

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 21 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NW ENERGY COALITION; IDAHO
CONSERVATION LEAGUE; MONTANA
ENVIRONMENTAL INFORMATION
CENTER; SIERRA CLUB; OREGON
CITIZENS' UTILITY BOARD,

Petitioners,

v.

BONNEVILLE POWER
ADMINISTRATION,

Respondent,

NORTHWEST REQUIREMENTS
UTILITIES; PUBLIC POWER COUNCIL
INC; ALLIANCE OF WESTERN
ENERGY CONSUMERS; PACIFIC
NORTHWEST GENERATING
COOPERATIVE; SOUTHWEST POWER
POOL, INC.,

Intervenors - Pending.

No. 25-4278

Agency No. Bonneville Power
Administration

MEMORANDUM*

On Petition for Review of an Order of the
Bonneville Power Administration

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted August 6, 2026
Seattle, Washington

Before: McKEOWN, N.R. SMITH, and CHRISTEN, Circuit Judges;
Dissent by Judge CHRISTEN.

Petitioners NW Energy Coalition, Idaho Conservation League, Montana Environmental Information Center, Oregon Citizens' Utility Board, and Sierra Club seek review of the Day-Ahead Market Policy and Record of Decision by the Bonneville Power Administration ("BPA"), indicating BPA's desire to join Markets+—a yet-to-be-developed organized market to trade power on a day-ahead basis. We deny the petition for lack of jurisdiction.

Petitioners lack standing and their claims are not ripe for review. *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022) ("The constitutional component of ripeness is synonymous with the injury-in-fact prong of the standing inquiry." (citation modified)). Markets+ does not exist yet; BPA has not formally joined it; and subsequent phases remain prior to BPA's potential participation in Markets+, including rate and tariff proceedings to determine cost allocations and the terms and conditions for transmission service.¹ We cannot speculate on what injuries

¹ Our dissenting colleague ignores all of these facts and argues that Petitioners have established that they *will* suffer injury by increasing power costs and risking harm to salmon. Dissent at 2. The record does not support this conclusion. The BPA's Day-Ahead Market Policy was not a final decision to join Markets+. To the contrary, it merely established an intent "to *pursue* participation." This statement of a potential future change (which includes the ultimate "decision [whether] to

Petitioners would face once Markets+ is up and running—particularly in view of the uncertainty over whether BPA will even join Markets+ in the end. Because Petitioners’ claims depend on a “highly attenuated chain of possibilities,” they do “not satisfy the requirement that threatened injury must be certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013).

DENIED.

become a market participant”) does not satisfy Article III’s injury-in-fact requirement, because it depends on a chain of contingent future events.

CHRISTEN, Circuit Judge, dissenting:

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In May 2025, after a two-year deliberative process, the Bonneville Power Administration (BPA) issued its Day-Ahead Market Policy, announcing its “final” decision to stakeholders that it will join the Markets+ day-ahead market and withdraw from the Western Energy Imbalance Market (WEIM). BPA described its decision as “momentous,” contractually committed \$40 million toward the project, and is now moving ahead with implementing its policy. The record shows that BPA expects to be fully online with Markets+ by 2028. Petitioners agree that BPA’s decision to join Markets+ is a fundamental change in BPA’s planned operations. Petitioners challenged that decision before our court, pointing to BPA’s own projections that joining Markets+ will increase power costs, and evidence that the project risks harm to salmon in the Columbia River.

In spite of this backdrop, the court’s memorandum disposition concludes that Petitioners lack standing. The court characterizes Petitioners’ claims as premature and describes their feared injuries as speculative. The memorandum disposition’s premise is that several steps must be completed before BPA actually begins to participate in Markets+, but none of the steps in the implementation process suggest that BPA will revisit its decision. Because the law does not require that litigants wait until they have actually incurred irreversible injury before they are

allowed access to our courts, and because Petitioners have certainly alleged injuries that are imminent and non-speculative, I respectfully dissent.

Petitioners argue that BPA's decision to join Markets+ has staked out a course that will cause them injury by: (i) increasing power costs; and (ii) risking harm to salmon. Both injuries are plainly cognizable. It is beyond question that "economic injury is generally a legally protected interest." *Cent. Ariz. Water Conservation Dist. v. U.S. EPA*, 990 F.2d 1531, 1537 (9th Cir. 1993). Indeed, we have repeatedly found standing where petitioners challenging BPA decisions show they "will suffer the burden of over-inflated power rates." *Ass'n of Pub. Agency Customers v. Bonneville Power Admin.*, 733 F.3d 939, 950 (9th Cir. 2013); *Aluminum Co. of Am. v. Bonneville Power Admin.*, 903 F.2d 585, 590 (9th Cir. 1989). Here, BPA's own models forecast that BPA's decision to join Markets+, rather than a different day-ahead market, will increase costs by roughly \$400 million per year. Evidence offered by Petitioners also strongly indicates that BPA's decision to join Markets+ will increase power costs for the Northwest region and that these costs will be passed on to ratepayers. In my view, there is no room to argue that Petitioners failed to show concrete and imminent economic injury.

We have also held that risks of harm to fish populations suffice to establish standing. *Idaho Conservation League v. Bonneville Power Admin.*, 83 F.4th 1182, 1188 (9th Cir. 2023); *see also Ass'n of Irrigated Residents v. EPA*, 10 F.4th 937, 943

(9th Cir. 2021). Petitioners cite evidence in the record showing that BPA’s decision will increase the generation of hydropower and that “[c]onducting hydroelectric operations to meet the needs of a new energy market will likely put further strain on the already extremely vulnerable salmon and steelhead” affected by hydroelectric dams. Petitioners’ allegations are not conclusory or inadequately supported. And under our precedent, Petitioners are entitled to have their day in court to prove their claims.

The court’s memorandum disposition dismisses Petitioners’ asserted injuries as dependent upon a “highly attenuated chain of possibilities.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013). According to the memorandum disposition, there is “uncertainty over whether BPA will even join Markets+ in the end.” I am unable to square that assertion with the record. In support of its conclusion, the court points only to the need to undertake rate and tariff proceedings to determine cost allocations and the terms and conditions for transmission service. In other words, the court points to steps BPA plans to take to implement its final policy decision to join Markets+, not to any evidence that there is reason to suspect BPA will reconsider, change course, or back out of its commitment and forfeit \$40 million. Respectfully, it is the court’s standing analysis that engages in speculation.

A petitioner “need not have already suffered” injury “to establish standing.” *See California v. Azar*, 911 F.3d 558, 572 (9th Cir. 2018). Instead, “[a]n allegation of future injury may suffice if . . . there is a ‘substantial risk that the harm will occur.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citation modified). When analyzing the risk of future harm, “[a] causal chain does not fail simply because it has several ‘links,’” so long as “those links are not hypothetical or tenuous.” *California v. Azar*, 911 F.3d at 571-72 (citation modified).

Contrary to the memorandum disposition’s characterization, the prospect of BPA joining Markets+ is not a remote, hypothetical, or tenuous contingency. The Day-Ahead Market Policy purports to “memorialize[] [BPA’s] final direction” to “pursue participation in a day-ahead market and specifically pursue participation in Markets+.” In BPA’s own words, the decision “conclude[d] the policy-development phase” of BPA’s process and “enable[d]” BPA to “move forward with market implementation.” Indeed, according to BPA, the Policy “establishes the scope for future implementation decisions related to Markets+,” as BPA “progresses through implementation of day-ahead market participation in Markets+.” To that end, BPA has already made a contractual commitment of \$40 million to the development of Markets+, and will be liable up to that amount if it withdraws from its agreement. This financial consequence is compelling evidence that BPA will be met with strong resistance if it does not implement its policy

choice because BPA is a self-funded agency that must recover its costs through the rates it charges its customers. *See* 16 U.S.C. § 839(4); *Ass’n of Pub. Agency Customers v. Bonneville Power Admin.*, 126 F.3d 1158, 1163-66 (9th Cir. 1997).

The implementation phases for joining Markets+ are not distant. In a December 2025 presentation to stakeholders, BPA expressly outlined its two-year plan to “go live” with Markets+ by October 2028. BPA laid out a timeline for initiating rate cases and tariff proceedings, amending Provider of Choice agreements, negotiating its “implementation agreements” with the operator of Markets+, and departing from the market platform in which it currently participates, the WEIM.

The consequences of BPA’s decision to join Markets+ are concrete and imminent. BPA itself expressly recognized that its decision to join Markets+ “will play a critical role in the energy and capacity market landscape for the region, and . . . will have direct impact on a number of other entities’ decisions regarding day-ahead market participation.” BPA also acknowledged that its policy directive “to join Markets+ impacts all generation and load in the Bonneville [Balancing Authority Area] to some degree.” Even before BPA goes online with Markets+, the record evidence shows that BPA’s decision to exit the WEIM will result in immediate costs to ratepayers.

BPA has made its final decision to join Markets+. Petitioners' evidence shows that BPA's decision creates a substantial risk of economic and environmental harm to Petitioners. *See Susan B. Anthony*, 573 U.S. at 148. To establish standing, nothing more is required.

For the foregoing reasons, I respectfully dissent.