

October 25, 2024

**VIA E-MAIL** (Comments@WestWidePathwaysInitiative.org)

West-Wide Governance Pathways Initiative

**Re: California Large Energy Consumers Association Comments on the Pathways  
Step 2 Draft Proposal**

Dear Sir or Madam:

The California Large Energy Consumers Association (CLECA)<sup>1</sup> is pleased to provide the following comments on the Pathways Step 2 Draft Proposal.

***Stakeholder Comment Template: Step 2 Draft Proposal***

*The Step 2 Draft Proposal released on September 26 highlighted detailed, technical questions for continued feedback. This comment template focuses on foundational areas, as not all stakeholders may have feedback on those narrower areas. Stakeholders are invited to provide additional feedback on the more technical questions in each chapter of the Draft Proposal in question 8.*

***1. Support for Step 2 Draft Proposal:*** Please indicate your level of support for the Step 2 Draft Proposal. Please provide general reactions, an indication of the benefits of the structural elements that are being proposed, and if you think that the Draft Proposal is on the right track.

CLECA supports the Pathways Initiative efforts and appreciates the broader recognition of the importance of developing an organized, west-wide market. The proposed independent Regional Organization (RO) holds great promise for a more reliable, clean, efficient, affordable electricity grid across the west. Successful RO formation and operation is essential to more affordable electricity for all customers, and the ultimate purpose of electricity markets is to serve customers.

---

<sup>1</sup> CLECA member companies produce goods essential for daily life, including critical infrastructure, oxygen for hospitals, and food distribution. CLECA members represent the steel, cement, industrial and medical gas, beverage, minerals processing, cold storage, and pipeline transportation industries. Their aggregate electric demand is about 500 Megawatts, which is equivalent to the electricity consumption of approximately 470,000 average California households. CLECA members are large, high load factor and high voltage industrial electric customers in California for whom the price of electricity is essential to their competitiveness and for whom the reliability of electricity service is critically important. For both reasons, CLECA member companies have participated for decades in the Base Interruptible Program (BIP), providing reliability demand response to the grid in times of need. (For more information, please go to [CLECA.org](https://www.cleca.org)).

Customers of all types rely upon reliable, clean, and affordable electricity, including the Commercial and Industrial (C&I) customer sector. Notably, the C&I sector actively engages in RO stakeholder processes across the country, due to their unique interests and the importance of energy to their core functions. The C&I sector is interested in access to clean energy and a reliable grid. And critically, large customers rely upon affordable electricity to produce their goods and services in an increasingly competitive global economy.

The Pathways team has done an extraordinary job getting the RO to this point. The initiative has tremendous support and momentum across diverse sectors and interests. CLECA supports the RO direction and continued advancement. However, these comments flag areas of concern and offer suggestions for improvement from the perspective of large customers as this RO continues to take form.

**2. Stepwise approach:** *The Draft Proposal would continue the stepwise approach for Step 2, beginning with Option 2.0, followed by the RO commencing a feasibility study within 9 months of its formation. Depending on the results of the study, the RO would assume further responsibility in the form of Option 2.5 or a similar structure. This stepwise approach is motivated by a desire to continue early momentum towards regional governance by standing up the RO in the near term, while recognizing the time required to create the infrastructure and financial reserves to enable Option 2.5, and the need to better understand the costs, benefits and structural specifics of Option 2.5. The RO would then have the ultimate authority, with stakeholder input, to make decisions about next steps from and after its formation. Does this stepwise approach create a platform that can achieve the desired level of independence at an appropriate cost to customers?*

CLECA supports the stepwise approach and emphasizes the need for a clear path to Option 2.5. It is appropriate for the RO Board once seated, with engagement from the stakeholder community, to conduct a feasibility study and manage the implementation details of expanded market services aligned with Option 2.5. However, the Launch Committee and final Step 2 proposal should set clear direction, priority, and timeline goals for expansion of market services.

**3. Cost:** *The Launch Committee has created a high-level preliminary cost estimate for Option 2.0 and 2.5. Please provide feedback on the level of staffing and the costs for both options. Do these estimates seem reasonable, and would stakeholders be willing to shoulder these costs associated with increased independence?*

CLECA supports higher budget levels to ensure that the RO is staffed at a level sufficient to ensure adequate independence. The exact budget required for independence is difficult to determine at this juncture, and under Option 2 the CAISO will continue to be responsible for direct management of the grid. However, the RO budget should be sufficient to ensure RO staff technical expertise adequate to provide independent advice and analysis to

the RO Board, the SRC, and broader stakeholder community without direct reliance on CAISO staff.

**4. Tariff approach:** *The Draft Proposal recommended maintaining a single integrated tariff at the outset, and embarking on an effort to organize the tariff into the areas of sole CAISO, sole RO, and where there is overlapping shared authority. This effort would lay the groundwork to eventually to progress to separate tariffs, should that separation be desired by stakeholders. Do you support this approach? If not, please provide an alternative approach and as much explanation as possible on how the alternative would better address stakeholder needs.*

CLECA supports this approach, with the recognition that separate tariffs are desirable when feasible, potentially followed by a single tariff with service provider contract as the end goal.

**5. Department of Market Monitoring (DMM):** *The Draft Proposal recommended a joint reporting structure for DMM and RO shared decision making in DMM upper management hiring. Would this change enable sufficient independence? If you think that the proposed approach does not achieve sufficient independence, please provide an alternative approach that would better address stakeholder needs, including any cost implications.*

Independent Market Monitoring is essential to a well-functioning market. CLECA recommends a market monitor that is entirely independent from both the RO and the CAISO; this new independent market monitor could initially operate in parallel with the existing CAISO DMM. The RO Board, with engagement from the SRC, should conduct a bid and evaluation process to select an independent, external organization to provide market monitoring services on a contract basis. The SRC should materially participate in the bid and evaluation process, and provide a recommendation. The RO Board should make the final selection decision with a formal public vote. CLECA recommends 3-year contract terms, with regular performance evaluation by the RO Board and SRC. Contract termination rights should be related to adequate performance of prescribed duties, but with protections for contract termination for taking policy positions contrary to RO Board or the SRC.

**6. Sectors:** *The Launch Committee is holding a workshop (10/7) focusing on sectors and seats on the Stakeholder Representatives Committee (SRC), and will release a revised sector proposal on 10/14. Please share your thoughts on the revised sector proposal and if this component of the overall stakeholder process would allow for meaningful participation and all stakeholder voices to be heard.*

### **Stakeholder Representatives Committee (SRC)**

Stakeholder representation is essential to a well-functioning RO. The perspective of market participants is essential. No RO Board or Staff can ever fully understand the business models,

interests, and concerns of market participants. The active participation and consensus building necessary for a robust stakeholder process relies upon meaningful input to the final policy outcome. Whether through voting or other means, stakeholders must have a real impact on the RO policy outcomes. The important work of stakeholders will fail due to lack of involvement and resources if they perceive their efforts are not meaningful.

### **Re-evaluation of Sectors and SRC structure**

CLECA appreciates a designated sector for Large C&I customers. This voice is important to the RO, and retention of the C&I Sector on both the SRC and the Nominating Committee is essential. The proposal to mirror the SRC sectors on the Nominating Committee is appropriate.

However, the proposed SRC sectors noticeably underrepresent customer groups.<sup>2</sup> The latest SRC proposal designates two of the nine sectors for customers. Similarly, the latest SRC proposal designates two of the 19 sector seats to customers. This underrepresentation is inappropriate for customers at large who represent tremendous diversity, for whose benefit the regional organization is designed, and ultimately who will pay for the entire cost of grid services.

CLECA urges serious reconsideration of the SRC proposal, and re-balancing of voting sectors and sector seats between supply and demand. CLECA's recommendations to rebalance the SRC voting sectors and sector seats should be included in the final Step 2 approved by the CAISO and WEIM Boards.

The Launch Committee should recognize and correct the imbalance between Buyer and Seller representatives designated in each sector in the Step 2 Proposal presented for Board approval. Each sector should have two seats, or alternatively one seat and one alternate—but, in all cases, the number of seats should be the same for each sector. The revised proposal states its intent to “ensure robust dialogue and guard against changes to the market that would decrease efficiency, result in any market manipulation practices, and negatively impact benefits to customers.”<sup>3</sup> And it rationalizes the proposed sectors and sector seats as seeking “to ensure that underlying business models are provided with an adequate voice.”<sup>4</sup> This fails to recognize that all sectors have heterogeneous membership worthy of adequate representation at the SRC. In particular, the C&I sector diversity is not adequately recognized in the revised Step 2 SRC Proposal.

---

<sup>2</sup> Launch Committee Step 2 Draft Proposal, Revised Sector Proposal at 1, 5.

<sup>3</sup> Launch Committee Step 2 Draft Proposal: Revised Sector Proposal at 3.

<sup>4</sup> Id. at 4.

Indeed, the C&I customer sector is incredibly diverse, across all meaningful metrics:

- Facility size and number: Hundreds of individual facilities, ranging from large industrial customers to smaller commercial customers.
- Geographic: Representing every corner of the RO footprint, from the Pacific Northwest to the Desert Southwest.
- Business models: Includes public corporations, non-profit hospitals, municipal services, public universities, and privately owned small businesses.
- Economic sectors: In every sector of the economy, including education, raw materials, heavy manufacturing, and data centers.
- Methods of Participation in the RO: from direct participation in the EIM and EDAM markets, through Investor Owned Utilities (IOUs) to municipalities, and every way in between.

Moreover, the C&I customer sector participates differently from consumer advocate retail customers. CLECA's proposed revision, with each currently proposed sector having the same number of seats, partially restores the balance between supply and demand representation. CLECA's proposed revision would better achieve the Launch Committee's stated goal of "creating a more inclusive and representative process that is also more capable of driving meaningful market evolution" than the revised proposal.<sup>5</sup>

CLECA appreciates the proposal's inclusion of alternate representatives as a practical way to manage predictable schedule conflicts and resource constraints within sectors. However, CLECA recommends applying the alternate seat construct to all sectors to help reduce the overall number of representative seats, to facilitate functional and collaborative SRC discussions. We note that the SRC needs to be small enough for meaningful collaboration; it cannot be so large as to be unwieldy. An SRC with one seat and one alternate seat per sector would facilitate the most constructive discussion, provided however that alternates are invited to attend all SRC meetings in order to stay informed of SRC activities. The ability of alternates to be present is valuable, and could help facilitate sector outreach and education efforts, in addition to being important from a representation standpoint. Additionally, alternate seats, or any other person, should be able to represent each sector on a working group or subcommittee as designated by the sector.

To the extent that the sectors are not balanced upon initial rollout, stronger protection of minority interests and minority voices is critically important, and CLECA's proposals below should be adopted. Further, the final Step 2 Proposal should set a path to restore representation balance at clear trigger points along the RO development path.

---

<sup>5</sup> Id. at 6.

Airgas USA, LLC • Air Products and Chemicals, Inc. • Anheuser-Busch • California Steel Industries, Inc. • CalPortland Company • CEMEX • Kinder Morgan • Linde Inc. • Lineage Logistics • Messer North America, Inc. • Mitsubishi Cement Corporation • National Cement Company • Pacific Steel Group • Specialty Minerals, Inc.

## Stakeholder Process Proposals

CLECA supports a robust stakeholder process with meaningful impact on RO policy. The West has a long tradition of collaboration and consensus building, and we have high confidence that this tradition will continue under the RO proposed stakeholder process.

However, structure and additional safeguards to manage disagreement and protect minority perspectives are essential, as inevitably, contentious issues will arise in the long term. CLECA proposes to retain and increase the minority perspective voice throughout the stakeholder process, including in Issue Identification and Prioritization, Policy Development, and RO Board approval processes. Policies can impact one particular sector uniquely in ways that may not be obvious to RO Staff or other stakeholders. Minority perspective sectors need the right to call for reconsideration of a fast-track process, and also the right to raise critical issues to the RO Board.

### **Restore automatic Remand under “Significant Opposition”**

CLECA recommends restoration of automatic remand if there is Significant Opposition. Significant Opposition should be a high bar to overcome. A simple majority of sectors opposing a policy is not fairly described as “lack of consensus,” rather the policy is not supported by the stakeholders. Simple majority opposing is losing the vote. Lack of consensus is lack of broad, nearly universal agreement. If the simple majority of sectors oppose, why did the proposal advance at all? Triggering “additional discussion at the SRC about whether remanding back to the stakeholders would be beneficial to the process and the initiative,” as recommended in the revised sector,<sup>6</sup> does not suffice; if the majority of stakeholders opposes an initiative, it should not advance.

Similarly, one-third of such diverse sectors with 70% opposition is a high bar and indicates strong opposition. A policy proposal should not advance under either condition (simple majority opposes, or one-third of sectors with 70% opposition), and should be automatically remanded to the SRC.

If an override of Significant Opposition is deemed necessary for exigent circumstances, the RO Board should have to unanimously vote to override for an interim period, and the SRC should then take up the issue for longer term consideration; this should be reflected in the RO bylaws or other foundational documents.

---

<sup>6</sup> Launch Committee Step 2 Draft Proposal: Revised Sector Proposal at 6.

Airgas USA, LLC • Air Products and Chemicals, Inc. • Anheuser-Busch • California Steel Industries, Inc. • CalPortland Company • CEMEX • Kinder Morgan • Linde Inc. • Lineage Logistics • Messer North America, Inc. • Mitsubishi Cement Corporation • National Cement Company • Pacific Steel Group • Specialty Minerals, Inc.



**Introduce mechanism for “Strong Minority Opposition”**

The final Step 2 Proposal should include a mechanism for Strong Minority Opposition. Strong Minority Opposition is defined as either of the following:

- Single sector opposition with 90% of sector votes; or
- Opposition by 70% of sector votes in two or more sectors

An SRC vote with Strong Minority Opposition would trigger additional stakeholder review and a higher bar for RO Board approval; this should be reflected in the RO bylaws or other foundational documents.

***Proposal advancement to stakeholder process Stage 2 Policy Development with Strong Minority Opposition***

The SRC Stakeholder process should incorporate strong minority protections for any move to Stage Two: Policy Development if a proposal bypasses Stage One: Issue Evaluation due to RO Staff categorization or any other reason. Strong Minority Opposition should cause such a policy proposal to revert to Stage 1 for further refinement.

Strong Minority Opposition implies that the initial categorization to fast track the stakeholder process was inappropriate, and the policy proposal is likely to cause unintended impacts on one or more stakeholder sectors. If the RO Staff determines that the proposal addresses an urgent critical issue, then an override should be available to the RO CEO through a signed letter attesting to the critical need.

***RO Board vote with Strong Minority Opposition***

If the RO Board votes on a proposal with Strong Minority Opposition, the requirement for passage should be a super majority of five votes out of the seven RO Board seats, and should be ineligible for any consent agenda.

Any sector representative with Strong Minority Opposition to a proposal should have the right to directly address the RO Board prior to the relevant vote, and the RO Board must respond to concerns raised and provide an explanation of the final vote.

More generally, CLECA encourages broad rights for sector representatives to address the RO Board directly on issues of interest or concern. The RO Board should also consider remanding or tabling non-urgent issues with Strong Minority Opposition for further evaluation.

### **Minority Perspective under Option 2.5**

To the extent CLECA's stakeholder balance between supply and demand and minority perspective recommendations are not fully adopted in the Step 2 Proposal, they should be triggered by the advancement to Option 2.5 market services.

### **Recalibration of SRC Sectors by Function upon Step 3**

Upon Step 3, the SRC should move to functional sectors; this re-classification would align the sectors along broadly defined functions, e.g. Generation, Transmission, and Load.

While the distinction between participating in the real time versus the day ahead market (EIM / EDAM) may be useful to differentiate entities now, in the early RO formation stage, this distinction becomes immaterial as the RO continues to develop (e.g., Option 2.5 and Step 3). In the later stages, this will become a distinction without a difference, and, as in other mature regional organizations (e.g., PJM, MISO, SPP), the choice between participation in the real time or the day ahead markets will simply be a commercial strategy for market participation. Accordingly, upon the move to Step 3 and a mature RO, a recalibration of the SRC sectors by function should occur, as opposed to continued use of sectors by like method of participation.

The best time to establish and commit to the interim and mature sector definitions is now. Once sectors are established, inertia and market power become entrenched, and imbalances are likely to persist.

<b>Current Step 2 Proposal</b>	<b>Step 3 Recalibration by Function</b>
EDAM Entities	Utilities and Balancing Authorities, EDAM Entities, WEIM Entities
WEIM Entities	
ISO PTOs	Participating Transmission Owners (PTOs), Independent Transmission Developers
Non-IOU LSEs serving load from WEIM or EDAM	Non-IOU LSEs serving load from WEIM or EDAM, Marketers
PIOs	Public Interest Organizations (PIOs)
Consumer Advocates	Consumer Advocates
Large C&I customers	Large C&I customers
IPPS, Independent Transmission developers and marketers	Independent Power Producers (IPPs), Distributed Energy Resources
Distributed Energy Resources	



CLECA's recalibrated Step 3 sectors result in seven sectors, with either two seats per sector, or one seat and one alternate; again, each sector should have the same number of seats.

The seven sectors are organized by broad market function, with two of the seven sectors representing customer interests.

**7. *Tariff based funding for new public interest protections:*** *To help safeguard the public interest, the Draft Proposal recommended a new Consumer Advocate Organization and an Office of Public Participation. Both entities are contemplated to have minimal staff (possibly one or two staff members) and modest budgets funded through the tariff. The current BOSR funding structure would remain unchanged and not be funded through the tariff, but may be revisited in the future if stakeholders think reevaluation is appropriate. Do you support tariff-based funding for these enhanced public interest protections? Please share as much detail as possible in your reasoning to help the Launch Committee understand the drivers for stakeholders on this topic.*

Yes, with explicit recognition that the public interest must be distinct and separate from the C&I customer sector. Such recognition is necessary, because while there may be alignment between the public interest and C&I customer interests some of the time, this may not always be the case. CLECA seeks to guard against a circumstance where the public interest is deemed to adequately protect the varied C&I customer sector interests, and an effort is made to either collapse the two or eliminate the C&I customer sector.

**8. *Chapter specific feedback:*** *In addition to the questions above, we are seeking feedback on the entire Step 2 Draft Proposal. Please use this space to provide general feedback by chapter, as well as feedback on the embedded technical questions by chapter.*

## Step 2 Draft Proposal Chapter Headings

- Chapter 1: RO Scope and Function
  - Chapter 2: Formation of the RO
  - Chapter 3: RO Governance
  - Chapter 4: Public Interest
  - Chapter 5: Stakeholder Engagement
- See CLECA Response to Question 6 above.
- Chapter 6: Pathways to Additional Services

CLECA appreciates the opportunity to provide input to this important process.

Sincerely,

BUCHALTER, A Professional Corporation



Nora Sheriff  
425 Market Street, 29th Floor  
San Francisco, CA 94105-2491  
415.227.3551 office  
415.227.0770 fax  
nsheriff@buchalter.com

Counsel for the California Large Energy  
Consumers Association



HARPER ADVISORY LLC

/s/ Sam Harper

Sam Harper  
1401 Lake Plaza Drive  
Suite 200-107  
Spring, TX 77389  
(214) 463-9423  
Sam@harper.energy

Consultant to the California Large Energy  
Consumers Association

