

Submitted online at www.bpa.gov/comments on July 22, 2019

RE: BPA's Letter to the Region on EIM Participation

Introduction and Overview

The Public Power Council (PPC) is the umbrella trade association representing the interests of the preference customers of the Bonneville Power Administration (BPA). PPC's members purchase wholesale power and transmission services from BPA, and these purchases produce much of the revenue supporting BPA's operations and debt repayment. PPC is committed to working closely with BPA to achieve long-term success and supports BPA's efforts to improve its business operations and meet customers' needs in a changing energy landscape through exploring participation in the Western Energy Imbalance Market (EIM).

PPC appreciates the opportunity to participate in BPA's EIM stakeholder process. Throughout the process the agency has worked to identify and analyze impacts resulting from its potential EIM participation and has kept customers informed regarding the agency's analysis. We appreciate BPA's efforts to maintain an open dialogue with customers and be transparent.

Based on the information and analysis available so far, we support BPA's continued exploration of EIM participation, including taking the next step towards joining the EIM by signing the Implementation Agreement with the CAISO. The decision to sign the Implementation Agreement and continue the scoping process is an important milestone in the agency's EIM review and should be the primary focus of the agency's September Record of Decision (ROD). In addition, we support the establishment of principles to guide BPA's ultimate decision-making regarding whether and how to participate in the EIM. Although we recommend that BPA adopt certain revisions to its existing principles, it is appropriate for the agency to adopt its guiding principles in its September ROD.

However, the *final* decision related to whether BPA's EIM participation is consistent with these principles must be reserved for the last phase of the scoping effort. It is also premature to make final determinations on certain legal, policy, and business case considerations regarding EIM participation until BPA completes its scoping effort and has a better idea of what participation actually looks like. It is worth emphasizing that our concerns relate to how definitively some of the decisions are characterized in the agency's proposal, and not with the general findings based on the scoping work to date. We look forward to continuing to engage and collaborate with BPA and other stakeholders to firm up these positions and inform decisions on other issues in future phases of this process.

The more detailed comments below are intended to further clarify our support for signing the Implementation Agreement, identify areas where additional discussions are needed, and help inform BPA's planned areas of focus for future stages of this process.

Context for Decision-Making Framework

PPC appreciates BPA's focus on its strategic plan as a driver for this process. Not only should the strategic goals included in the plan drive BPA's decision on whether it should participate in the EIM, they should also guide the way BPA participates if it joins the EIM. This includes development of policies associated with BPA's participation, as well as the agency's strategy for offering generation and transmission for use in the EIM. To date, BPA has not specifically evaluated proposed policies, or its participation more generally, against its strategic goals. The agency should consider doing so as the stakeholder process progresses. One way to include this review is by adopting PPC's proposed revisions to BPA's EIM Participation Principles, which include a reference to the strategic plan (submitted on June 17).

Future Stakeholder Phases

As PPC and its members have already expressed in stakeholder workshops, based on the current descriptions of the phases, it is unclear precisely how Phases III and IV of the process interact. Our understanding is that there may be some overlap between these two phases, and we look forward to continuing to work with BPA to refine how issues in these phases will be addressed. To promote clarity, customers and BPA should work together to determine which changes will be sought through a formal process (such as BP-22 or TC-22) and which will be made through an informal process (such as a business practice change). The process used to make these changes should be based on where policies will be captured, consistent with previous BPA practice. Any policies that require changes to rates or BPA's Tariff will need to be made through a formal process (BP-22 or TC-22), which could include a possible settlement if there is consensus for that approach. It would also be helpful to understand how and when BPA will discuss with stakeholders the implementation details associated with these decisions.

PPC really appreciates the addition of Phase V, the final close out letter, in the decision process. This is an important addition that will allow BPA to decide whether to participate in the EIM using the most complete information possible. While this will be BPA's final decision on whether to "go-live," it should not be a final assessment of participation. BPA should continue to assess its participation on an ongoing basis to ensure that participation continues to be in the interest of BPA and its customers.

Scope of September Record of Decision

BPA proposes to make or establish decisions in five areas in the September 2019 Record of Decision (ROD): (1) whether to sign the EIM Implementation Agreement; (2) Bonneville's legal authority to join the EIM; (3) Bonneville's business case for joining the EIM; (4) what Bonneville's EIM principles will be; and (5) decisions on select policy issues.

At this stage of the review process, BPA should be focused on decisions that enable its continued scoping efforts on EIM participation. The signing of the Implementation Agreement (area (1) above) and continuation of BPA's process exploring its possible EIM participation should be the focus of the September ROD. In addition to determining whether it will sign the Implementation

Agreement with the CAISO, it is also appropriate for BPA to establish its EIM Participation Principles (area (4) above) in the September ROD. Establishing clear principles that BPA will use to determine whether it will participate is appropriate now to help guide the remainder of the stakeholder process and set expectations for how BPA will make its final decision on joining the EIM.

It is too soon for BPA to make *final* decisions on areas (2) and (3) above. Both issues relate very closely to BPA's participation principles and deciding them now may preclude the agency from performing a complete and rigorous review, informed by the agency's entire scoping effort, in Phase V. The addition of Phase V to the agency's decision process was very important because it will allow BPA to use its participation principles to evaluate all the information learned during the scoping process. Only after that evaluation will the agency be positioned to make a well-informed final decision about participation. Given the importance of the Phase V review, it is not appropriate at this time to make any final determinations that would undermine that final review of BPA's participation during Phase V.

To be clear, we understand that BPA must make some preliminary findings in these areas based on its current understanding to determine if it will continue working towards possible EIM participation through signing the Implementation Agreement with the CAISO. However, it should be made clear that these findings are preliminary, being made based on limited information, and will be reviewed as part of BPA's Phase V. This is particularly true given the tenor of the scoping work in Phases I and II. The stakeholder process has largely looked for "showstoppers" that would prevent BPA from participating in the EIM as opposed to identifying or establishing enabling policies that support the agency's participation. Further comments regarding "BPA's legal authority to join the EIM" and "business case for BPA joining the EIM" are included in those sections of these comments.

BPA also proposes to make final determinations on several policy issues in its September ROD (area (5) above). For many of the areas identified, there has been enough policy discussion to support the agency's proposed position, particularly as an initial approach for its EIM participation. There are other areas, however, where we would like additional clarification, either as part of the ROD or in the next phase of the stakeholder process. This is discussed in more detail in the "BPA Policy Proposals" section of these comments.

Lastly, BPA's proposal to sign the Implementation Agreement suggests that only after Phase V (the final close out letter), would there be a final action ripe for judicial review. This position is surprising because to the extent finality is a prerequisite to appellate jurisdiction, it is for the Ninth Circuit Court of Appeals to decide what is and is not "final" BPA action. See *Abdisalan v. Holder*, 774 F3d 517, 524 & fn. 7 (9th Cir. 2014) (en banc); *San Diego Air Sports Ctr. v. FAA*, 887 F2d 966, 968-969 (9th Cir. 1989). And while the agency's characterization of its actions can be relevant, it is not controlling with respect to the court's determination of whether the action is a "final" agency action. *Sierra Club v. Skinner*, 885 F2d 591, 592 (9th Cir. 1989). The extensive administrative record BPA has compiled so far, the formal signing of the Implementation Agreement, and the resultant expenditure of funds under that agreement could convince the court to characterize BPA's decision as final and subject to judicial review. Regardless, we suggest

that BPA avoid in the ROD any discussion on whether the signing of the Implementation Agreement is a “final” agency action.

BPA’s EIM Participation Principles

As discussed above, PPC finds it appropriate to establish the agency’s principles for EIM participation in the September ROD and appreciates the opportunity to comment on BPA’s proposed principles. Consistent with prior comments, PPC asks BPA to consider revising these principles.

While the proposed principles include important considerations, particularly in the descriptions provided in the proposal, they do not fully address certain areas of concern raised repeatedly by PPC and its members. As explained in comments submitted to BPA on June 17, 2019, PPC and its members have developed principles that we will use in our assessment of BPA’s EIM participation. These principles address the gaps in BPA’s principles by providing additional clarification and would better ensure that BPA’s participation in the EIM is aligned with its customers’ interests and consistent with the goals laid out in BPA’s strategic plan. We reemphasize our June 17 request that BPA consider revising its principles consistent with the principles developed by PPC, which are attached to these comments.

BPA’s Legal Authority to Join

The section in the proposal on the agency’s legal authority to join the EIM contains very helpful information and considerations provided by BPA staff in their review of whether participation as an EIM Entity is within BPA’s legal authority. We recognize that a preliminary legal evaluation of the proposed changes “at this early stage of the decision process” is important to ensure that there are no legal showstoppers to BPA’s potential participation. BPA’s “preliminary determination” that it has the legal authority to join the EIM seems reasonable.

However, it is premature for BPA to make a final affirmative finding at this time on its legal authority to become an EIM Entity. Instead, BPA should reserve this determination until its Phase V review, which will be completed once the agency and stakeholders have more complete information on how BPA will participate. Specifically, there are several areas of BPA’s “legal authority” analysis that convey a strong sense of finality but would benefit from the opportunity for additional discussion.

For instance, the proposal includes a finding that “Bonneville’s proposed participation in the EIM is consistent with the preference and surplus requirements of federal law.” We have no reason to believe that participation in the EIM will be inconsistent with these requirements based on scoping efforts to date; however, BPA and stakeholders have not discussed specifically how the agency plans to meet its requirement to first offer surplus power to preference customers before it would offer such power to the EIM. Again, we have no reason to believe that participation in the EIM would prevent this from occurring, but more discussion is needed to understand how this will be implemented consistent with the agency’s statutory obligations.

Similarly, more exploration is needed to confirm the agency’s conclusion that “bidding in capacity from specific federal hydroelectric dams or groups of federal hydroelectric dams is

consistent with Bonneville's statutes." PPC would appreciate more discussion on this point to better understand the mechanics behind BPA's anticipated bidding strategies which we anticipate could confirm BPA's finding quoted above. For example, does the agency plan on having separate bid curves for each of the aggregated resource groups, in general how will these bid curves be developed, and how is this approach consistent with the agency's interpretation that it must provide service on a system basis.

Consistency with contractual commitments is another area within the legal review that would benefit from additional discussion. We are not suggesting that BPA's participation as an EIM Entity would cause it to fail to meet its contractual commitments, but there are many details of BPA's participation which are yet to be explored. For that reason, this determination is more appropriate to include in the Phase V close out letter after BPA's participation scoping process is completed.

While no changes are required in the EIM governance structure for BPA to participate, that structure could change between now and BPA's proposed go-live date. PPC agrees with BPA that there are improvements to be made to the EIM Governance structure and we will continue to seek those changes through the CAISO's EIM Governance Review stakeholder process. We also concur with BPA that independent governance of the EIM is important and appreciate the recognition of that importance in this proposal. We suggest that the agency make the same recognition in the ROD.

Decision on the Business Case for BPA Joining the EIM

PPC supports BPA continuing its scoping efforts on joining the EIM based on the business case presented by BPA and the other considerations discussed during these initial phases of the stakeholder process. However, additional clarity is needed on the specific findings put forward in this section of the proposal.

The specific determination BPA is making in the "Business Case for Joining the EIM" portion of its proposal is not clear. The discussion in this section focuses on expected costs and benefits associated with participation, but BPA's "position" is related to participation being a broader "sound business decision." We would like to understand what, if any, considerations in addition to BPA's cost benefit analysis BPA is relying on to make that determination.

The quantitative and qualitative benefits are important considerations in determining whether joining the EIM is "a sound business decision," but there are other factors that should be considered in making such a finding. Consistent with PPC's principles for EIM participation, as part making final determinations in Phase V, BPA should ensure that "BPA's participation is consistent with a sound business rationale and advances the objectives of BPA's Strategic Plan, including providing competitive products and services, by capturing the full value of its power and transmission system."

Until BPA's scoping efforts, including much of its implementation work, are finished, it is premature to make any definitive conclusions on whether participation is a sound business decision. There are still outstanding questions that BPA and customers will work together to

address in the next phases of the stakeholder process. The answer to these questions should inform the closeout letter expected to be issued in late 2021.

We suggest that BPA revise its position for this section to clarify that the cost benefit analysis is one piece of evidence that supports the decision to sign the EIM Implementation Agreement, rather than using it as a stand-alone justification of a sound business rationale for joining the EIM. The revised position should also clarify that these findings are made on information available to date. For example, a more appropriate finding for this section could be, “based on current scoping efforts, the business case supports Bonneville signing the Implementation Agreement and the agency’s continued interest in joining the EIM.”

Cost Benefit Analysis

PPC appreciates BPA’s work with E3 to produce an analysis of potential dispatch benefits resulting from BPA’s EIM participation. We are particularly grateful for BPA’s collaboration with customers to identify additional scenarios to include in this analysis. This collaboration resulted in updated information that is reflected in BPA’s updated benefits range. The additional scenarios provided a broader range of estimated benefits for BPA and stakeholders to consider.

Our understanding is that the analysis conducted with E3 was produced as a “screen” to indicate whether the potential benefits are sufficient to support continued pursuit of EIM participation. We agree that the range of benefits shown in this analysis, including the additional scenarios run by customer request, indicate significant potential benefits from BPA’s joining the EIM.

PPC’s understanding is that BPA plans to conduct an analysis using Aurora to include estimated dispatch benefits resulting from EIM participation in the next rate case. We look forward to more discussion around that analysis, including what, if any, assumptions will be different between the E3 study and the rate case study. Understanding the impacts to rates resulting from BPA’s EIM participation is an area of significant interest for PPC and its members. This includes understanding how the benefits assumed in rates relate to the range of dispatch benefits described in the proposal.

Future Business Case Analysis

We encourage BPA to include as part of Phase V a review of its quantitative cost benefit analysis to ensure that any updated information is properly considered. During the future phases of this process we will continue to learn more about the EIM and how BPA will participate, which will better inform any updated analysis. There are also possible changes in the EIM and/or other related markets prior to BPA’s final decision that may impact the expected benefits.

There may also be qualitative benefits to Power Services or its customers that may not be reflected in the dispatch benefits. We look forward to working with BPA to understand any such benefits. This would help the agency and customers have a more complete understanding of the benefits of participation, including whether there are benefits that advance the agency’s strategic objectives that may not be captured in the cost benefit analysis.

We appreciate the analysis BPA shared during the initial phases of the stakeholder process identifying some of the possible avoided costs for transmission service. We understand that many of the benefits associated with transmission service will be directly accrued to BPA's transmission customers, which is one reason that the transmission benefits associated with participation are difficult to quantify. We would like to continue to build on the work that has been done by BPA staff to explore potential methods for quantifying these benefits.

In the next phase of the stakeholder process, BPA should address how it would estimate and evaluate benefits of EIM participation for both the transmission and power sides of its business once it has joined the EIM. We understand this may be a difficult analysis and will require some collaboration between the agency and its stakeholders to develop a methodology. While existing analysis performed by others may be a helpful starting point for estimating benefits, we encourage BPA to consider developing an independent methodology. This would be more transparent, and likely more meaningful, to BPA stakeholders compared to the benefit estimates calculated by others.

BPA Policy Proposals

PPC has appreciated the discussions to date at stakeholder workshops regarding BPA's policy proposals associated with its EIM participation. We generally agree with BPA's policy proposals but seek additional clarification on some of BPA's positions as described in more detail below.

BPA's initial plan to have the "Big 10" hydro projects participate in the EIM through three aggregated resource groups seems reasonable, subject to more discussion on the consistency with the agency's system sales approach as described above. The proposal discusses this as an initial approach and agency staff has indicated that the preferred approach may change over time. If the agency wanted to pursue a change to this approach, that change should be discussed at a customer stakeholder meeting so the impacts can be fully vetted.

The proposal to use a donation method for interchange transmission rights use in the EIM is appropriate for BPA's initial participation. It provides a straightforward method to ensure that BPA is fully compensated for use of its transmission. If BPA later decides to explore making otherwise unused ATC available for use in the EIM, it should do so through a stakeholder process which includes an extensive review of the rate design for such use.

BPA's proposal to meet its carbon obligations in the EIM is appropriate for its initial participation. To date, discussions on BPA's carbon obligations have been narrowly focused on how the agency would meet those obligations. In future phases of the stakeholder process there are two areas related to carbon where BPA should commit to more discussion. The first is a review of how participation in the EIM may change BPA's carbon obligations through potential impacts to BPA's system mix. We have appreciated the information that agency staff has provided on possible impacts in these initial phases, including an analysis of how the system mix would be impacted based on the dispatch modeled in the E3 study. We would like to expand on this work in future phases. Specifically, BPA should work with its preference customers to

ensure that changes to BPA's system mix that result from BPA's EIM participation would not hinder preference customers' ability to meet customer obligations under state laws.

More discussion is also needed on the policies and implementation of Greenhouse Gas (GHG) accounting in the EIM. It is important for BPA's preference customers to understand how this accounting will impact BPA's system mix as well as the anticipated financial benefits associated with EIM participation. The agency has stated that it will opt out of selling directly into California via the EIM until it is given the authority by Congress to directly purchase carbon allowances. BPA should also commit to completing a review of GHG accounting in the EIM prior to "opting in" to serve California load. It is imperative that BPA and its preference customers understand how GHG accounting in the EIM works to ensure that BPA's valuable, carbon-free resources will be properly compensated, and that BPA's system mix will not be unexpectedly impacted.

PPC agrees that if the CAISO's proposal to improve its Local Power Market Power Mitigation policies are not adopted, BPA should reassess its participation in the EIM. BPA has stated that a resolution on this issue is a requirement for BPA's participation and PPC agrees. If the Market Power Mitigation issue is not solved sufficiently, it exposes BPA to unacceptable risk of unintended and uneconomic dispatch.

We also agree with BPA's proposal that the BPA BAA should be treated as one Load Aggregation Point. This is consistent with the way that every EIM Entity to date has participated.

EIM Implementation Agreement

PPC appreciates BPA sharing its draft Implementation Agreement as part of the letter to the region. The business case and other scoping efforts to date support BPA's decision to move forward with signing the Implementation Agreement and spending up to \$1.87M on work done by the CAISO in preparation of BPA's possible EIM participation.

We support BPA's inclusion of several of its EIM Participation Principles in the implementation document. It is appropriate to highlight the importance of the agency's statutory, regulatory and contractual requirements as well as the need to maintain reliable operation of the federal power and transmission systems as part of this agreement. We also appreciate the reiteration in the agreement that participation, both as an EIM Entity and for any resources choosing to participate in the market, is voluntary.

We anticipate that BPA will keep customers apprised as it moves through the milestones described in the Implementation Agreement and look forward to those discussions.

Remaining Policy Decisions Planned for Phase III

All the policy decisions identified in Phase III are of significant interest to PPC. We look forward to working with BPA to develop a timeline for addressing these issues, as well as working to understand where the policies on each issue will be captured (in Rate Schedules, the Tariff, or in Business Practices).

BPA should also work internally to coordinate these issues with other topics that will be raised in the TC-22 and BP-22 cases. For instance, BPA Transmission staff has already kicked off a discussion on changes in losses for TC-22 and currently it is not clear how that effort relates to the Transmission Losses issue that will be addressed in Phase III of the EIM stakeholder review. To the extent there is overlap of issues between separate BPA processes, the agency should clarify how the two discussions are related and identify impacts that a decision in one process will have on the other.

PPC requests two additions to the issue list for discussion during Phase III. First, as discussed above, we would like to work with agency staff to review how participation in the EIM would impact BPA's system mix. This review should include a walk-through of CAISO's GHG accounting rules to help customers better understand the mechanics of this accounting methodology. Use of specific examples during these discussions would be particularly helpful to understanding how transactions inside and outside of California would be treated differently. These discussions on the GHG accounting rules should also include review of recent CAISO policy changes to GHG accounting to discuss whether these changes are sufficient to address concerns that EIM participants have raised on this issue. As discussed above it is also important that BPA address how changes to the system mix resulting from participation may impact preference customer's ability to meet their obligations under state law.

We would also like to work with BPA to identify the aspects of the market that are necessary to enable BPA's participation in the EIM. PPC has developed a list of "Key Market Elements" that are important to ensuring BPA's initial and continued participation in the EIM is consistent with the principles we have identified. These are included in the *PPC Principles for BPA's EIM Participation* document attached to these comments. We would like to work with BPA staff to identify what they believe are key market elements that support the agency's participation. So far, the stakeholder discussions have largely focused on looking for "show-stoppers" which would prevent participation. We would like to understand what elements BPA sees as required to enable their participation. This discussion should include existing policies as well as potential and proposed policies under discussion in CAISO stakeholder processes.

Relationship of EIM to Other Emerging Markets

While BPA did identify "Relationship of EIM to Other Emerging Markets" as one of their eight issues for discussion during the initial stakeholder process, there is no position on this issue in the letter to the region. When the agency discussed this topic at their EIM stakeholder workshop, the focus was on the relationship of the EIM to the Day Ahead Market Enhancements (DAME) and Extension of the Day Ahead Market (EDAM) initiatives.

While there was some discussion of the relationship between the EIM and EDAM during the initial stakeholder workshops, we understand that BPA's participation in EDAM is outside of the scope of this process. BPA should commit to discussions with stakeholders, either as part of its EIM scoping process or in a separate process, to explore its potential participation in EDAM if that initiative moves forward. The scope and duration of such a discussion/process should be determined after more is known about a potential EDAM proposal. As BPA staff has explained,

a much larger portion of BPA's business would be impacted by EDAM than by the EIM. That is certainly sufficient justification for holding a stakeholder process to discuss joining that market.

The background section of BPA's proposal to sign the Implementation Agreement mentions development of a day ahead flexible ramping product which is currently being discussed as part of DAME. Since this product related to the Day Ahead Market is referenced in this EIM letter to the region, PPC would like to better understand the relevance of the creation of this product to BPA's potential participation in the EIM. Is the assumptive creation of this product an important consideration in BPA's decision on joining the EIM, and if so, why?

Stakeholder Process Comments

We again thank BPA for the opportunity to comment and to participate in the EIM Stakeholder process. PPC and its members have greatly appreciated receiving regular updates from BPA staff as part of this process and recognize the amount of work that goes into these discussions. We look forward to continuing these collaborative and constructive discussions as we move into the next phase of BPA's EIM review.

We would like to thank BPA staff for all their hard work and engagement on this effort.

PPC Principles Regarding BPA's Participation in the EIM

6/17/2019

PPC offers these principles for consideration in BPA's decision to join and participate in the Western Energy Imbalance Market (EIM). PPC plans to use these principles when evaluating and commenting on BPA's EIM participation prior to its ultimate determination on EIM participation in 2021 and to revisit that evaluation on an ongoing basis.

Principles

1. BPA's participation is consistent with its statutory, regulatory, and contractual obligations.
2. BPA maintains reliable delivery of power and transmission to its customers.
3. BPA's participation in the EIM is discretionary and BPA retains its ability to effectively exit the market in the event participation is no longer consistent with these principles.
4. BPA's participation is consistent with a sound business rationale and advances the objectives of BPA's Strategic Plan,¹ including providing competitive products and services, by capturing the full value of its power and transmission system.
5. BPA's evaluation of EIM participation includes transparent consideration of the commercial and operational impacts on its products and services.

In addition to these principles, we have identified market elements of the EIM that are key to ensuring BPA's initial and continued participation in the EIM is consistent with these principles. The retention of these market elements will be an important consideration in PPC's evaluation of BPA's EIM participation both initially and on an ongoing basis.

While we will continue to seek improvement on these elements where necessary or applicable, they are sufficient to support BPA's EIM participation. Participation in a day ahead market, such as EDAM, would require additional assessment of these and other market areas.

Key EIM Market Elements for BPA's Initial and Continued Participation

- Participation is voluntary.
- Participation does not change BPA's ability to determine rules and policies associated with its Tariff.
- Market Power mitigation methods that accept and provide for the complex and dynamic nature of hydropower planning, operational constraints, and opportunity costs are in place and functioning properly.
- The EIM Governing Body (or a similar independent governing body that represents the diversity of those impacted by the EIM) exists and has primary authority over EIM issues.
- BPA is able to determine the manner of participation for transmission on its system.
- GHG benefits and costs are accurately allocated and only apply to actual physical EIM dispatches made to serve load subject to carbon regulation.²

¹ BPA's 2018-2023 Strategic Plan published January 2018

² Accurate allocation of GHG costs and benefits is important for BPA's participation in the EIM to the extent that their participation includes dispatches to serve load subject to carbon regulation. It is our understanding that BPA's initial participation will opt out of such dispatches.