

Submitted via Comments@WestWidePathwaysInitiative.org on October 25, 2024

RE: West-Wide Governance Pathways Initiative – Step 2 Draft Proposal

The Public Power Council¹ (PPC) appreciates the opportunity to comment on the West-Wide Governance Pathways Initiative (“Pathways”) Step 2 Draft Proposal. The development and expansion of organized markets in the West is a critical issue for PPC members. Adoption of organized markets will make long-term, irrevocable changes to the way that energy needs across the West are met. While there is the potential for substantial benefits as a result of pursuing organized market participation, there is also the potential for new risks and unintended consequences. Widespread confidence that a market can and will take swift action to make needed adjustments to market design in order to ensure equitable and efficient market outcomes is critical for the durability and equity of future markets.

This is why governance is a central element of PPC’s evaluation of market options, both in the current iteration of market development and during past efforts. The market footprint and market design will impact the potential benefits achieved by a future market, but without proper market governance to ensure equitable market outcomes, participants in the market could be signing up for a future that results in substantial and long-lasting inequities, ultimately harming the consumers and communities that PPC member utilities serve.

PPC appreciates the hard work of the Pathways Launch Committee and commends the group for exploring a new approach to improve the governance of the WEIM and EDAM markets. The Launch Committee’s lack of consensus on a proposed approach in the Step 2 proposal is an indication of the immense challenge associated with addressing this issue. We acknowledge the difficult stakeholder dynamics and practical considerations that informed the Launch Committee’s proposal. Each entity, including PPC members who are evaluating market participation, will need to evaluate the proposed market governance, along with other relevant factors, to inform their own decisions on market participation.

In this case, and as described in more detail below, PPC’s expectations for a “strong and effective independent governance” are not met by the Step 2 Draft Proposal. It is unclear whether further evolutions of the proposal as envisioned by the Launch Committee would achieve this objective, and the uncertainty around *if* that evolution will occur presents an

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.

unacceptable level of risk. PPC would recommend that BPA decline to participate in EDAM based on the Step 2 Draft Proposal.

PPC agrees with other stakeholders that an ideal outcome would be broad participation in a single West-wide market with independent governance. Unfortunately, the current proposal does not achieve the objective of independent governance which is needed to encourage that broad participation.

PPC Evaluation of Pathways Step 2 Proposal

As stated above, PPC appreciates the hard work of Launch Committee members, who volunteered to develop this proposal. In response to prior failed attempts to regionalize the CAISO as a means of achieving independent governance, the Launch Committee developed a novel approach intended to address concerns about CAISO's independence as the market administrator, while honoring concerns from entities within California that did not want to regionalize the BAA function served by CAISO. We commend the Launch Committee for their creativity in this proposal and acknowledge that the Step 2 Draft Proposal does include areas of incremental improvement in EDAM and WEIM governance as compared to today.

PPC has identified that any market option it would support must have a "strong and effective independent governance structure which does not unduly discriminate in favor or against specific market participants." While there are incremental improvements in the proposal, the Step 2 Draft Proposal falls well short of PPC's expectations for independent governance in several areas - in particular the continued relationship between the newly proposed Regional Organization (RO) and CAISO. Option 2, where the RO only serves as policy making organization, clearly fails PPC's evaluation of independent governance. The RO continues to rely substantially on support from the CAISO for staffing, regulatory obligations, and financial solvency. This raises serious questions about whether the RO would be able to perform its duties to market participants without influence from CAISO. It also raises questions around if it would be appropriate for the RO to act without oversight from the CAISO in such a paradigm, given the financial and regulatory responsibility that CAISO would hold on the RO's behalf.

Option 2.5 could offer additional advances towards independence, but also does not meet PPC's expectations for independent governance as currently proposed. At this time, there are not clear policies described to ensure the RO would operate independently of CAISO influence. In addition to the uncertainty around the specifics of Option 2.5, there is no certainty as to when or even *if* an eventual evolution to Option 2.5 (or potentially even Option 3 or Option 4) would occur. Currently there is the greatest incentive there has even been to make changes to the governance of EDAM, given the noted importance for California entities to have access to low hurdle regional trading and that there will likely be a viable alternate day-ahead market option for Western entities to consider.² If entities wait until 2026 to explore further governance

² It is important to note that PPC does not anticipate that the creation of two markets would end valuable regional trade. Trade across the region has persisted in bilateral trading scenarios, across existing seams. PPC will continue to support seams negotiations to enable continuing trade among entities in the West regardless of market participation.

evolution, that market alternative is likely to be gone. Without a viable alternative to EDAM there will not be an incentive to continue to “evolve” to a more independent governance structure - particularly given the substantial challenges with that evolution as described in the Step 2 Draft Proposal.

PPC has identified eight criteria that help better define “strong and effective independent governance.” An evaluation of the Pathways Step 2 Draft Proposal against these criteria is included as an attachment to these comments. Option 2 fails to meet nearly all of the PPC independence criteria. A further evolution to Option 2.5 may meet some additional criteria, but it was difficult to analyze such an evolution in sufficient detail based on the information currently available. For instance, lack of specifics around the use of CAISO staff and continued use of a shared tariff under Option 2.5 made the option difficult to assess.

Based on the Pathways Step 2 Draft Proposal, PPC would recommend that BPA **not** further consider EDAM participation, as the proposal fails to meet PPC’s expectations for “strong and effective independent governance.” There are two potential approaches to governance reform that would better address PPC’s concerns:

- 1) Broader changes to CAISO’s statutes to enable CAISO itself to be independent; or
- 2) Clearer separation between the CAISO and the RO to ensure independence of the RO *and* greater durability of governance changes including specific commitments regarding the direction of future governance “evolutions.”

Shared Tariff, Dual Roles, and Organizational Dependencies Do Not Support Independence

In PPC’s evaluation of independence criteria, three aspects stand out as creating the greatest barriers to independence: 1) the shared tariff between CAISO and the RO, 2) dual roles for CAISO which will be both operating the market and acting as a BAA participating in that market and 3) the reliance that the RO continues to have on CAISO for its existence and operations. These areas in particular perpetuate some of PPC’s most significant concerns about the current EDAM governance under CAISO today.

Sole authority for the RO over market policy decisions is an improvement as compared to today; however, PPC is concerned that the structure described in the draft proposal provides very little certainty and durability over the RO’s authority over future decisions.

While the proposal is to remove the CAISO Board’s decision-making authority over market policies, CAISO would still act as both the market operator and as a participating BAA in the market. The proposal does not adequately describe or ensure that sufficient “firewalls” would be in place to maintain the independence of the CAISO as a market operator. PPC is also unaware of any evaluation of potential legal risk associated with having CAISO staff take on such a role, while retaining its current obligations to benefit the state and ratepayers of California. Additionally, while we recognize the practical reality that the market operator needs to have the ability to take needed actions in emergency situations without Board oversight, CAISO’s potential conflict of interest creates additional concerns with this arrangement. Emergency actions can be very consequential in terms of costs and reliability, and it is vital to have

confidence that actions will be taken in such a way that is not intended to benefit a specific group of market participants.

Lastly, as described above, the reliance that the RO has on CAISO for its continued existence is neither durable nor independent under the current proposal. This is a significant concern for PPC.

Draft Proposal and Incremental Approach Create Significant Uncertainty and Unacceptable Risk

As noted above, there is significant uncertainty surrounding important aspects of the proposal given the lack of detail at this time. We understand that there are specific challenges that have limited the level of information in certain areas – for example, that the Launch Committee is not in a position to offer specific enabling legislative language for stakeholders to evaluate. While the reasons for this lack of detail are understandable in many cases, it still introduces uncertainty. This level of uncertainty contributes to PPC’s conclusion that the Step 2 Draft Proposal does not present an acceptable governance option for PPC.

Some of the key areas of uncertainty in the proposal include:

1) The scope and durability of RO decision-making authority.

There is not sufficient certainty around which elements of the tariff would be under RO authority. There is also very little detail around the planned stakeholder process for determining decision-making authority, including whether this would be a one-time process or ongoing discussion, how stakeholders would provide input, and who is the ultimate decision-maker. The scope of the RO’s authority is a key consideration in PPC’s evaluation of whether the proposal achieves independent governance.

2) The specific language related to important foundational documents is unavailable.

Such language includes: the legislative language enabling the proposal, the RO incorporation documents, updated CAISO Board of Governors’ Bylaws, and contractual language which would guide the relationship between the RO and CAISO staff operating the market.

3) Specific implementation and potential durability of legislative change is unclear.

It is unclear at this time when legislative change would occur and what that specific legislative change would look like. It is also unclear after an initial legislative change whether future revisions could cause changes to the CAISO/RO relationship – especially under Option 2 where CAISO is still responsible for the financial and regulatory risk associated with operating the EDAM and WEIM markets.

4) Evolution to More Independent Governance is Speculative

The envisioned evolution from Option 2 to Option 2.5 or some other version of more independent governance is speculative at this point. We understand that practically a decision to move to Option 2.5, 3 or 4 today might not result in a quicker achievement of those outcomes, but it would provide a greater level of certainty that additional independence beyond Option 2 would be achieved. It is also unclear to PPC what the exact process would be for enabling such an evolution including whether the CAISO

Board of Governors would need to opine on future RO governance changes and whether future legislative changes would be required.

Additional Background on PPC's Perspective

PPC's eighty-five consumer owned utility members take their responsibility to the communities they serve very seriously. They are accountable to their communities to provide reliable, low-cost service to families and businesses across the Northwest, including areas facing particular economic hardships. Providing reliable access to electric service, which has become essential for community health and development, is something they are held accountable for through their locally controlled governance structures. The idea of sacrificing aspects of that local control in order to potentially achieve greater efficiencies and cost savings through market participation is not taken lightly, which is one of the reasons that robust independent governance is so critical for PPC and its members in considering organized market options.

PPC's members will be impacted by markets that develop in the West in multiple ways: as preference customers of BPA who rely on the agency for the majority of their collective generation and transmission needs, as potential direct market participants who will make their own market participation decisions, and as utilities in BAAs that have or will make their own market participation decisions with little to no input from the PPC members in those BAAs.

The comments above represent the collective interests of PPC's eighty-five COU members; each member utility may perform its own evaluation of the risks and benefits of different market options, including whether the associated governance structure provides them sufficient comfort to enable their market participation.

While there are multiple elements which will inform market decisions, for many of our members governance is the primary consideration – as it impacts all aspects of market design and operation that ultimately determine allocation of market benefits and market risk. With so much uncertainty looming in the years ahead and as the western energy landscape continues to evolve, governance is even more important so that unexpected circumstances and necessary market design changes can be addressed equitably.

It is important to note that PPC's concerns with CAISO governance are not related to the individual decision-makers and staff associated with the CAISO market, but instead stems from structural and legal issues related to CAISO's original purpose as an organization created to benefit the state of California.

PPC has had long standing concerns with CAISO's governance structure due to:

- CAISO's statutory requirements to operate consistent with the interests of the people of California, to manage the transmission grid and energy markets to reduce economic cost to California consumers and maximize generation resources to meet the needs to California consumers.
- 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 CAISO's tax-exempt status is connected to its operation and market promoting reliability and efficiency of the grid of California.
- CAISO's dual role as the Market Operator of the EIM and EDAM and a Balancing Authority Area participating in those markets.

In Closing

PPC stays committed to continued discussions on governance changes and looks forward to seeing the Launch Committee's response to stakeholder feedback on the Step 2 Draft Proposal. We would like to reiterate our appreciation for the Launch Committee's hard work. Regardless of the outcome of the Pathways initiative or any specific market process, PPC remains committed to finding ways that the region can work together, while respecting the individual interests of the diverse stakeholders across the West.

Evaluating Pathways Draft Step 2 Proposal Using PPC Criteria for Strong & Effective Independent Governance

PPC Independence Criteria	Evaluation of Step 2 Draft Proposal	Discussion
<p>Element #1a: The decision-making body* and its individual members must: act without the undue influence of any market participant, the market operator, or single state or provincial government.</p>	<p>Not Met</p>	<p>Under Option 2, the RO is still heavily reliant on CAISO to support the organization (for staffing, regulatory requirements, and financial risk). This significantly impacts the RO's ability to act independently of CAISO. If CAISO retains legal obligations to CA ratepayers, then it also impacts the RO's ability to act independently of the interests of the state of California. It is possible that this could be improved upon in an evolution to Option 2.5, but we don't have enough details on the specific relationship between the RO and CAISO under a future Option 2.5 to say if this criterion would be met.</p> <p>This is a critical element that would need to be addressed for PPC to support the Pathways proposal.</p>
<p>Element #1b: The decision-making body and its individual members must: have the responsibility for making unbiased and balanced decisions so that all interests of market participants are adequately represented.</p>	<p>Unclear</p>	<p>PPC appreciates the intent to include language confirming that the RO would be responsible for serving the interests of all market participants in the RO's founding documents. We agree this is an important aspect of achieving independent governance. However, the CAISO's role in the stakeholder process (which remains unclear) potentially complicates the independence of the RO in making policy decisions (if they are relying on CAISO staff as the primary support for the RO as an organization).</p>

<p>Element #2: The authority of the decision-making body setting market policies and associated roles and responsibilities of the organization administering the market are clearly defined without risk from future changes to state law or tariff.</p>	<p>Not Met</p>	<p>There is not sufficient certainty on the scope of the RO's sole authority or how disputes would be resolved if there is a disagreement regarding decision-making authority. Additionally, the risk of potential changes to state law is particularly concerning in Option 2 where the RO is relying on CAISO to support its financial and regulatory obligations.</p>
<p>Element #3: The process for selecting decision-makers reflects the diversity of interests of market participants and other stakeholders.</p>	<p>Potentially</p>	<p>The proposed process for seating the RO Board uses a similar framework to other nomination and seating processes for regional organizations which have worked well. The process for each sector to identify a representative for the nominating committee is not well defined and could present a risk related to all parties having sufficient representation. There is also little information on the Formation Committee who will approve the initial slate of RO Board members and may not adequately represent the diverse interests of the potential market footprint.</p>

<p>Element #4: Institutional documents governing actions of the market administrator and associated board adequately describe the fiduciary duties to serve the collective interests of market participants.</p>	<p>Not Met</p>	<p>The reliance on CAISO for meeting financial and regulatory obligations of the market complicates the RO's ability to execute its fiduciary duties distinct from CAISO. As long as CAISO maintains its statutory responsibilities to the state of California, this is a concern. A potential evolution to Option 2.5 could possibly address this issue, but that is unclear. Option 4, by comparison, would achieve this objective.</p> <p>This is a critical element that must be addressed for PPC to support the Pathways proposal.</p>
<p>Element #5: The market operator is sufficiently independent to ensure confidence that the interests of all market participants are being equitably considered in implementing market policies and taking market actions.</p>	<p>Not Met</p>	<p>PPC appreciates the acknowledgement of the Launch Committee that this a potential area of concern, and the attempts made in the proposal to address these concerns through proposing some additional involvement of the RO in limited CAISO staffing decisions. However, without a legislative change that would modify the ties between CAISO and the state of California, the use of CAISO staff to implement that market does not "ensure confidence" of independent operations.</p> <p>This is a critical element that would need to be addressed for PPC to support the Pathways proposal.</p>

<p>Element #6: The roles and responsibilities of the decision-making body, the market operator and market participants are clearly defined, distinct and separate.</p>	<p>Not Met</p>	<p>There is not sufficient clarity provided on how CAISO would manage its potential dual roles as an entity implementing the market and a participant in that market. Additionally, the scope of decision-making authority is not sufficiently clear.</p> <p>This is an important element that would need to be addressed for PPC to support the Pathways proposal.</p>
<p>Element #7: Decision making and stakeholder engagement must occur in a transparent and inclusive manner. Market participants have an empowered role in the stakeholder process and the opportunity to collectively influence the direction of the organization where appropriate.</p>	<p>Unclear</p>	<p>PPC appreciates the improvements to the stakeholder process outlined under the Step 2 proposal. PPC is interested in seeing market participants have a larger role in the stakeholder process and acknowledges efforts to expand that role in the proposal. However, PPC is concerned RO staff may have the ability to advance proposals to the Board without sufficient support from stakeholders. Since it is unclear exactly who would be acting as “RO staff” (is it actually RO employees or CAISO employees) it is difficult to opine on the extent of this concern.</p>

<p>Element #8: The stakeholder process is designed to promote consensus and collaboration between diverse market participants and stakeholders.</p>	<p>Potentially</p>	<p>Again, PPC appreciates the proposed improvements to the stakeholder process. Providing stakeholders a more direct role in the policy development process and using indicative voting at multiple stages can create greater transparency in participant and stakeholder positions, encouraging additional collaboration between stakeholders. There is no requirement for a minimum level of stakeholder support to advance proposals, which may undermine the incentive for collaboration. Instead, it can encourage entities to continue to directly appeal to the RO staff in the hope that RO staff “overrides” indicative voting and takes issues to the RO Board without broad support.</p>
--	---------------------------	---

*Throughout the table, “decision-making body” refers to the entity that has final authority over setting market policy, including tariffs and business practices/protocols.

Please note: the perspectives described above are the position of PPC representing the collective interest of its member organizations. Each PPC member will conduct their own evaluation of the Step 2 proposal and organized market options based on their individual utility needs.