



May 8, 2024

To: Pathways Initiative Launch Committee

Re: Response to Straw Proposal, April 10, 2024

The Interwest Energy Alliance supports the continuing progress towards development of one or more wholesale electricity markets across the Western Interconnect which will include the greatest available size and diversity of generation and load as can be achieved, including California. Independent governance for California ISO's Enhanced Day Ahead Market ("EDAM") and the Western Energy Imbalance Market ("WEIM") would enable utilities and their customers to realize reliable and cost-effective electricity production, preserving as much benefit as possible from their previous investments in CAISO, energy markets and large-scale transmission. The Straw Proposal issued on April 10 by the Launch Committee advances the goals stated in the July 14 regulator's letter, with substantive analysis of various alternatives.

**Interwest promotes prompt fulfilment of Step 1 before the end of 2024.** Achieving Step 1 will demonstrate early commitment to the ultimate goal of a substantive increase in market independence by all affected parties including California utilities and the CAISO Board of Governors, without creating undue risk of controversy or litigation related to California law or FERC rules and market precedent. Step 1 includes a recommendation by the Launch Committee to the CAISO Board of Governors and the Western Energy Imbalance Market Governing Body ("WEIM Governing Body") to vest the WEIM Governing Body with primary authority for FERC 205 filing rights along with the modified dispute resolution process described in the Straw Proposal. This decision could be implemented around the end of 2024 if approved after stakeholder input and decision by early Fall, 2024, to accomplish near-term realization of increased independence. These steps should be recommended and considered as part of a multi-step process which would also include concrete steps towards further action in 2025.

**After California legislative changes in 2025, Interwest supports completed formation of the Regional Organization and advancement towards Step 2.5, to achieve independent governance with as much flexibility for future decision-making as possible.** Interwest supports action to achieve further independence through formation of a Regional Organization ("RO") which can be accomplished in a stepwise process throughout the period commencing in late 2024 and throughout 2025, guided by any legislative changes which may be contemplated in California.

Both Step 2.0 and Step 2.5 give the RO the sole authority over the regional market services that the CAISO currently offers or will offer through the CAISO's Enhanced Day Ahead Market ("EDAM") and the Western Energy Imbalance Market ("WEIM"). Both options propose a continuing relationship with CAISO, which leaves the CAISO balancing area intact for the foreseeable future.



Importantly, Step 2.0 and Step 2.5 differ in the form of relationship between the RO and CAISO. The relationship would exist either through an interface agreement between the RO and CAISO (Step 2.0) or through a contract for services between the RO and CAISO (Step 2.5) under which CAISO executes and delivers market services. Both provide CAISO with ongoing protections for its corporate functions as discussed at length in the Perkins Coie legal opinion. The Launch Committee<sup>1</sup> identified the points at which the need to change California law is triggered as additional authority is transferred to the RO, either because the CAISO corporate structure which sets up legal requirements and fiduciary duties for the CAISO Board of Governors (as with all corporate governing boards) is altered by transfer of corporate rights and authority to the RO, or because the California public utilities requirements and CAISO's legislative duties to oversee the market functions are transferred to the RO. These risks would be mitigated by appropriate changes to California law and associated changes to the FERC-approved market tariff.

Interwest recognizes the tradeoffs between Step 2.0 and Step 2.5, particularly related to the amount of institutional independence the new RO will have and the amount of responsibility and liability the organization would need to take on. Increasing oversight responsibility and liability will likely increase costs, due to the need for more staffing and expertise to accomplish legal and compliance obligations. If the CAISO operates a market under contract in the name of the RO, the RO will need to have more robust organizational structure, as compared to the CAISO operating the market on its own behalf, but with oversight and independent governance by the RO.

Overall, Interwest members support the RO having as much independence and possible, and flexibility to enable the RO to take on full regional transmission organizational powers in the future. Independence provides the ability for states outside of California to ensure that their own state policies will be followed related to utility operations, including, for example, reliability, resource planning requirements and consumer protection initiatives, clean energy goals (GHG emission reductions, renewable energy requirements), and focus on economic development and energy transition.

For these reasons, Interwest supports the move to Step 2.5 as the goal for formation and scope of authority of the RO. Interwest recommends the Launch Committee carefully weigh stakeholder input and the results of further analysis related to the relative differences in costs between Step 2.0 and Step 2.5, along with the options for financial support of RO activities, including a potential lien on market revenues to support market activities and to cover potential contract responsibilities. These issues can be fleshed out using expert legal input related to whether and when the RO becomes or must become a public utility, and what acquisition principles apply to assignment of existing contracts between market participants and CAISO to the RO. As difficult as the questions can be, the Launch Committee should thoroughly explore whether the scope of authority over the tariff is clear enough for efficient operations in the future when one integrated tariff continues to be governed by separate organizations. The Launch Committee has explored and resolved difficult

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<sup>1</sup> See Perkins Coie legal opinion published with the Straw Proposal.



scoping issues in a short period of time, and is well-suited to continue these exceedingly important discussions with stakeholder input over the coming months.

If there were to be considerable public support for the Pathways Initiative expressed through new utilities committing to join EDAM contingent on adoption of a recommendation to achieve Step 2.0 rather than Step 2.5, Interwest would consider support for achieving Step 2.0, which also provides independent governance and sole authority in the RO for 205 filing rights, but without the institutional independence. Step 2.5 and further regionalization of market services could yet be accomplished in the future, consistent with the pattern of incremental progress towards growth of markets in the West to date.

**Interwest supports preservation of options for the RO to mature into an Regional Transmission Organization (“RTO”) under Step 3.** Ultimately, Interwest members support regional wholesale market services that include a single market tariff, a single balancing area (to avoid pancaking and inconsistent market rules), regional coordinated transmission planning and cost allocation, and all of the market services which an RTO can provide, as described in “Step 3.0” and related alternatives in the Straw Proposal. Therefore, the potential for voluntary movement towards a full regional transmission organization in Step 3—which will ultimately be based on choices by participating utilities, states and stakeholders—should be preserved at all times. While this is outside what is currently defined as the scope of work for the Launch Committee, Step 2.5 and related actions can be designed to retain flexibility to achieve these enhancements, if desired by the market participants, states and utility regulators, consumers and other stakeholders.

**Interwest supports near-term review of processes for stakeholder input and dispute resolution.** Interwest members are interested in providing further input related to evolution of the stakeholder processes under which the RO will be formed and ultimately exercise its governing authority. Meaningful input from diverse stakeholders including the independent power sector provides critical legitimacy, and can preserve competitive power and transmission expansion opportunities, helping to control overall wholesale power costs and injecting diverse business models into the market to serve all types of load. Independent governance cannot be achieved without enabling independent market participants to have input on board member selection, as well as on decisions related to future market tariff design changes, seams management, and growth of the transmission system and related services. Existing stakeholder processes can be improved in this regard. Efficient resolution of conflicts between all stakeholders is necessary to achieve the goals set forth in the regulator’s July 14 letter, while respecting the public interest concepts expressed in the public interest document published with the Straw Proposal. These issues should be addressed as part of decision-making related to formation of the RO.



## **Outstanding questions:**

A number of questions should be addressed by the Launch Committee before taking action on Step 2.0 or Step 2.5:

A. Decisions needed to advance to Step 2, to be made by end of August, 2024:

1. Cost differences between Step 2.0 and Step 2.5 (or alternatives which may be identified). The relative costs of formation and operation of the markets under each type of relationship between the CAISO, its Board of Governors, and the RO should be identified and projected in the near term so a more informed decision can be made to guide selection of Step 2.0 versus Step 2.5, actions related to RO formation and California legislative changes in 2025.
2. Contracting implications of Step 2.5. The Launch Committee should seek legal opinion about the focused question of whether under Step 2.5 the existing contracts between market participants and CAISO would be assignable to the RO, or whether the terms of most of the contracts would need to be renegotiated under a transfer of interests. Stakeholders will want to know whether this appears to be a fairly straightforward conveyance to another governing body such as occurs in a merger and acquisition of corporate assets, rights and responsibilities in a private corporate transaction or whether there are special rules in California law, FERC precedent, or most of the contracts which would trigger a need to renegotiate.

Interwest supports the Launch Committee receiving further analysis of the foregoing, and then making a final recommendation in the form of an updated straw proposal by mid-Summer, 2024 for decision-making by the CAISO Board of Governors.

B. Decisions to be made prior to Q2 2025, especially related to stakeholder processes and formation of the RO:

1. Preparation to form the RO:
  - a. What type of non-profit corporate entity is appropriate to fulfill all of the RO's likely responsibilities under both Step 2.0 and Step 2.5, as well as steps to include additional market services under its governance, as in Step 3.0?
  - b. Will the RO need to be a public utility under each alternative path to independent market governance, and what related steps are required under applicable federal and state laws?
  - c. What other organizational requirements are critical to RO formation (appropriate state of organization, types and amount of staffing required in formation stage, operational stage(s), to provide the foundation for Step 2.0 or Step 2.5?
2. Stakeholder process changes. Interwest urges prompt review of stakeholder processes, to improve efficient decision-making while preserving influence for diverse groups of



stakeholders, state commissions, consumer advocates, and including market participants which are not load-serving entities or transmission service providers. Interwest recommends that a separate input process be established to revise CAISO's existing stakeholder process, which could incorporate some of the best practices identified through exploration of governance for the various market structures developed in recent years.

- C. Interwest does not opine on California legislative changes, which is subject to the discretion of the California legislature. The Launch Committee will provide an important educational function, armed by their legal opinion(s) that they are able to obtain within funding limits, to advise all stakeholders about types of changes which are anticipated to be helpful to achieve the recommendations in the updated straw proposals to be issued near the end of 2024 and in early 2025.

Respectfully submitted,

Interwest Energy Alliance

A handwritten signature in black ink, appearing to read "LHickey", with a long horizontal flourish extending to the right.

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