

Submitted via Comments@WestWidePathwaysInitiative.org on May 8, 2024

RE: West-Wide Governance Pathways Initiative Straw Proposal

The Public Power Council¹ (PPC) appreciates the opportunity to comment on the West-Wide Governance Pathways Initiative (“Pathways”) straw proposal. The Launch Committee has endeavored to take a new approach that explores a long-standing challenge in regionalizing the governance over the CAISO Energy Imbalance Market, and now the Extended Day-Ahead Market as well. The Launch Committee’s approach allowed for the consideration of a broad scope of options, including both those that would and would not require legislative change to be implemented.

PPC looks forward to additional stakeholder conversations and reactions to the Pathways proposal. The consensus among Launch Committee participants is a testament to the collaboration of that group in developing this proposal. We are interested in hearing additional details on how this consensus was reached. We hope there will be upcoming opportunities to gain better insight into individual stakeholder positions and how they are reflected in the proposal. In particular, we look forward to understanding whether the consensus of the Launch Committee is reflective of the broader stakeholder community. It also will be critical for PPC to hear from California legislators who will be instrumental in the successful implementation of the Step 2 proposal.

PPC continues to evaluate the proposal, gain a better understanding of stakeholders’ positions, and weigh the opportunities and risks associated with different day-ahead market options. While independent governance that treats all participants equitably is a vital component of a well-designed market, good governance alone is not sufficient. Governance, market design, and market footprint will all influence PPC’s evaluation of market options. It is with that context that we offer the comments below.

Challenges with Existing CAISO Governance Structure

As stated above, PPC appreciates the efforts of the Launch Committee to address the challenges presented by the current CAISO governance structure. As noted in previous comments by PPC,

¹ PPC, established in 1966, is an association that represents the vast majority of consumer-owned electric utilities in the Northwest, with membership spanning across six states. PPC’s mission is to preserve and enhance the benefits of the Federal Columbia River Power System operated by BPA for consumer-owned utilities. PPC’s members pay roughly 70% of BPA’s annual \$3.9M revenue requirement, in addition to owning their own generation and transmission facilities in the Northwest. PPC is actively engaged in BPA’s decision process on day-ahead market participation. Additionally, PPC has members who are evaluating their individual market participation decisions.

BPA and other stakeholders across the West, the current governance structure falls short of providing all market participants with equal protection and ensuring equal treatment. BPA described this well in its recent staff recommendation on day-ahead market participation:

CAISO's governance model has presented challenges in resolving contentious regional issues. Bonneville staff observe that EDAM governance presents real problems for Bonneville's participation in a day-ahead market and could result in unbalanced outcomes, as it continues to operate under provision of California law.²

PPC agrees with this assessment and would not support BPA's participation in a day-ahead market under the current governance structure. **For PPC, all participants in EDAM must have equal protection under the law, which requires legislative change to California law.**

It is important to note that the challenges that PPC observes related to CAISO's governance are in no way related to CAISO decision-makers or staff, but instead the result of the origin, structure, and legal obligations of the institution. These challenges arise because the organization's current offerings have expanded beyond its original mission, which was to first and foremost serve the interests of the state of California and California ratepayers. While CAISO's offerings have grown based on regional cooperation and broad stakeholder support, the original mission of the organization is still enshrined in California law and has served as the foundation for the organization that exists today. Changes have been made where possible through stakeholder processes to better reflect the broader region that CAISO serves with its current offerings. However, past attempts to update the legal obligations of CAISO have failed, creating barriers and risk for those entities outside of California participating in CAISO-run markets.

For PPC, specific areas of concern include:

- The appointment process for the CAISO Board of Governors (CAISO BOG).
- The inability for the CAISO BOG to completely or durably delegate authority to a more regionally representative decision-making body.
- The state specific focus of the BOG's duties as specified in California Public Utilities Code Section 345.5.
- CAISO's dual role as the Market Operator of the EIM and EDAM and a Balancing Authority Area participating in those markets.

These individual issues create risks on their own, and together they introduce a compounding risk for entities outside of California. While the CAISO BOG may not be compelled to make decisions on behalf of California residents at the expense of residents in other Western states, there are limited legal protections against such an outcome. There could be instances where the

² BPA Day-Ahead Market Policy Paper, Attachment 1, Staff Recommendation on Day-Ahead Market Participation, Pg. 9, Sec. 7, (April 2024) <https://www.bpa.gov/-/media/Aep/projects/day-ahead-market/2024/02-day-ahead-market-attachment-1-staff-recommendation.pdf>.

interests of entities or ratepayers inside of California are directly counter to those of entities and ratepayers outside of California. The CAISO BOG members must perform their fiduciary duty to the CAISO as a California benefit organization and act consistent with the obligations described in California Public Utilities Code 345.5. These obligations include conducting operations consistent with “the interests of the state”³ and “[r]educing, to the extent possible, overall economic cost to the states consumers.”⁴

PPC commends the Launch Committee for procuring a third-party legal analysis. The analysis, produced by Perkins Coie, included an evaluation of the FERC regulatory risk and California legal risk associated with various governance options identified by the Launch Committee. The framing of the California legal risk captured PPC’s concerns with the current statutes well – the presence of legal risk arising from any option where the CAISO BOG does not retain ultimate decision-making authority. This emphasizes the need for legislative change to ensure that all market participants enjoy equal protections under the CAISO governance structure. We look forward to additional discussions to understand the specific approach for legislative changes that might be explored under the Step 2 proposal.

PPC shares the Launch Committee’s interest in facilitating trade broadly across the West. Improving upon the existing CAISO governance structure should help to facilitate broader participation in EDAM. Regardless of any individual entity’s choice to participate in EDAM, reflecting a more regional perspective in the governance over the EDAM and EIM markets would likely benefit Western stakeholders broadly including participants in EDAM, participants in the EIM, participants of potential neighboring markets, and those not participating in organized markets.

Step 1 Proposal

PPC understands that timing is an important consideration in the two-step approach developed by the Launch Committee and that Step 1 provides an opportunity to seek near-term governance improvements that will influence the participation decisions of some stakeholders. We note that some areas of the Step 1 proposal deviate from the recommendations of the Governance Review Committee (GRC), particularly with regards to the benefits of primary authority as compared to joint authority. PPC’s understanding has been that many members of the GRC saw additional benefit from the CAISO BOG and the EIM Governing Body meeting jointly, and being part of the same conversations with stakeholders to inform decision-making, particularly given that the ultimate decision-making authority must remain with the CAISO BOG. We would like to better understand from stakeholders who supported joint authority during the GRC review what has changed to influence this proposal.

It is PPC’s understanding that the ability for the CAISO BOG to file independent of EIM Governing Body approval in “exigent circumstances” is important to reducing the California

³ Cal. Pub. Util. Code § 345.5(a)

⁴ Cal. Pub. Util. Code § 345.5(b)(2)

legal risk associated with the Step 1 proposal. We look forward to learning more about this aspect of the proposal as it could have significant implications on the amount of risk associated with the Step 1 proposal for entities outside of California, such as BPA and PPC members.

Specifically, PPC would like to know:

- How are exigent circumstances defined, how will that definition be memorialized, what is the process for determining if exigent circumstances exist? Also, can the presence of exigent circumstances be challenged at a later date?
- Is a specific definition or application of “exigent circumstances” required to lower the California legal risk as evaluated in the Perkins Coie analysis?
- What are the additional relevant details from the Perkins Coie analysis regarding the exigent circumstances provision and its use as a tool to reduce California legal risk?

PPC would note that it is possible, if not likely, that decisions of greatest controversy, financial impact, and reliability effects will be in instances that are time-critical and when the existence of “exigent circumstances” could be declared.

The existing and expanded “safeguards” to be included in the EIM Governing Body charter as part of Step 1 are helpful, but do not sufficiently counteract the existing legal directives for the CAISO as explained above.

PPC appreciates the efforts of the Launch Committee in developing this proposal. We recognize that for some entities, this change will be sufficient to support their participation in EDAM – in fact, several entities have committed to participate in EDAM even absent some of these changes.

Currently, the Step 1 changes as we understand them do not meet PPC’s expectations for independent and equitable governance of a regional organized market. We look forward to additional discussions and submit the following questions to the Launch Committee:

- What helped define the threshold for Step 1 to take effect?
- What is the process for determining whether primary authority applies?
- What would it mean for the BOG and EIM Governing Body to “accept” the proposal?
- What does the follow-on public process through the CAISO stakeholder process look like? How is it different than the “Pathways” process? How would the Launch Committee members plan to participate in that process?
- As described above we seek additional information on the definition, determination, and review of “exigent circumstances.”

Step 2 Proposal

PPC is interested in better understanding the details of the proposed Step 2. In particular we are interested in better understanding the potential for legislative changes, what those legislative changes would look like, and what they would mean for the potential for the broader West to participate in an RTO that also includes the current CAISO BAA.

We appreciated the general discussion about trade-offs between the various options reviewed by the Launch Committee. Since most of these trade-offs were debated in closed sessions, we look forward to hearing more of the details about how these trade-offs influenced the ultimate “Pathways” recommendation. For instance, the Launch Committee indicated that cost concerns were a large driver in developing the recommendation. PPC members care deeply about cost management, at the same time, in considering the trade-off between costs and market independence, PPC recommends a heavier weighting towards independence. The specific balance of these two objectives will need to be worked out among stakeholders, which is why PPC looks forward to gaining additional insight into the Launch Committee’s discussions.

If limited to reviewing the options advanced in the Step 2 proposal by the Launch Committee, then Option 2.5 provides the greatest independence and is most appealing. However, Option 3 would provide even more independence and eliminate potential issues around the interpretation of the “applies to” test on an ongoing basis. Option 4 would provide the greatest amount of independence. More information on the potential costs associated with implementing these options, along with more robust discussion among a broader set of stakeholders, would help inform whether the Launch Committee is focused on the “right” options in its Step 2 proposal.

As explained above, since much weighing of the alternatives has occurred among Launch Committee members outside of public meetings, other stakeholders could benefit from additional discussion and sharing of perspectives. The Launch Committee should consider additional public meetings to have further discussion on Step 2 before narrowing options. It will be important for all stakeholders to understand each other’s perspectives on preferred outcomes. Additional public meetings would also be helpful to refine the options that will be pursued through the Pathways Initiative.

PPC supports exploring additional avenues for direct stakeholder involvement in the governance structure. PPC and members have had a positive experience with both the Markets+ Participant Executive Committee and Resource Adequacy Participants Committee which include more direct stakeholder participation in decision-making.

PPC would like to better understand the prudence of standing up a Regional Organization (RO) on the currently proposed timeline. We have heard that the associated costs are a significant, if not the primary, driver for some participants in evaluating the options developed by the Launch Committee. Developing a more complete definition of RO requirements would be helpful in limiting unnecessary costs and achieving optimal design. Potential legislative change will need to be pursued outside of the Pathways stakeholder process, and the specifics of that legislation could impact the design, scope and structure of the RO.

While PPC appreciates members of the Launch Committee and other California stakeholders sharing their perspectives on how this current effort diverges from previous governance reforms, currently there are no clear or formal public statements made by the California legislature on the

potential for legislative action. Since legislative change is outside the of the Launch Committee's direct control, it would be helpful to have additional insight into the perspectives of the California legislature, which would have to adopt the change. Further clarifications from parties inside California, including the California legislature, regarding whether and why there has been a change in the appetite for legislative change since the last revision attempt would be helpful.

PPC looks forward to additional discussions on the proposal and submits these questions to the Launch Committee on the Step 2 proposal:

- Is it likely that a “trigger” would be included for Step 2 beyond Step 1 requirements?
- What are potential cost estimates of the various RO structures considered?
- If legislative change does not occur, how does that impact the potential value of the RO?
- What aspects of RO formation would be executed immediately, and which would need to wait for legislative changes?
- What level of detail regarding the RO structure needs to be included to inform and advance the legislative change?
- What functions must be retained by the CAISO under this proposal? How does that impact the prospects for a future Regional Transmission Organization that includes the broader West *and* California?
- What is the appetite for Launch Committee members and broader stakeholders for continuing to explore legislative change if there is significant commitment to EDAM under Step 1?
- What has been the involvement to date of the California legislature? Is there a clear “champion” to carry this issue through the legislative process?
- What are CAISO's thoughts about the proposed options being considered given the impacts to the organization?

Pathways Outcome Impact on Market Participation Decisions and Process Next Steps

PPC appreciates the diligent work of the Launch Committee to quickly and judiciously explore governance alternatives. The outside legal analysis from Perkins Coie was particularly helpful to shape the evaluation of alternatives. Similar analysis has been conducted previously by the CAISO legal team as part of the GRC effort, and a reaction from CAISO to the Perkins Coie analysis would be helpful, including a comparison to its own previously conducted legal analysis.

The broad support across the Launch Committee is evidence of the collaboration involved in this effort. PPC reiterates that for those not on the Launch Committee, it would be helpful to hear more about the trade-offs considered by different options and how those were weighed by individual sectors or Launch Committee participants.

Many of the entities across the West that are evaluating market options will be looking to make decisions by the end of this year. While the Launch Committee has done the groundwork for exploring Phase 2, at this time PPC finds it challenging to consider these potential changes as part of evaluating market options given that legislative change would not be pursued until 2025. There is a significant amount of uncertainty in the specifics around the Step 2 proposal. Without better understanding the other stakeholder perspectives it is difficult to discern the likelihood of consensus on specific Step 2 design and challenging to know whether that design would meet PPC members' expectations for regional market governance. The potential political risk in California is also notable and creates significant uncertainty for entities outside of California.

If it is possible to provide more certainty on the outcome of Phase 2, that would be helpful to inform entities' evaluation of day-ahead market options. PPC would appreciate hearing additional details from Launch Committee members about their "must-haves" in Step 2 to inform the alignment on the details surrounding the proposal. This could help inform the amount of alignment among the Launch Committee on specific recommendations.

Conclusion

PPC appreciates the opportunity to comment on the Launch Committee's proposal. We look forward to better understanding how the proposal approach meets the collective needs of the broader West. Additional discussions to inform the implementation risk related to all aspects of the proposal will be critical in determining how the Pathways initiative impacts the market participation decisions of those across the West. PPC will reiterate that the discussion on governance is not occurring in a vacuum; there are other critical components of the day-ahead market options which must be evaluated outside of the Pathways initiative. We look forward to additional discussions with other stakeholders in the coming months.