



Memorandum

To: ISO Board of Governors and Western Energy Markets
Governing Body

From: Stacey Crowley, Vice President, External Affairs

Date: August 6, 2024

Re: **Decision on West-Wide Governance Pathways Initiative Step 1 proposal**

This memorandum requires ISO Board of Governors and WEM Governing Body action.

EXECUTIVE SUMMARY

Management presents for consideration the Step 1 proposal that was developed by the Launch Committee of the West-Wide Governance Pathways Initiative and sent to the Chairs of the ISO Board of Governors and Western Energy Markets (WEM) Governing Body on June 5, 2024 (attachment 1). As set forth below, Management recommends that the Board and the Governing Body jointly approve the Step 1 proposal and authorize Management to move forward with its implementation, consistent with the triggering mechanism set forth in the proposal.

The West-Wide Governance Pathways Initiative (“Pathways Initiative”) is a stakeholder-driven effort, convened by stakeholders throughout the West at the request of California and other western state regulators, to develop governance enhancements to facilitate the success of the Extended Day-Ahead Market (EDAM) and any future additional regional market offerings. Their Step 1 proposal seeks to accomplish this objective by enhancing the authority of the WEM Governing Body in certain respects and thereby increasing regional confidence in EDAM, as described in this memorandum.

The Step 1 proposal includes a recommendation that the proposed changes go into effect once entities representing a certain amount and distribution of load have signed EDAM implementation agreements. The proposal refers to this as the trigger for implementing the proposal.

If the Step 1 proposal is approved by both bodies, Management will move forward with implementing the proposal consistent with the recommended trigger. Specifically, Management will prepare the necessary revisions to the relevant governance documents and will bring them to both bodies, as appropriate, for review and approval at an upcoming general session meeting within the next several months. Management

will also prepare proposed implementing revisions to the tariff that will be filed with the Federal Energy Regulatory Commission (FERC) upon approval of the amended governance documents, which would all take effect at a subsequent date, when the trigger conditions in the Pathways proposal are satisfied.

Management proposes the following motion:

Moved, that the WEM Governing Body and ISO Board of Governors approve the proposal set forth in the West-Wide Governance Pathways Initiative Step 1 Recommendation, as sent to the Chairs on June 5, 2024, and attached to the memorandum dated August 6, 2024.

Moved, that the WEM Governing Body and the ISO Board of Governors direct Management to prepare proposed amendments to the ISO governance documents and the ISO tariff to implement the Pathways Initiative Step 1 recommendation, which will be submitted for their review and approval pursuant to the currently effective approval provisions set forth in those governance documents.

BACKGROUND ON THE WEST-WIDE GOVERNANCE PATHWAYS INITIATIVE:

The [West-Wide Governance Pathways Initiative](#) was established in 2023, in response to a July 14, 2023 letter from regulators in California and several other Western states setting forth a vision for developing an independent regional governance structure for a market that includes California and the ISO's Western Energy Imbalance Market (WEIM) and EDAM. The July 14 letter invited stakeholders and state regulators to collaborate in developing this concept, with the goal of maintaining and expanding upon "the benefits of WEIM and EDAM" while "avoiding a duplication of the investments and expenses of the market infrastructure that has already been created."

In response, stakeholders representing a diverse set of utilities, consumer advocates, public power, generators and power marketers, public interest organizations, and others have come together to form the West-Wide Governance Pathways Initiative Launch Committee ("Launch Committee"), which is focused on developing potential options consistent with the state regulators' vision. The Launch Committee is following an iterative stakeholder process similar to the process followed by the ISO's Governance Review Committee, whereby it uses working groups to develop and present written proposals for public stakeholder comment and then refines the proposals based on stakeholder input.

The ISO is not a member of the Launch Committee, and is not coordinating or administering this effort. Instead, the ISO staff's role has been limited to serving as a technical resource for the Launch Committee and its working groups, when requested, on topics where ISO staff has relevant information or expertise.

Based on early stakeholder input, the Launch Committee decided to pursue a phased or stepwise approach to increasing the independence of regional market governance. In this first phase – which it calls Step 1 – the Launch Committee has focused on enhancing the role of the existing WEM Governing Body, specifically in the context of its role in approving proposals to amend ISO tariff rules that apply to WEIM or EDAM market participants in their capacities as such. The goal of this Step 1 effort is to build momentum for EDAM and demonstrate an early commitment to the regulators’ vision of independent governance within the context of the existing governance structure.

The Launch Committee is also currently exploring and developing a Step 2 proposal that is expected to recommend more fundamental governance changes over the longer term, which they expect would require amendments to California statutory provisions applicable to the ISO. The Launch Committee and the Pathways working groups are currently holding [public workshops](#) to develop concepts for their Step 2 recommendation, which they intend to publish later this year. Although the specifics of this Step 2 proposal are not yet known, our general understanding is that Step 2 is intended to produce a longer-term proposal requiring legislative change in California and that could be implemented after the Step 1 proposal has gone into effect. ISO Management will keep the Board and the Governing Body apprised of developments in the Step 2 process as they continue to unfold.

SUMMARY OF THE PATHWAYS’ STEP 1 PROPOSAL

There are four elements to the Pathways Step 1 proposal, each of which is discussed in detail in the Step 1 recommendation paper that the Launch Committee co-chairs sent to the Board and Governing Body Chairs on June 5, 2024. The Launch Committee co-chairs’ cover letter and the Step 1 recommendation paper are included as attachment 1 to this memo for reference.

Element One: Elevate WEM Governing Body Decision-making to Primary Authority

Currently, the WEM Governing Body has “joint authority” with the Board for approval of proposals to change any tariff rules that are applicable to WEIM/EDAM market participants in their capacities as such participants. This, in practice, means that such a proposal comes to both bodies for their joint approval, with each body voting on the proposal. A majority vote in favor by each body is required for approval.

The Step 1 proposal recommends that the WEM Governing Body’s role be elevated to “primary authority” for approval of such proposals. Under this approach, a proposal would come to the Governing Body first for review and approval, and if approved (by majority vote) would be placed on a consent agenda for the Board of Governors. The Board would then have the option to simply approve the consent agenda item or remove the matter from the consent agenda for a full discussion of the proposal. In either case, a majority vote in favor of the proposal would be required for approval.

The current “applies to” test for establishing the scope of rules within the Board and Governing Body’s shared approval authority would remain unchanged under the Step 1

proposal. Thus, under the primary authority framework, the determination of whether the Governing Body has primary authority would be made using the same “applies to” test as is used today. The shift from joint to primary authority would thus impact only the process the two boards follow for initial consideration and approval of a proposal.

Element Two: Modify Current Dispute Resolution Process to Include Dual Filing Option

The current governance includes a multi-step dispute resolution process the ISO staff would follow if there were an instance where one body votes in favor of a proposal within their shared authority and the other body votes against it.¹ The process requires the proposal to be remanded back to ISO staff for additional public stakeholder proceedings designed to develop a revised proposal that would then come back to the two bodies for review and approval. If both bodies do not approve the revised proposal, the revised proposal could not move forward for filing at FERC, except in a circumstance where the Board finds, by unanimous vote “that exigent circumstances exist such that a tariff amendment is critical to preserve reliability or to protect market integrity.”² In that event, a proposal approved only by the Board may be filed with FERC, and the WEM Governing Body would have the right to prepare a written statement or opinion stating its position on the proposal that would be included with the filing.³

For context, the ISO has never experienced a need to use this dispute resolution process. The Board and the Governing Body have instead consistently been able to reach consensus on approval of the many proposals that have come before them for their shared approval.

The Step 1 proposal recommends retaining the current dispute resolution process, including the Board’s “exigent circumstances” authority, but would add a “dual filing” option as a second means for moving forward when the Board and Governing Body are unable to agree on a single proposal for FERC to consider. This dual-filing approach is modeled on a dual filing process that ISO New England has developed, and that FERC has approved, for instances where the New England Power Pool Participants Committee supports an alternative to a tariff amendment approved by ISO New England.

Under this option, as set forth in the Step 1 proposal, the two bodies could each approve a differing proposal, and the two proposals would be filed at FERC as “co-equal” proposals in a single document, with neither option presented as preferred over

¹ See Charter for WEIM and EDAM Governance, Section 2.2.2.

² The Board generally may only exercise this authority after going through the full dispute resolution process, including bringing a proposal to both bodies at least two times. The only exception is if the Board unanimously makes a finding that “the circumstance is so time critical as to require immediate action.” Charter for WEIM and EDAM Governance, Section 2.2.2(i).

³ See Charter for WEIM and EDAM Governance, Sections 2.2.2(i), (ii), and (iii).

the other.⁴ FERC would then have authority to approve either proposal, or potentially adopt elements of each proposal, using the just and reasonable standard set forth in Section 205 of the Federal Power Act.

This dual-filing option would not be available unless and until all of the steps in the current dispute resolution process have been exhausted, including the remand to the stakeholder process to develop a revised single proposal for both bodies to consider. This requirement is intended to drive all parties towards a single proposal, wherever possible, with the dual-filing option serving only as a last resort if consensus cannot be reached.

As noted, the Board would continue to have the option to direct the filing of a proposal that the Governing Body has not approved, but only if in approving the proposal it finds, by unanimous vote, “that exigent circumstances exist such that a tariff amendment is critical to preserve reliability or to protect market integrity.” The Board also would continue to be required to complete the full dispute resolution process before authorizing such a filing unless it finds, again by unanimous vote, that the issue is “so time critical as to require immediate action.”

In such a case, however, the revised governance, under the Step 1 proposal, would give the Governing Body the option to subsequently develop an alternative proposal that would be submitted to FERC at a later date, as part of a dual filing proposing a more permanent solution. This feature is designed to ensure that an alternative proposal approved by the Governing Body can ultimately be put before FERC for consideration, even if the exigent circumstances provision is otherwise used to bypass the full process in a case where an immediate filing is needed.

Element Three: Augmenting Language in the Charter for WEIM and EDAM Governance Relating to Consideration of the Public Interest

The Charter for WEIM and EDAM Governance currently sets forth a list of considerations and stakeholder interests that the WEM Governing Body should consider in evaluating proposals that come before it for approval.⁵ As part of the Pathways Step 1 process, a group of Western state regulators, including California regulators, worked together with public advocates representatives to develop some language that could be added to the Charter specifically to reinforce the importance of considering the interests of consumers across the WEIM and EDAM footprint and respecting state and local regulatory authority.

⁴ If one body were to approve a proposal to change the tariff and the other body does not believe any tariff changes are warranted, a dual filing that proposes both of these options could be presented to FERC for its decision.

⁵ See Charter for WEIM and EDAM Governance, Section 2.1.

The additional language the regulators and public advocates developed is shown in red font in Appendix D to the Step 1 proposal. The proposed additional language is consistent with more general language in the existing Charter about consideration of the interests of all stakeholders and is intended to more directly identify these specific interests.

Element Four: The Trigger for the Pathways Step 1 Proposal to Take Effect

The last element establishes when the Step 1 proposal would take effect, if approved by the Board and the Governing Body, and if FERC approves the tariff filing described above.

The proposal recommends a trigger that both reflects and encourages an expanded and geographically diverse EDAM footprint. To that end, it recommends the proposal become effective when two conditions are satisfied: (1) execution of EDAM implementation agreements by utilities representing non-CAISO BAA load that is equal to or greater than 70% of CAISO BAA load; and (2) geographic diversity among the non-CAISO participants beyond PacifiCorp, BANC and LADWP, such that it includes at least one additional non-California entity each from the Northwest and the Southwest.

OVERVIEW OF THE STAKEHOLDER PROCESS AND DISCUSSION OF COMMENTS

Prior to transmitting the Step 1 proposal to the Board and Governing Body Chairs, the Pathways Launch Committee undertook a several-months-long public stakeholder process to develop the proposal. As such, the Pathways Initiative held multiple public stakeholder calls, took several rounds of written stakeholder comments, including two rounds specifically focused on the Step 1 proposal, and published both a draft and a final written proposal.⁶

On May 31, 2024, the Pathways Launch Committee held a public call to further discuss and vote on the final version of the Step 1 proposal. The voting members of the Launch Committee unanimously voted in support of the proposal, which in turn led to its submission to the Chairs of the Board and the Governing Body through the June 5, 2024 letter.

At the request of the Chairs, ISO staff undertook a follow-on stakeholder process designed to give ISO stakeholders an additional opportunity to comment on the Pathways Step 1 proposal. To that end, ISO staff convened a June 18 stakeholder call where ISO staff and representatives of the Pathways Launch Committee presented the Step 1 proposal and took stakeholder questions and comments. Stakeholders were then offered an opportunity to submit written comments on the proposal by July 10, and

⁶ The work of the Pathways Initiative has been compiled on the website of the Western Interstate Energy Board at the following link: [WWGPI - Western Interstate Energy Board \(westernenergyboard.org\)](https://www.wiegpi.org/).

ISO staff held a second public stakeholder call on July 23 to further discuss the proposal and the written stakeholder comments.

There was robust participation in the ISO's stakeholder process, with more than 30 parties submitting written comments. ISO Management greatly appreciates this extensive work and commitment demonstrated by stakeholders and has carefully reviewed and considered all of the comments. A comments matrix summarizing the written stakeholder comments and ISO Management's responses is included as attachment 2 to this memo,

Overall, there was strong stakeholder support for the Step 1 proposal, with a large majority of stakeholders indicating their support for the proposal as written. There were, however, a smaller number of stakeholders that offered comments suggesting either changes or refinements to the proposal. Those comments generally fall within two categories.

The first category were comments on topics that the Pathways Initiative had already directly considered and addressed in detail. These included comments on: (1) the trigger for when the proposal would come into effect; (2) the definition of "exigent circumstances" under which the Board can unilaterally approve a proposal to amend the tariff; (3) the scope of the Governing Body's shared approval authority under the existing "applies to" test; and (4) one comment about the public interest language added to the Charter for WEIM and EDAM Governance.

In each case, as detailed in the matrix, ISO Management believes the Step 1 proposal reached a balanced and well-considered outcome that should not be modified at this juncture.

The second category involved comments on two topics that were at a level of detail that the Launch Committee decided not to address in the Step 1 proposal.

The first topic involves a recommendation by several stakeholders that, in implementing the primary authority proposal, the ISO explore ways to continue to foster and maintain the level of collaboration between the Board and the Governing Body that has existed under the joint authority construct. This may include retaining some aspects of the overall joint meeting process or finding other ways for the two bodies to communicate and collaborate with each other.

ISO Management supports this in principle and recommends that the Board and Governing Body continue to work together on finding ways to maintain their collaborative relationship. The Step 1 proposal does not mandate the complete elimination of the joint meeting structure, nor does it otherwise prevent the two bodies from developing new processes to enhance their collaboration. Rather than proposing a specific mechanism at this early juncture, Management recommends that the Board and Governing Body retain the flexibility to address this issue over time as the two bodies gain experience with the primary authority paradigm.

The second topic involved various suggestions relating to the logistics for making dual filings. As noted in the comments matrix, these commenters generally seek more detail on how the filing would be made, including the exact role of ISO staff in preparing any filings, how to ensure that the filing does not state a preference for either proposal, and other similar details.

The Step 1 proposal has been designed in a manner that should make dual filings exceedingly rare if they occur at all. This is the case because the proposal allows for this possibility only if the entire dispute resolution process, including the remand process to develop a new stakeholder proposal, is unsuccessful at reaching an outcome that both bodies can support. With these limitations in place, the proposal establishes the circumstances under which a dual filing is permitted and the basic requirements for a dual filing, but does not attempt to prescribe in detail the mechanics of how ISO staff would undertake to ensure that the filing fairly and accurately reflects the two proposals without expressing a preference.

ISO Management believes this is the proper amount of detail to include in static governance documents. If a dual filing were to occur, the Board and Governing Body would be well situated at that time to provide any necessary guidance to ISO staff on these topics. ISO Management believes this allows more flexibility compared to formalizing that level of detail into the governance documents in advance.

CONCLUSION

Management recognizes the enormous time and effort the Pathways Launch Committee and all stakeholders have devoted in developing the Step 1 proposal, and recommends that the Board and Governing Body approve the governance recommendations contained in the proposal. Management also acknowledges and appreciates the continued robust stakeholder involvement in the ongoing Pathways process.

If approved, Management will develop implementing revisions to the relevant governance documents, as well as implementing tariff language to file at FERC. Management will bring those materials within the coming months to both bodies for their review and approval, consistent with the terms of the documents.