

## **Bonneville Power Administration Comments on WWGPI April 10<sup>th</sup> Proposal and Legal Analysis**

Thank you for the opportunity to comment on the April 10, 2024 West-Wide Governance Pathways Initiative Phase 1 Straw Proposal. Bonneville is currently holding a public process to examine day ahead market options to determine if Bonneville will join a market and if so, which one. This process centers on the benefits of market participation to Bonneville's customers and how market participation is consistent with Bonneville's statutory obligations. Bonneville anticipates issuing a draft record of decision in August with a final decision in late November. Bonneville appreciates the work of Pathways to further the independence of CAISO and EDAM governance and will consider the progress of Pathways in its decision process.

For Bonneville and its customers, there is risk inherent in a future that is dependent on California legislation with unknown outcomes. The Phase 1 Straw Proposal and the analysis by legal counsel confirm that it will take California legislation to move the Pathways proposal to Step 2. Until then, Step 1 would retain California's control over all aspects of market decisions and design as well as unilateral authority over the market in exigent circumstances. Bonneville's continuing concern is that this retained authority is inconsistent with independence governance principles and creates ambiguities during times of greatest market and reliability stress. This situation underscores the need for legislation allowing the California market to participate in a regional structure with independent governance.

Until such legislation is passed, it will be essential to maintain informed collaboration between the Board of Governors and Governing Body. Bonneville believes that Step 1 should retain the Joint Authority decision model. Both boards should continue to meet jointly to decide matters of market design and administration. Until the Governing Body holds sole control on decisions, it is more effective to retain a model that supports informed collaboration in decision making.

Bonneville will consider how any California legislation addresses the CAISO's corporate scope, and the current provisions of Section 345.5 of the California Utilities Code which prioritizes the interests of the people of California in CAISO operations. It will be important for legislation to recognize and provide for CAISO and California utilities to participate in regional markets on equal footing with utilities in other states.

In the meantime, the objective to leverage the infrastructure of the CAISO for a regional market produces a complicated design. The regional market would remain intertwined with California authority, and this is potentially problematic when the same entity both operates the market and functions as a market participant. It is important to note that this structure will result in significant market seams issues in both Steps 1 and 2. During this time, the EDAM market design, which remains under California's administration, will move to full implementation and operations.

The Regional Organization must be an independent organization devoid of control or undue influence from any one state. Participation on the CAISO's part in the Regional Organization-administered market should be equivalent and equal to participation of any other participating Balancing Authority Area.

## Responses to Launch Committee Questions

### 1. Step 1: Bonneville's Response

#### Transition to Primary Authority:

Bonneville recognizes that Step 1 aims to make meaningful progress in the transition towards independent governance. It is intended to be a stepwise approach from the status quo. The status quo of Joint Authority, however, represents deliberation and recommendations of the comprehensive multi-year stakeholder process undertaken by the Governance Review Committee (GRC). The GRC recognized certain benefits to Joint Authority in its final recommendation:

“After discussing the perspectives of both groups, the GRC opted to recommend the joint authority model in our Straw Proposal due to the substantial collaborative benefits it promotes. Both the existing WEIM and the EDAM are designed to operate as unified markets that co-optimize the resources of multiple balancing authority areas across a broad regional footprint. The joint authority model recognizes the high degree of interconnectedness in these markets and requires the stakeholders and the two bodies to come together with a problem-solving orientation to address any challenging issues that may arise. It also ensures that the decisions made by both the Governing Body and Board transparently consider and then balance the impacts on all customers, rather than focusing only on a subset of stakeholders that may choose to appeal to a particular body.”<sup>1</sup>

Primary authority does *not* materially increase independence from the status quo. The difference between Primary and Joint Authority is a procedural matter of order of voting. They are both essentially advisory in nature, with Board of Governors having the final say. In Primary Authority, the Board of Governors retains substantial authority over the full scope of Governing Body decisions. Bonneville is concerned that the proposed structure creates distance between the Governing Body and Board of Governors such that the Board of Governors may be less informed about the market decisions. The proposed scope of Governing Body authority is not expanded beyond the current Joint Authority scope.

Bonneville agrees with the GRC perspective regarding the benefits of the current Joint Authority structure and is not confident that there are added benefits to Primary Authority without going to Sole Authority. With Joint Authority, the Board of Governors and Governing Body have joint decision meetings and hear the same input from stakeholders. This results in a cooperative decision-making process. Under the Step 1 proposal it appears that the primary interaction between the governing entities would be in a legal setting where FERC filings are needed to settle differences.

Although the proposal references use of the current dispute resolution process, that process relies on joint meetings of the WEIM Governing Body and CAISO Board of Governors. With a shift to Primary Authority, those joint meetings could no longer be required. Bonneville recommends that the Step 1 final proposal clearly define the proposed dispute resolution process and any required changes from the status quo process.

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<sup>1</sup> [EDAM-Governance-Final-Proposal-WEIM-Governance-Review-Committee-Phase-3.pdf \(westerneim.com\)](#), page 11

Step 1 proposes modifying the WEIM Governing Body's charter to distinguish its obligations from those of the CAISO Board of Governors under section 345.5 of the California Public Utilities Code. The proposed revisions to the WEIM Governing Body's charter only serve to highlight the conflicting missions of the WEIM Governing Body and CAISO Board of Governors. The two bodies would have explicitly different missions.

The proposed approach in Step 1 introduces the co-equal filing at FERC as an added level of independence. Bonneville is interested in learning more about the experiences to-date with similar "jump ball" structures, including whether the "jump ball" provisions have been used, how frequently, and the decisions that FERC has rendered in these situations. As a provision that is new to the West, Bonneville is seeking to understand the level of confidence participants may have in this mechanism.

#### **Exigent Circumstances:**

The standard of exigent circumstances bears more discussion. The CAISO Board of Governors would retain sufficient authority to take back the steering wheel when certain conditions arise (to maintain fiduciary responsibility under California law). "Exigent circumstances" is a very broad concept, and by its nature, would likely to be called upon during a crisis, e.g., a reliability event, a price spike, or a call by California-elected officials to take action. Such events will be sudden and chaotic. It would be concerning for parties outside of California to be exposed to a sudden assertion of control by the CAISO Board of Governors when the WEIM Governing Body, by the nature of its primary focus on the market, may have superior understanding of the issues. Bonneville is interested in understanding what the circumstances would be where the assertion of control would occur and if there is any consideration of check and balances on this discretion of CAISO or the Board of Governors in their use of exigent circumstances declarations.

#### **Regulatory Authorities:**

Bonneville also urges Pathways to work directly with the California regulatory agencies (and possibly legislative committees) to confirm the scope of reserved authorities over WEIM and EDAM market design. These should include GHG accounting by CARB; resource adequacy procurement by CPUC, and other policies that will be defined as being under exclusive authority of the state of California.

#### **Initiative Priorities and Stakeholder Engagement:**

The reporting structure for CAISO staff during Step 1 warrants consideration in the proposal, including how the Governing Body may influence staff time and priorities and negotiate with the Board of Governors to determine CAISO staff priorities. During Step 1, staff of the CAISO would report to the Board of Governors and allocate their time to priorities as set by CAISO management. While the scope of the tariff may be under decision-making of WEIM Governing Body, staff time and priorities will remain under a management team that reports to the Board of Governors. CAISO staff will also continue to work within policy design requirements of California state agencies, particularly CARB and CPUC.

Bonneville encourages Pathways to consider what changes could be made to the stakeholder engagement model during Step 1, rather than waiting for Step 2 to implement new approaches.

During the April 19<sup>th</sup> Pathways stakeholder call, Launch Committee members shared that they are coordinating with CAISO staff regarding the stakeholder process requirements to implement Step 1 and that staff believe the change could be taken through the stakeholder process in 2024. CAISO staff have limited bandwidth for new initiatives and CAISO has a planned roadmap in place for stakeholder initiatives. Bonneville is concerned that other CAISO stakeholder processes that impact WEIM participants will be impacted by moving the Step 1 process to the head of the line, which could have unintended consequences such as delaying Phase 3 of Resource Sufficiency Evaluation Enhancements.

Finally, the Step 1 proposal references an elevated role for states, but it is not clear in the process document or description what that elevated role would be. Bonneville recommends further defining that role, if it is to be enhanced, in the final proposal. Alongside any elevated role for states, Pathways could consider giving the Regional Issues Forum a similarly elevated advisory role for enhanced stakeholder involvement.

## **2. Step 2 - Full Governance Independence: Bonneville's Response**

*Bonneville recognizes that Step 2 proposes a significant step towards independence while balancing impacts on the cost and efficiency of the transition to a regional organization. In Bonneville's view, the proposed approach sacrifices ultimate independence to achieve cost efficiencies. Bonneville encourages Pathways to take a long-term view and consider opportunities to move Step 2 towards further independence.*

Bonneville could support a market that has the necessary independence to provide a level playing field for all participants. Noting that the Launch Committee chose to propose the more limited independence in Options 2 and 2.5, Bonneville describes overall concerns with these Step 2 approaches.

Bonneville understands that the Launch Committee has only focused on governance issues, but it is important to think about how the governance proposal will impact market design and viability. From Bonneville's perspective, Step 2 appears premised on California retaining the CAISO BA and continuing control over state policy requirements such as resource adequacy and GHG accounting. While these reservations may be essential for California, this is a good example of how governance concessions can have negative impacts on market design. In this instance there will be significant seams issues with California entities having different resource adequacy and GHG requirements from other participants. Potentially other states could impose their own requirements and the new market will have to operate over a mishmash of resource adequacy and GHG requirements. Similar issues exist in the WEIM, but the WEIM is only a real-time market and participants are currently willing to accept the disparity associated with these seams issues. However, under a full day-ahead market, these seams issues will make the market much more difficult to operate.

Another question involves the scope of the tariff subject to the new RO's authority under Step 2. The current scope of Joint Authority was determined based on CAISO general counsel's interpretation of CAISO Board of Governors' fiduciary responsibility and its assessment of market rules that are specific and limited to internal California operations. If Option 2 or 2.5 moves

forward, it will be critical to reassess the scope of the tariff to identify which elements would be under Sole Authority and which remain under the authority of the CAISO Board of Governors.

The concept of Sole Authority requires a clear delineation of tariff responsibilities particularly with the proposal to move forward with a single tariff. The RO's independence would be undermined if the CAISO Board of Governors could assert that all or portions of the RO's initiative or tariff revision are in fact under CAISO's Sole Authority. No other participating balancing authority would have this ability. Today, when new issues arise in the WEIM, the classification procedures for determining whether initiatives fall under Joint Authority is determined by the Board of Governors and the WEIM Governing Body, with the Board of Governors Chair's tie-breaking role. This process would conflict with the concept of Sole Authority and independence, and it is unclear how new issues would be classified under the Step 2 construct.

The legal analysis is clear that current law requires CAISO to manage the energy markets related to the transmission grid. In other words, independence for a regional market is at a juxtaposition with current California law. The Step 2 proposal attempts to mitigate the existing juxtaposition by suggesting legislation that would allow for a relationship between the CAISO and an RO, while retaining specific authorities for the Board of Governors and management responsibilities for the CAISO. While this is still just a concept, and we do not yet know how the legislation will be framed, the proposal falls short of obtaining meaningful independence for the RO governance if it does not also address CAISO and its Board of Directors' obligations under Section 345.5. Under Option 2, the Legal Analysis assumed the CAISO would include contractual provisions "to seek specific performance to force the RO to perform certain contractual obligations or to enjoin the RO from forcing a filing that could run contrary to Section 345.5 requirements." Legal Analysis at 15. The RO's Sole Authority and independence would be illusory if the CAISO has contractual provisions to force certain tariff filings and prohibit others. At the heart of the current juxtaposition is Section 345.5, requiring the Board of Governors and CAISO to base their decisions on what is in the interest of the people of California. Without legislation that redefines the CAISO's corporate scope and broadens the Board of Governors and the CAISO's overarching directive beyond California interests, the juxtaposition between independent governance and California law will continue to exist regardless of the contemplated legislation described in the Step 2 proposal.

Step 2 envisions a future in which the current EDAM tariff is implemented as approved by FERC. Bonneville understands that Pathways members see this as the most economical approach. However, it must be recognized that the EDAM tariff is an extension of the CAISO's existing day-ahead market, and the EDAM tariff was developed through the CAISO staff-driven process and approved through the current CAISO decision and governance structure and within California policy constraints. Bonneville suggests considering a step in the Pathways RO development that reconsiders elements of the EDAM tariff under the new RO's independent governance structure, independent of the CAISO process. This may be very difficult, because in all likelihood the EDAM tariff will have already been implemented for the early adopters and the Pathways proposed RO would be attempting to modify an already operating market. Regardless of the difficulty, when the RO is a separate decision-making body with some level of independence, it should undertake a full review of the EDAM tariff and make meaningful adjustments to levelize the market design for participants outside of California.

### **3. Step 2 - Institutional Independence: Bonneville Response**

*The proposed Step 2 trades off institutional independence for cost control and efficiency. Bonneville is concerned that these tradeoffs may create a structure of reduced institutional independence for the RO and encourages Pathways to consider ways to reduce the risks outlined in the comments below.*

#### **Staff independence:**

CAISO continues to maintain control over tariff administration under both Options 2 and 2.5 (as well as Option 3). CAISO staff would not be employees subject to the RO's management. As CAISO employees, they would be under the direction of the CAISO Board of Governors. Absent independent administration, there is the potential for pressure on staff to advance California interests over other considerations in tariff revisions. Bonneville recommends that Pathways attempt to develop contractual approaches to resolve this potential conflict.

#### **Market Operations:**

Likewise, under both Option 2 and 2.5, CAISO continues to manage the market rules and operate the market. This continues to present potential conflicts in carrying out market-related work in the interest of either the RO or CAISO. There could also be conflicting priorities. For example, would the RO have unilateral control to set an initiative roadmap, or would CAISO staff prioritize initiatives and determine timelines? In the latter case, the CAISO's prioritization may inappropriately reflect the value it sees as a market participant BA from various initiatives. Further, if a CAISO employee's workload is split between tasks related to the CAISO BA and to the market, their employer may direct them to prioritize certain tasks over others.

Bonneville is concerned about CAISO staff reporting up a chain of command to a Board of Governors with unique obligations to one of the market's participating balancing authorities. If RO-related tasks are severable, then such employees should report to the independent RO, rather than the CAISO. This approach would not result in a parallel staff. Without staff being independent from any one market participant, the risk of conflicting interests and priorities remains.

#### **Emergency Authorities:**

Page 22 references an ongoing role for the CAISO Board of Governors, even under Step 2, to make unilateral decisions without, or over the objection, of the RO in emergency situations. Emergencies in particular require true independence, since the impacts will likely be more acute. This would give one participating BA (CAISO) the power to make unilateral decisions in emergency situations rather than allowing that power to any other BA or to the group of market participants. If this power is somehow required by the fact that CAISO would still be operating the market under contract, then it would be important to gain further operational separation from the CAISO (e.g., Option 4) in order to avoid the CAISO retaining special influence at critical times.

#### **Liability:**

Bonneville recognizes that transferring authority to the RO could result in the RO being exposed to liability, including compliance and penalty risk. That is, the RO would be responsible and accountable. Market participants are not currently insulated from the consequences of liability that

falls on the CAISO; responsive actions can impact market participants, and costs can be passed through. Compliance and penalty risk should be considered in establishing an RO, but this is not inherently an incremental risk to market participants.

The straw proposal recognized “the strong tension between two critical goals: independence and leveraging existing infrastructure (i.e., keeping costs low).” Phase 1 Straw Proposal at 36. There is the potential to mitigate this tension by leveraging other existing infrastructure that is truly independent from any one market participant.

#### **4. *Unexplored or new options:* Bonneville’s Response**

*No additional structural ideas.*

#### **5. *Other considerations:* Bonneville’s Response**

The proposal references the potential for the RO to be launched prior to legislative changes. Bonneville recommends further exploring this in the next phase of work. If this was done, how would the RO be funded and staffed before oversight of WEIM/EDAM is transitioned to the RO? Bonneville recommends considering if contingencies would be put in place regarding the future of the RO in the event sufficient legislation was not successful in 2025.

In developing the next phase of the Step 2 proposal, Bonneville recommends looking at some example policies and considering how decision-making authority would be split in a hypothetical RO future (per discussion on page 21 of the need to maintain BA decision making). For example, the Launch Committee could consider testing the wheel-through prioritization decision, which was a main topic of discussion in the GRC process.

Bonneville urges Pathways to consider the structure of stakeholder engagement earlier in its process, beginning with Step 1. Stakeholder engagement and representation models may be a key consideration in decisions regarding whether to join a market. Advancing this work sooner will provide greater assurance to stakeholders of their roles in the future market.

Thank you for the opportunity to comment on the Pathways proposal.