Spectrum – The 3 Pillars of Public Participation*, INTERNATIONAL ASSOCIATION FOR PUBLIC PARTICIPATION, <https://www.iap2.org/page/pillars> (last visited March 3, 2021).

<sup>21</sup> See Order No. 2000, 89 FERC ¶ 61,285 (Dec. 20, 1999).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See SPP Bylaws Section 4.2.2 (2021).



and local government and experience with consumer advocacy, environmental non-profits, clean energy advocates and trade associations, and other public interest organizations).

The Western Energy Imbalance Market (“EIM”) Governing Body provides a relevant example. When selecting candidates for appointment to the EIM Governing Body (the Board that oversees the Western EIM), the stakeholder-comprised Nominating Committee and search firm are to seek out candidates that have broad expertise in the following areas: electric industry, markets, general corporate/legal/financial, and the public interest.<sup>25</sup> Additionally, the Nominating Committee is to ensure the following:

*“Optimally, the Committee’s selections should ensure that the overall composition of the Governing Body reflects the diversity of expertise **so that there is not a predominance of Members who specialize in one subject area, such as operations or utility regulation** [emphasis added].”<sup>26</sup>*

As previously discussed, SPP’s Board of Directors typically holds meetings in conjunction with the Members Committee and makes final decisions following a vote of the membership. Typically, voting of the membership and the Board are aligned. While this result is indicative of a stakeholder process that encourages consensus at every stage, it is likely also indicative of a membership that is relatively homogenous when compared to other RTOs and ISOs. Diversifying SPP’s membership, broadening representation on the Board to include public interest sector experience, and allowing for meaningful participation by non-member stakeholders and PIOs can only serve to add value to the stakeholder process and enhance the independent decision-making of the SPP Board of Directors.

*B. The Board should consider limiting its use of consent agendas to enable a more robust dialogue between the Board, members, non-member stakeholders, and the Regional State Committee before final decisions are made.*

Despite the appearance of alignment between the membership and the SPP Board of Directors, according to the Board of Directors Survey, this is not always the case. Rather, some members have observed that the Board is not as engaged as it could be.<sup>27</sup> As noted by one member: “I have heard nothing from many of our Board members about their views [...] they need to speak up at meetings and engage in the discussions, even if it is only to ask direct questions.”<sup>28</sup> Members further note that there is not always consensus among the membership on important decisional items and that there is little engagement between the Board and the members during meetings where decisions are made. The frequent use of consent agendas seems to exacerbate this concern and, as discussed in the previous section, the Board should consider limiting its use of consent agendas in order to encourage greater discussion and engagement among the members, non-member stakeholders, the Regional State Committee (“RSC”), and the Board before final decisions are made.<sup>29</sup>

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<sup>25</sup> CALIFORNIA ISO, SELECTION POLICY FOR THE EIM GOVERNING BODY 6-7 (2016) (available at: [https://www.westerneim.com/Documents/SelectionPolicy\\_EIMGoverningBody.pdf](https://www.westerneim.com/Documents/SelectionPolicy_EIMGoverningBody.pdf)).

<sup>26</sup> *Id.* at 5.

<sup>27</sup> For example, one member stated in the survey: “It is a little hard to gauge during virtual meetings, but some Board members do not seem engaged.” Another member added the following: “I like the joint meetings, but there does not seem to be much engagement on behalf of the Board.” Board of Directors Survey, *supra* note 12, at 6-7.

<sup>28</sup> *Id.* at 6.

<sup>29</sup> As noted by one member: “The [...] joint stakeholder briefings have the feel of only engaging the board and RSC. [The] Members Committee is on the sidelines.” *Id.*

Allowing for more robust discussion at Board meetings – including the option for non-member stakeholders to make appeals and the consideration of minority viewpoints – could go a long way in enhancing the Board’s level of engagement with its membership. This, in turn, will help ensure that its membership is “heard” – especially in those seemingly rare cases where the membership and the Board are not in agreement. However, this is a delicate balance. To preserve its independence, the Board must engage with and understand the concerns of its membership, while also ensuring that its decision-making is not overly influenced by market participants.

***Principle #5: State Utility Commissions and Public Interest Organizations should have a major role in RTO formation and once formed, the RTO’s ongoing operations.***

State regulatory commission involvement is particularly important to the creation and operation of an RTO in the West because the size, scope and functions of an RTO will be critical for successfully achieving recently enacted energy and climate policies. While FERC has declined to impose specific requirements on the role of state agencies in RTOs, FERC has previously noted that state commissions “should fully participate in RTO formation and development.”<sup>30</sup>

- A. Western state utility commissions should be provided the opportunity to engage in SPP’s Regional State Committee now as changes to market design and governance are under consideration by SPP’s membership.*

While SPP has formed the State Commission Forum as part of its RTO West stakeholder process, it remains unclear what level of influence western state regulatory commissions may be afforded in this forum. Therefore, PIOs strongly recommend that SPP allow for western state regulatory commission participation on SPP’s Regional State Committee – perhaps in an advisory capacity (i.e., non-voting role) initially and later as voting members (once western utilities become members of RTO West). Enabling robust state commission participation now will provide a critical learning and trust-building opportunity, potentially reducing conflicts down the road as these same state commissions open investigatory or approval dockets related to RTO West.

- B. The creation of a formal role for a Public Sector Liaison to the RSC would help to facilitate consideration of public policy requirements of both states and localities.*

Of particular importance to PIOs is the role of state utility commissions and the public in supporting the RTO’s consideration of public policy requirements. For example, SPP’s RTO West expansion should facilitate compliance with state and local policies, including, for example, emissions tracking in states where it intends to operate. This will require close coordination with state regulatory commissions, PIOs and members of the public across the region. The formal creation of an ex officio (i.e., non-voting) Public Sector Liaison to the RSC to advise on such matters would provide valuable support to the RSC and SPP regarding the RTO’s ongoing consideration and coordination of public policy goals and requirements across the region.

The Western EIM offers another relevant example. Recently, as part of the Western EIM governance review stakeholder process, stakeholders recommended that public power be provided a certain

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<sup>30</sup> See Order No. 2000, 89 FERC ¶ 61,285 (Dec. 20, 1999).

number of ex officio liaison seats on the EIM’s Body of State Regulators (“BOSR”).<sup>31</sup> The BOSR is the EIM’s equivalent of the RSC and advises both the EIM Governing Body and the California ISO Board of Governors on both governance and market design issues pertaining to the EIM. The Governance Review Committee (the Board-appointed stakeholder committee overseeing the governance review) has accepted these recommendations and the BOSR has indicated its support for allowing such an advisory role for public power on the BOSR.<sup>32</sup> There are myriad reasons why BOSR sees value in having public power interests represented on its committee. Within the West, public power has a large presence and its participation in the EIM has grown noticeably in recent years. Additionally, public power utilities are not regulated in the same way as the investor-owned utilities that the BOSR’s members oversee. Rather than create an entirely new advisory body to represent these unique interests, creating an advisory role for public power on the BOSR was deemed most appropriate. PIOs similarly support the creation of a formal role for a Public Sector Liaison to the RSC, modeled after the approach used in the Western EIM, in order to enhance the consideration of public policy requirements within SPP’s stakeholder processes.

## **Conclusion**

PIOs appreciate the opportunity to submit these recommendations for the Members Forum’s consideration as it continues its analysis of potential changes to both market design and governance necessary to expand SPP’s RTO services into the Western Interconnection. Additionally, we look forward to ongoing engagement with SPP management, the Board of Directors, the Regional State Committee, and the Members Forum on these important issues.

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<sup>31</sup> CALIFORNIA ISO, WESTERN EIM GOVERNANCE REVIEW: GOVERNANCE REVIEW COMMITTEE REVISED STRAW PROPOSAL 31-32 (2021) (available at: [http://www.caiso.com/InitiativeDocuments/Revised\\_Straw%20Proposal\\_Western\\_EIM\\_Governance\\_Review.pdf](http://www.caiso.com/InitiativeDocuments/Revised_Straw%20Proposal_Western_EIM_Governance_Review.pdf)).

<sup>32</sup> See generally Western EIM Body of State Regulators, Comments in Response to the Governance Review Committee’s Revised Straw Proposal, available at: <https://stakeholdercenter.caiso.com/StakeholderInitiatives/AllComments/f6b52c90-63a6-4802-bc36-4c907ae22e5c#org-b838016f-705e-4de1-a7cc-f8bb6fdc0d22>.