

Bonneville Power Administration Comments on West-Wide Governance Pathways Step 2 Draft Proposal

Submitted October 25, 2024

Introduction

Bonneville appreciates the Pathways Launch Committee's efforts to address the goals set forth in the Commissioners' initial launch letter of July 2023. Bonneville recognizes that the Launch Committee and work group members dedicated significant time, effort, and thought to developing the Step 2 Draft Proposal.

I. Bonneville's Principles and Interest in Pathways

Bonneville has participated in every western interconnection market development effort since at least the 1990s, and independent governance has always been an essential consideration for any market. Despite the State of California's disproportionate authority, Bonneville joined the Western Energy Imbalance Market (WEIM), rationalizing that the WEIM was a small increment of Bonneville's market activity and that there was room to move the WEIM towards a more independent governance structure. Moving to a day-ahead market is a much bigger step that would implicate the majority of Bonneville's marketing activity, resources, and load service to its preference customers. For Bonneville to participate in a day-ahead market, the market must have a fully independent governance structure that treats all market participants fairly.

Bonneville has not decided whether or not it will join a day-ahead market, and its decision-making process is scheduled to conclude in May 2025. Regardless of the outcome of that process, Bonneville will be a WEIM participant for the foreseeable future and wants the WEIM governance to be as independent as possible. As for the decision to join a day-ahead market, Bonneville strongly supports the development of two viable market options and believes that encouraging competition between markets has improved both market options. It is in Bonneville's and its customers' best interest that Bonneville has viable alternatives to choose from in order to reduce costs to serve our load in a fair market for all participants.

One of the reasons Bonneville delayed its decision-making process was to allow Pathways to develop its Step 2 Proposal. Bonneville understood the value to the region of giving the Pathways workgroups a reasonable extension of time to better define the Pathways Step 2 Proposal which provides more concrete information to factor into Bonneville's May decision. Bonneville is not a member of the Launch Committee, but Bonneville has been an active participant, submitting constructive comments on the Pathways proposals at every opportunity. During the Step 2 development process, Bonneville had key staff participate in four of the seven work groups and several of Bonneville's suggestions are incorporated into the Proposal.

Throughout the Pathways process and other market development efforts, Bonneville has consistently advocated for an independent governance structure with the following objectives:

- Independent board of professionals with no undue influence from a single state or entity.
- Governance structure that is independent from any market participant.

- Transparent decision-making process that addresses both majority and minority recommendations.
- No one entity or participant has veto power.
- Stakeholder process that is transparent, stakeholder-driven, and not limited by decisions of the market operator.
- Meaningful representation for all participants and stakeholders.

II. Bonneville's Recommendation to Pathways

Bonneville urges the Launch Committee to restore in its final proposal the objective for a fully independent entity capable of administering market services across a wide Western footprint. The independent entity should allow for California participation, should state legislation authorize, and be expandable if willing participants seek additional market services. For Pathways to remain a viable option for the widest possible market footprint, the Launch Committee should hold to the creation of a separate, independently governed entity.

The overarching approach of the Step 2 draft proposal introduces significant uncertainty regarding how long the Regional Organization would remain operating in Option 2.0 and whether there would be an eventual transition to option 2.5 or beyond to achieve a separate, independently governed and operated market. While a transition directly to a more independent option may require more time, it would provide more certainty regarding the future governance and operations model for the market.

Bonneville believes the benchmark for a regional organization should be a fully staffed independent entity capable of administering market services itself (similar to Option 4). The Launch Committee should assess the cost to administer and operate a separate market platform, then “work backward” to analyze any efficiencies that may be gained by contracting for market infrastructure and operations through current CAISO support or from another entity. Bonneville recommends that Pathways take this approach of aiming for more independence rather than leading with the limited incremental options 2.0 or 2.5.

III. Does Option 2.0 Achieve Independent Governance?

In reviewing the Step 2 proposal, Bonneville assessed whether the proposed approach achieves independent governance for markets. Under the proposal, the Regional Organization Board members would not be selected by the California governor and confirmed by the California Senate, which is an advancement from the current state. However, the Regional Organization governance in this proposal is not independent from the State of California or CAISO. Bonneville believes that Pathways Step 2 does not achieve the independent governance contemplated in Pathways' charter. This appraisal is not a matter of subjective opinion about what degree of independence would be good enough; the proposal creates conflicts that undermine any claim of independent governance. As discussed below, the Regional Organization proposed by Pathways does not achieve independent market operations, an independent tariff, independent contracts, and the ability to provide RTO services absent future

legislation. The market contemplated by the proposal remains California's market adding an independent policy board with limited control.

1. Independent Market Operations

First, the Regional Organization would not have independent oversight and administration of market operations. Instead, the market would continue to be operated and overseen by the market's largest participant, the CAISO. This sets up a conflict of interest. For governance to be independent, the CAISO should have the same role as any other market participant.

The Regional Organization Board may find itself in a frustrating situation. While it has authority in market design, it would have no executive authority to manage operations to ensure the market is faithfully implemented. Further, the Regional Organization will be forced to take market operations services from a single provider without regard to potential competitive market operation services. The proposal notes that, while a typical arms-length contract allows a dissatisfied party to choose to not continue doing business with the other, "[t]he RO would be more or less required to use the CAISO[.]" Operations would answer to a single market participant, with no remedy available to the Regional Organization.

The CAISO and its employees would remain subject to California legal requirements to act for the benefit of California. See Cal. Pub. Util. Code § 345.5. The market would be operated by a single participant with duties to itself and its state. Pressure to favor California could manifest in subtle ways, such as how issues are framed and presented, and in prioritizing work under time and staffing constraints. The Pathways proposed role for the Regional Organization to weigh in on select hiring decisions is a small step forward, but ultimately does not get to the heart of the issue.

Bonneville is also concerned that this conflict of interest and lack of operational authority for the RO will have impacts on participants in emergency or shortage situations. The Pathways proposal states it is standard practice for operators to be able to act in an emergency without seeking advance blessing from a board. BPA is not advocating for emergency operations to be brought to a board before responding to a crisis. Instead, it is imperative that operations are independent, so the operators have no incentive to favor one market participant. When making critical, time-sensitive decisions to keep the lights on, *whose* lights will stay on, and at what impact to others? Until the CAISO's load service responsibility and Western energy market operator responsibilities are performed by completely separate entities, the market will not have achieved independence.

2. Independent tariff

Second, the proposal recommends an integrated tariff with continued joint authority over many tariff sections. The Regional Organization would not have sole authority over the tariff. The CAISO tariff would remain the relevant tariff. An integrated tariff creates conflicts over who has authority over which provisions, and who decides how certain initiatives are classified. An independent market would not intentionally choose to integrate its tariff with that of a single market participant. From a practical standpoint, joint management of a tariff would be needlessly cumbersome and inefficient. From a legal standpoint, the ambiguity regarding authority could result in unjust and unreasonable implementation of the tariff.

Joint provisions are not necessary. General provisions could be copied and pasted to create two separate tariffs. Provisions specific to the CAISO Balancing Authority Area (BAA) could be unwound from sections that should be under Regional Organization sole authority. For the Regional Organization to have independent authority, it must be clear what uninhibited authority it possesses. If the reluctance to separate tariffs is driven by cost considerations or the difficulty of precisely defining the CAISO's new role, it is worth the investment now to address the issues to ensure unambiguous, just, and reasonable terms and conditions rather than in the heat of a future controversy. In order to get to an independent governance structure separate tariffs are a necessity, and if some participants are unwilling to move to separate tariffs, the EDAM market will not achieve independence.

Under a joint tariff, a single BAA would have undue influence over whether tariff changes fall under joint authority. While Pathways proposes the decisional classification process be run by stakeholders rather than CAISO management, the CAISO Board would still be the decisionmaker. No other BAA would have similar authority or influence.

It appears that, unlike in Step 1, the Step 2 proposal is that the CAISO Board would *not* have 205 filing rights for "exigent circumstances." See p. 17. However, the proposal (p. 18) states authority under emergency conditions should be addressed in the tariff, and possibly the Regional Organization's governing documents and contract with the CAISO. The Perkins Coie legal analysis stated regarding Option 2, "[W]e assume that CAISO and the RO would execute a Market Services Agreement . . . that could also provide remedies for the RO's breach of such obligations, including allowing CAISO 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." If contractual rights allow the CAISO to force or prohibit a 205 filing, then the Regional Organization will not be independent and will not have sole authority, even over those certain portions of an integrated tariff. The details of the contract between the Regional Organization and CAISO will be critical. While one market participant will necessarily have a seat at the negotiating table, it is not clear whether other market participants and stakeholders will be adequately represented and have any visibility or input into these terms.

3. Independent Contracts

Under the Step 2 proposal, the CAISO would remain the counterparty on contracts with other market participants. This status is unique among market participants. It creates conflicts if the CAISO interprets the contract differently than the Regional Organization. This could be a problem for the CAISO if the CAISO disagrees with the Regional Organization over what market rules are required or prohibited by the contracts. This is problematic for the Regional Organization if it adopts market rules applicable to scheduling coordinators and participating generators but lacks privity to enforce any related contract action. It is not clear that the Regional Organization would have any authority to amend contracts if it determines such amendments are necessary or desirable. Even if the CAISO and Regional Organization attempt to coordinate and align on interpretations, this continues to give one market participant undue influence over contracts with all other market participants. One market participant should not be able to wield influence over the contracts of all other market participants. As proposed, this contractual influence would not be shared or checked even by the Regional Organization itself.

These conflicts would not simply be philosophical differences of opinion. Under option 2.0, the CAISO would retain financial responsibility, liability, and compliance obligations, which represents significant risk for the CAISO. Therefore, when conflicts occur, the stakes will be high and the CAISO will naturally

be incented to act in its own interest. The party that sets market rules should be impacted by the practical financial and legal ramifications of those rules. When the relationship between authority and impact are severed, as they are in the Step 2 proposal, conflict is inherent.

4. Ability to Provide RTO Services Independent of Future Legislation

An original intent of the Pathways initiative was to create an entity that “could provide a full range of regional transmission operator services[.] . . . Once formed and structured, the independent entity created under the regulators’ proposal could become a market platform for all states, including California, to join.” Letter from Commission Chair David Danner *et al.* to Commission Chair Megan Decker *et al.*, *RE: State regulators’ call for viable path to electricity market inclusive of all western states, with independent governance* (July 14, 2023). The Step 2 proposal does not create an entity to provide RTO services that California could join. As with the status quo, incremental change would remain conditional on future legislation and significant future changes by the Regional Organization. Bonneville is concerned that the incremental nature of the Step 2 proposal indicates limited support for a viable RTO in the future. The incremental steps in the proposal do not “shake loose from [the] concerns” that EDAM governance “falls short of full regional co-ownership that is required for deeper coordination.” *Id.* Overall, Pathways’ has settled for incremental independence at the lowest cost possible, which has produced a proposed market that does not achieve the independence needed for a western market and that creates unnecessary and unacceptable conflicts between the Regional Organization and CAISO.

Comment Template Questions:

1. Support for Step 2 Draft Proposal: Please indicate your level of support for the Step 2 Draft Proposal. Please provide general reactions, an indication of the benefits of the structural elements that are being proposed, and if you think that the Draft Proposal is on the right track.

Please refer to the introduction above.

2. *Stepwise approach: The Draft Proposal would continue the stepwise approach for Step 2, beginning with Option 2.0, followed by the RO commencing a feasibility study within 9 months of its formation. Depending on the results of the study, the RO would assume further responsibility in the form of Option 2.5 or a similar structure. This stepwise approach is motivated by a desire to continue early momentum towards regional governance by standing up the RO in the near term, while recognizing the time required to create the infrastructure and financial reserves to enable Option 2.5, and the need to better understand the costs, benefits and structural specifics of Option 2.5. The RO would then have the ultimate authority, with stakeholder input, to make decisions about next steps from and after its formation. Does this stepwise approach create a platform that can achieve the desired level of independence at an appropriate cost to customers?*

Please refer to the introduction above.

3. *Cost: The Launch Committee has created a high-level preliminary cost estimate for Option 2.0 and 2.5. Please provide feedback on the level of staffing and the costs for both options. Do these*

estimates seem reasonable, and would stakeholders be willing to shoulder these costs associated with increased independence?

Bonneville response: Bonneville has reviewed the cost estimates on pages 36-37 and is concerned that they are incomplete and do not account for current CAISO costs that should be assigned to market administration.

The proposal notes that there is an outstanding question of whether the stakeholder process work would be done in the Regional Organization or by CAISO staff and, therefore, where it should be budgeted. Bonneville recommends that the stakeholder process staffing and support be funded through the Regional Organization to ensure separation from CAISO staff and to provide the Regional Organization Board with full oversight over the stakeholder process. Throughout the stakeholder process work group, it was emphasized that there was an important role for the RO staff in the stakeholder process. This role should be represented in the budgets for both Options 2.0 and 2.5.

The budget estimates should also include costs for the customer account management, and other functions supporting market policy development and administration. These costs will necessarily be separated from the CAISO's budget and associated management charges for its balancing authority and other transmission services functions. Bonneville recommends further consideration of whether either proposed budget includes duplication of roles from CAISO that could reduce the total overall cost to participants.

The costs tables appear to omit the elements included in the public interest section of the proposal, including the costs for the proposed office supporting state-chartered consumer advocates and the office for public participation. Is this funding included under a different heading? These are proposed to be funded from the Grid Management Charge and so should be accounted for in the budget.

As discussed in the introduction to comments, Bonneville suggests that Pathways share a high-level estimation of the costs for Option 4, the fully independent entity capable of administering market services. Pathways has previously stated that Option 4 is too expensive relative to the incremental independence gained. Providing a cost estimate would allow stakeholders to better understand that reasoning.

- 4. Tariff approach: The Draft Proposal recommended maintaining a single integrated tariff at the outset, and embarking on an effort to organize the tariff into the areas of sole CAISO, sole RO, and where there is overlapping shared authority. This effort would lay the groundwork to eventually to progress to separate tariffs, should that separation be desired by stakeholders. Do you support this approach? If not, please provide an alternative approach and as much explanation as possible on how the alternative would better address stakeholder needs.*

Bonneville Response: In addition to our introductory comments, Bonneville offers further comments on the tariff approach. Bonneville appreciates that the Launch Committee proposes to more clearly delineate responsibility for discrete tariff provisions than currently exist to support the WEIM framework. However, Bonneville is concerned that allowing joint authority in the instances recommended will result in confusion and excessive authority for

the CAISO. The Step 2 draft proposal acknowledges that an integrated tariff poses challenges, but Bonneville believes those challenges are understated.

Regarding the seven sections of the tariff with shared authority, it is unclear from the proposal how responsibility will be allocated between the CAISO and the Regional Organization and how that will be applied under different circumstances. Bonneville believes the best option is for there to be no areas of shared authority in order to avoid subjective tests.

Regarding the sections of the tariff under sole authority, it is possible that the CAISO will have undue influence over any process related to tariff authority as a result of its role as BAA and MO, particularly under Option 2.0, in which many stakeholder processes are maintained by the CAISO rather than the Regional Organization.

Additionally, the Launch Committee has proposed to do additional work on the tariff through the stakeholder process, but Bonneville is concerned that the stakeholder process is not adequately funded to achieve independent, equitable results for non-CAISO participants.

The CAISO will have a role as a BAA, a Market Operator, and will be providing many functions on behalf of the Regional Organization, which Bonneville believes is detrimental to the idea of independent governance. The Launch Committee's recommendations with regard to tariff responsibility maintains the same flaw of CAISO having direct and indirect control and influence over Regional Organization functions.

While the proposed approach of dividing up the existing tariff would appear to be the path of least resistance, it should be recognized that the entire tariff was drafted for a market centered in California and inherently driven by the interest of the California participants. In order to achieve independence, Bonneville recommends that the Regional Organization create a separate EDAM/WEIM tariff and reevaluate each section from the perspective of what is best for the entire market footprint.

5. *Department of Market Monitoring (DMM): The Draft Proposal recommended a joint reporting structure for DMM and Regional Organization shared decision making in DMM upper management hiring. Would this change enable sufficient independence? If you think that the proposed approach does not achieve sufficient independence, please provide an alternative approach that would better address stakeholder needs, including any cost implications.*

Bonneville Response: This joint reporting structure approach undercuts independence without clarity of who the DMM reports to for which markets. The DMM is tasked with monitoring the market to ensure that there are no structural problems and that no participant is manipulating the market or exercising market power. Bonneville recommends that the proposal be adjusted to specify that the DMM reports to the Regional Organization for the EDAM and the WEIM and to the CAISO Board of Governors for the CA-specific markets (i.e., ancillary services) with clear lines of reporting. If the Regional Organization has the sole authority to make decisions regarding the WEIM and EDAM markets, the DMM should only be reporting to the Regional Organization. While the CAISO is running an ancillary service market that is exclusive to

California participants, the DMM should report on that market to the CAISO and its board of governors. Once the Regional Organization incorporates an ancillary service market into the EDAM, the DMM reporting responsibilities would only be to the Regional Organization. This structure would be considered independent as far as the DMM is concerned. As to the hiring decisions, the joint decision-making is justified, as long as the CAISO is operating a market exclusive to the California participants.

6. *Sectors: The Launch Committee is holding a workshop (10/7) focusing on sectors and seats on the Stakeholder Representatives Committee (SRC), and will release a revised sector proposal on 10/14. Please share your thoughts on the revised sector proposal and if this component of the overall stakeholder process would allow for meaningful participation and all stakeholder voices to be heard.*

Bonneville is comfortable with the sector definitions and SRC representatives as proposed. The inclusion of a PMA seat on either the EDAM or WEIM entities sectors is important to ensure that the unique PMA perspective is represented on the SRC. Bonneville notes the inclusion of the non-participating entity group for voting, but with no representation on the SRC and encourages Pathways to include a review of this approach in the proposed future re-assessments of the sector definitions to ensure this structure works for those interacting with the markets, but not operating in the markets.

The revised sector proposal also included an update to remove the automatic remand. While Bonneville understands the challenges in defining an automatic remand before participation is understood, removing this element could dilute the perceived importance of the voting. Bonneville recommends maintaining some level of defined review process if the remand triggers are met. This could be a vote by either the SRC or the Board regarding whether to remand the issue in light of the division across sectors.

7. *Tariff based funding for new public interest protections: To help safeguard the public interest, the Draft Proposal recommended a new Consumer Advocate Organization and an Office of Public Participation. Both entities are contemplated to have minimal staff (possibly one or two staff members) and modest budgets funded through the tariff. The current BOSR funding structure would remain unchanged and not be funded through the tariff, but may be revisited in the future if stakeholders think reevaluation is appropriate. Do you support tariff-based funding for these enhanced public interest protections? Please share as much detail as possible in your reasoning to help the Launch Committee understand the drivers for stakeholders on this topic.*

Bonneville response: Bonneville supports a role for coordination among state-chartered consumer advocates consistent with the scope of their representation of utility customers as determined by each state. It is appropriate for assignment of funding for an office of consumer advocate coordination to align with the utility customers they serve and not through tariff-based funding for all market participants. This is consistent with the principle for funding of the Body of State Regulators.

For an office to assist public participation, Bonneville agrees that the proposed functions are closely related to existing functions of stakeholder engagement and public communications. Bonneville supports tariff-based funding to assist public participation but agrees with the draft

proposal that the Launch Committee should identify the appropriate scope of work for the office.

8. *Chapter specific feedback: In addition to the questions above, we are seeking feedback on the entire Step 2 Draft Proposal. Please use this space to provide general feedback by chapter, as well as feedback on the embedded technical questions by chapter.*

Step 2 Draft Proposal Chapter Headings

- *Chapter 1: RO Scope and Function*

Bonneville is concerned that the proposed structure of the Regional Organization as a policy organization with CAISO remaining the market operator undercuts any gains made in independent governance and could create a challenging situation for the CAISO. This structure has the potential to create uncertainty within the CAISO as the market operator, because it sets up a situation in which some parts of the CAISO essentially have two supervisors – the CAISO Board of Governors and the Regional Organization Board. Since the CAISO continues to bear the liabilities of the market, its board may understandably desire to have greater involvement in market decisions than is envisioned in the proposal. It also keeps significant control with the CAISO both in day-to-day operations and in market actions that could impact corporate risk or liability. This risk would be reduced in Option 2.5 as it transfers more responsibility and liability to the Regional Organization and sets up a contractual relationship with the CAISO, but the risk is still present until further separation is achieved beyond option 2.5. Market operations would still not be wholly separate from the CAISO, but there would be clearer lines of accountability in option 2.5.

From the governance perspective, the proposal for Option 2.0 gives the Regional Organization the responsibility to ensure that CAISO is operating the market per its policy direction. However, it is unclear what the Regional Organization's authority would be, without being FERC jurisdictional, or what recourse it would have if it found that CAISO was not operating the market correctly. Bonneville recommends further developing the proposed relationship between the CAISO and the Regional Organization to define accountability and actions that each may take regarding the others' actions.

- *Chapter 2: Formation of the RO*

The creation and work of the Formation Committee is critical to defining the remaining elements of the RO, approving the initial board and launching the Regional Organization. With such a critical role to play, Bonneville strongly recommends that the Launch Committee reconsider the membership of the Formation Committee. The Launch Committee has done strong work to this point of driving Pathways forward however it may not be the best group to take on the work of RO formation. The Formation Committee should be an intentionally designed group with representation from across sectors and geographies, chosen by the members of those sectors, and Formation Committee members should bring specific management expertise, such as finance, human resources, governance and legal.

- *Chapter 3: RO Governance*

Please refer to the introduction above.

- *Chapter 4: Public Interest*

No comments at this time.

- *Chapter 5: Stakeholder Engagement*

Bonneville appreciates the advancements in the proposed stakeholder engagement proposal. The proposed approach represents a more stakeholder-driven process than the current CAISO process. However, Bonneville continues to believe that a process with even greater stakeholder leadership will result in better market design outcomes and improved collaboration. In the Markets+ development, Bonneville has found that the stakeholder-driven process leads to effective compromise and collaboration. For example, it has been very effective in developing a GHG approach that meets the needs of multiple states. Bonneville encourages Pathways to continue to shift the stakeholder process towards increased roles for stakeholders.

In the context of Option 2.0, Bonneville is concerned that the Regional Organization will have a limited ability to define and implement roadmap prioritization with limited control and no contract mechanism to define available staff and systems capacity for new initiatives. Bonneville recommends that Pathways define how the Regional Organization would work with CAISO to define available capacity for new initiatives in the Option 2.0 structure and what authority the Regional Organization would have to enforce the agreed-upon capacity.

- *Chapter 6: Pathways to Additional Services*

Please refer to the introduction above.