

Submitted via Comments@WestWidePathwaysInitiative.org on August 19, 2024

RE: West-Wide Governance Pathways Initiative – RO Formation

The Public Power Council¹ (PPC) appreciates the opportunity to comment on the West-Wide Governance Pathways Initiative (“Pathways”) Step 2 Process. Please consider these initial comments of PPC staff for the Launch Committee’s consideration. The formation of the RO is an important structural component in ensuring the organization’s independence and we appreciate the Launch Committee’s attention to this issue. PPC acknowledges that late receipt of these comments may impact the Launch Committee’s ability to consider these perspectives in its next update on RO formation. We are endeavoring to keep pace with the request for comments in the Pathways process and appreciate the Launch Committee’s consideration of these comments to the extent possible.

As stated in other PPC comments on the Pathways process -

PPC is supportive of a robust, independent governance structure. For this to be achieved within the context of Pathways there will need to be a decision-making body over the Western markets (EIM, EDAM) that does not have additional responsibilities or accountability to one subset of stakeholders, as is the case with CAISO’s governance today.

In order to evaluate whether this objective is achieved, it will require stakeholders to understand the proposed organizational structure, California legislation, the bylaws of both the Regional Organization and CAISO Board of Governors, the articles of incorporation for the Regional Organization and many other components which together will govern the decision-making authorities and fiduciary responsibilities of decision-makers related to the WEIM and EDAM markets. It is somewhat difficult to opine on some of the questions posed by the Launch Committee without better understanding how all those components will work together. PPC provides this initial input on the Launch Committee’s proposal without the benefit of these important components to aid our perspective.

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.

Regional Organization Formation Questions:

1. Type of Organization: do you support the proposed 501(c)(3) organization of the RO? If there is another organization that you feel would be a stronger fit for the RO, please tell us which organization you prefer and the basis for your opinion.
2. State of Incorporation: Do you support proposed incorporation of the RO in Delaware? If you think there is another state that you feel would be a more compelling option, please tell us which state and the basis for your opinion.
3. Principal Place of Business: Do you support co-locating the RO in Folsom with the CAISO as the principal place of business? If there is a different location that you feel would be a stronger fit, please tell us which location and the basis for your opinion.
4. Do you have any additional feedback you would like to share with the Launch Committee on these topics?

Generally, the Launch Committee's proposal to incorporate as a 501(c)3 seems reasonable. During the stakeholder meeting, the Launch Committee seemed to indicate that choice was being made primarily for the purposes of tax benefits for the corporation and the limitations on lobbying and political campaigns, as opposed to a meaningful distinction about the services that the corporation will be providing and to whom. PPC would like to confirm that understanding.

Incorporating the RO in Delaware seems like a suitable solution. Incorporating in any of the states in the market footprint creates potential concerns about the organization's independence and the potential that the RO would place a higher value on the interests of a subset of market participants as compared to others.

While PPC understands that the Launch Committee anticipates potential efficiencies from co-locating RO staff in Folsom with CAISO employees, we are concerned about the implication of this choice on independent governance. Additional access for CAISO staff to the RO, such as in a co-location scenario, impacts the perception of independence. Co-location of the two organizations significantly positions the CAISO BAA differently than other BAAs participating in the market and potentially blur lines of roles and responsibilities.

It would be helpful to better understand more details about why co-location with CAISO staff is so beneficial and how that relationship would compare with that between the RO and other market participants.

Establishing a culture where the RO and CAISO are both focused on their respective objectives is critical, and co-locating sends a signal that their primary focus is one and the same.

In addition to the implications that co-location has on independence, Folsom is not an easily accessible location for stakeholder meetings and processes. A location in the West closer to an airport could be a practical solution for hosting the RO.

Regional Organization Governance Questions:

1. The working proposal recommends there should be a collaborative relationship between the existing CAISO Board and the new RO Board. Where there are issues of joint authority for the two boards to consider, there should be joint meetings. Do you agree with the recommendation? If not, please share your thinking and an alternative proposal for how this issue can better be addressed.

Under the proposed approach to have a single tariff for CAISO and the RO it is will be necessary for the Boards to have a working relationship; however, it will be critical the roles and responsibilities between the two Boards are clear and that any joint decision-making is consistent with those roles and responsibilities.

The ambiguity associated with having areas of “shared” responsibility, and also the potential for disagreements over which entity has responsibility for administering which portion of the tariff is a significant downside of the Option 2 and 2.5 approach. As stated in other comments, PPC would appreciate more discussion on whether this issue could be more cleanly addressed through pursuit of Options 3 or 4 identified by the Launch Committee.

2. The working proposal recommends the RO Board should consist of seven members that meet the knowledge and skills requirements outlined in the RO Board selection procedure. Do you agree with the recommendation? If not, please share your thinking and an alternative proposal for how this issue can better be addressed.

Five to seven members is a reasonable size for the Board to encompass a variety of backgrounds and areas of expertise for the RO Board.

3. The working proposal recommends seats on the RO Board should not be reserved per se. Do you agree with the recommendation? If not, please share your thinking and an alternative proposal for how this issue can better be addressed.

An appropriately representative and diverse Nominating Committee should be sufficient to ensure that there is diverse representation included on the Board, making “reserved” seats unnecessary. This should be an area that undergoes review after the first three to five years of the RO’s existence, to ensure that the nominating process has been successful in achieving this goal.

4. The working proposal recommends the details of the Transition Plan from the WEM GB to the new RO Board should be left to the Formation Committee. Do you agree with the recommendation? If not, please share your thinking and an alternative proposal for how this issue can better be addressed.

There is not enough information available on the Formation Committee for PPC to comment on this issue at this time. If the Formation Committee leads development and implementation of the Transition Plan it would require regular and transparent reporting to the broader stakeholder community. It is also unclear to PPC who is appointed to the Formation Committee and whether that group is sufficiently representative of the diversity of Pathways stakeholders.

Leaving such details up to the Formation Committee may make it difficult for some stakeholders to evaluate the governance proposal upon completion of the Launch Committee process. We understand that the need for legislative change to effectuate the Launch Committee's proposal will inherently create some uncertainty, but it is unclear just how much of the proposal may change/further develop under the oversight of the Formation Committee in concert with the California legislature.

Would there be some "guidelines" put into place to limit some of this potential risk, for example, if a certain amount of change occurs would the Formation Committee bring an issue back to the Launch Committee?

5. The working proposal recommends that, based upon discussions to date, the Launch Committee has taken the position in the Phase 2 work plan that we will not launch the RO before the legislation is signed and the amended tariff is filed at FERC. There are formation efforts (e.g. type of corporation, tariff language development, bylaws development, board selection process) that should be pursued by the Formation Committee in conjunction with the CAISO in advance of these milestones, but mindful of the legislative process. Do you agree with the recommendation? If not, please share your thinking and an alternative proposal for how this issue can better be addressed.

PPC would like to better understand the planned sequencing of the Formation Committee's work. We understand that the Formation Committee will not control legislation, but instead will have an opportunity to influence it. Will a proposed draft of the legislation, as proposed by the Launch Committee or Formation Committee, be shared before the end of the Launch Committee process?

How will the Formation Committee adjust the proposal/approach if what is passed by the legislature differs from what is envisioned by the Launch Committee?

How will the Launch Committee/Formation Committee sequence its work during this time? What actions will be conducted parallel to legislative efforts, and will those actions be taken as part of a public process?

Are there bounds on the potential costs that would be incurred during these efforts prior to completion of the legislative process?

We also have questions around the Formation Committee including composition, scope of work, and planned stakeholder engagement.

6. The working proposal recommends that startup funding for the RO will likely be required before any market supported funding is available. Due consideration should be given to identifying funding that would not be considered as compromising Board independence. Such sources might include DOE grant funding or ongoing support from the Pathways Initiative 501.c.3 funding via Global Impact. Do you agree with the recommendation? If not, please share your thinking and an alternative proposal for how this issue can better be addressed.

PPC agrees that potential impacts or perceived impacts of funding sources on independence should be accounted for in determining what funds to accept for the purposes of funding Pathways.

All funding sources should be made public as should all organizations that are contributing resources to the effort. Our understanding is that the Launch Committee has made this information available to date; we would appreciate confirmation from the Launch Committee on whether this assumption is correct and a reminder of where this information is available.

7. The Work Group is developing a draft RO Board selection procedure that started with the current WEM GB selection process. Specific issues for stakeholder input include: 1) Number and definition of nominating committee sectors, 2) Board knowledge and skills requirements, 3) Use of Formation Committee as approval body for initial board selection and 4) Restriction on number of current WEM GB members that can transition to the new RO Board. Please share your thinking on the proposal and any alternative proposals for how these issues can better be addressed.

The current WEM GB selection process is a good starting point for Board selection criteria.

To date the number and definition of nominating committee sectors has worked well. Additional consideration on this point may be needed in the future as the stakeholder mix changes, or as some entities change their relationship with the RO.

The knowledge and skills requirements, as well as the informal efforts of the nominating committee to appoint a diverse mix of expertise among WEM GB members have worked well.

PPC does not see a specific reason that there should be a limitation on the number of WEM GB members that can transition to the RO Board.

8. Do you have any additional feedback you would like to share with the Launch Committee on these topics?

PPC looks forward to more information on the proposed bylaws, charter, and/or other governing documents related to the RO.

In these documents it will be important to understand the roles and responsibilities of RO.

We would also like to see the Launch Committee's proposed revisions to the CAISO Board of Governors' governing documents to understand how the roles and responsibilities of the CAISO Board of Governors and the RO Board complement one another.

Thank you for the opportunity to comment.