



Public Generating Pool
Comments on Governance Pathway Initiative
May 8, 2024

Introduction

The Public Generating Pool (PGP) appreciates the opportunity to provide comment on the proposed West-Wide Governance Pathways Initiative Straw Proposal for Pathways Options. PGP is composed of nine publicly-owned electric utilities, eight in Washington and one in Oregon, that work together on issues of common interest. The PGP members have a large presence in the Pacific Northwest, serving approximately 1.4 million customers with approximately 8,000 megawatts of non-federal generating resources. PGP has been engaged in market development issues, and governance challenges in particular, for many years and appreciates the opportunity to engage in this important effort.

PGP's Orientation on Markets & Context for PGP Comments on the Pathways Initiative

To help provide context for PGP's perspectives on the Pathways Initiative that inform its comments on the Phase 1 Straw Proposal, PGP provides the below articulation of its orientation around organized market development in the West. PGP members share a common set of principles and objectives on organized market design, with key priority areas of focus on independent governance, resource adequacy, greenhouse gas issues, and price formation, and a representative structure that enables participants transparent and equitable input into the stakeholder process and drives compromise and dialogue among participants and stakeholders, while maximizing net benefit to all parties by achieving a wide area footprint and connectivity. PGP members have not yet collectively determined which day-ahead organized market option currently being considered in the West—the Southwest Power Pool's (SPP) Markets+ or the California Independent System Operator's (CAISO) Extended Day Ahead Market (EDAM)—will best meet those principles and objectives.

In the Straw Proposal, the Launch Committee indicates that it “hopes to gain a better sense of which approach (Option 2 or 2.5) would draw in the most interested parties and increase the depth of market participation...” As an initial matter, unless current timelines change, PGP does not expect that either Option 2 or 2.5 can be accomplished within a timeframe to change the decision-making for those entities considering funding Phase 2 of Markets+, which is anticipated by the end of 2024. However, for PGP, the key elements that could “draw in” additional parties are: 1) independent governance; and 2) a representative structure similar to that developed for Markets+ that enable participants transparent and equitable input into the stakeholder process and drives compromise and dialogue among participants and stakeholders. Once independent governance and a more representative structure are established,

participants and stakeholders will have the ability to balance many of the tradeoffs discussed in the Straw Proposal between increased institutional separation and cost.

Regardless of whether the West is headed for a one- or two-market future, PGP uniformly supports independent governance structures for all markets—in the context of participating in that market or interacting with a neighboring market across a seam. Either way, it is imperative that all organized markets in the West operate under structures that result in market rules that achieve actual and perceived fairness and equitable outcomes. Therefore, PGP members have an interest in seeing the Pathways Initiative result in an achievable and workable governance structure for EDAM/CAISO and/or a new Regional Organization (RO) that is independent, transparent, and representative.

PGP's comments on the Pathways Initiative Straw Proposal are offered in this context.

Comments on Proposed Step 1

In its comments on the Initial Evaluation Options, PGP supported consideration of options that may increase the autonomy of decision-making over market rules in the shorter-term. PGP continues to support this approach recognizing a desire by the Pathways Initiative and many stakeholders to demonstrate early progress.

In prior comments to the Governance Review Committee (GRC), PGP supported joint authority for the CAISO Board and the WEIM Governing Body as a decision-making framework that would encourage important collaboration and trust building between the two bodies to enable robust and informed decision-making. While PGP believes that there continues to be value in this concept given the legal need for the CAISO Board to maintain backstop authority, PGP also recognizes that the scope of primary authority defined by the 'apply to' test contemplated in Step 1 was not considered by the GRC. PGP also recognizes the desire by a number of stakeholders to demonstrate early progress and commitment to the trajectory. PGP is therefore supportive of either joint or primary models so long as the broader scope adopted in the EDAM governance process is maintained for the EIM Governing Body.

Similarly, in past iterations of governance review, PGP has advocated for incorporating a 'dual filing' mechanism within the dispute resolution process but ultimately supported and accepted the GRC's recommendation not to adopt such a mechanism. In part, the reason for this was that PGP saw the dual filing process itself as potentially confusing and administratively challenging, which is still the case. PGP therefore recommends that the Launch Committee provide additional detail about the nature of the dual filings and how FERC may be expected to render a decision. PGP's understanding of the NEPOOL example is that NEPOOL has the right to compel an 'alternative' section 205 filing at FERC. The assessment of a preferred approach and an alternative is different than how the Straw Proposal characterizes the dual filing process, which seems to involve two neutral options with no stated preference. Further detail is warranted to understand this process, how CAISO staff will support and defend each proposal, and the standard of review FERC may apply to determine which proposal to accept—particularly where each proposal may meet a just and reasonable standard. PGP also recommends that further detail be developed around the exception for time-critical exigent circumstances and that this exception should be narrowly construed so that it cannot be used as a mechanism to circumvent the dual filing process.

PGP does recognize that the dual filing option provides a single point where the WEIM Governing Body may exercise its independent judgment in contradiction to the CAISO Board and that this element has been noted by some entities as critical. PGP therefore does not oppose the Pathways Step 1 proposal to adopt a dual filing option.

Step 2: Full Governance Independence – Opportunities & Challenges

In its guidance to stakeholders, the Launch Committee solicited comment with respect to whether and how the level of governance independence contemplated in the proposed Step 2 would create opportunities or challenges for your organization and the broader Western region. As noted in the introduction, PGP is supportive of pursuing independent governance for the EDAM and any future Western market services. With legislative change, the Step 2 proposal to transition the WEIM Governing Body to a Regional Organization (RO) board and establish sole authority for that board over market rules would meet PGP's definition of fully independent governance in that the authority would not be delegated or revocable, and the decision-making body would not have ties to a specific state. However, it is unclear whether the Step 2 proposal would meet PGP's governance principles as a whole, which also includes a representative structure and transparency. As implied through the discussion in the Straw Proposal, Step 2 also raises questions with respect to whether and how some level of institutional separation is necessary between the CAISO Balancing Authority and the RO to ensure that the RO can be independent in practice as well as in name. PGP's perspective is that greater institutional separation is likely preferred but will be more complicated and costly. As noted above, a key piece that should be established prior to determining the appropriate degree of institutional separation is the development of a representative and inclusive stakeholder engagement and decision-making model.

PGP sees an opportunity associated with establishing a new organization in that it could enable stakeholders to design a preferred governance structure drawing from recent development experience in both the Western Resource Adequacy Program and Markets+. Additional governance elements, such as a participants committee or other structures could be considered to augment the current CAISO stakeholder and decision-making process. PGP supports the conclusion in the Straw Proposal that an early task for the RO board will be review and development of the stakeholder process for developing regional market rules but believes that it would be helpful for the Launch Committee to detail more of this in future proposals.

PGP's primary concern with respect to Step 2 has to do with potential challenges associated with implementing the proposal and having a clear and consistent understanding of the structure and vision for the RO and its governance. As highlighted in the Straw Proposal, there will be tradeoffs between establishing meaningful enough separation between the RO and CAISO governance structures to support fully independent decision-making with the cost and complexity of greater functional and potentially operational separation.

As an initial matter, PGP requests that the Launch Committee consider whether there are alternative structures that may achieve the balance sought with respect to varying stakeholder interests. As the Launch Committee acknowledges, the initial letter from the regulators suggesting that a new

organization contract for services with CAISO has proven more complex and time-consuming than was initially assumed. PGP suggests that the Launch Committee consider whether there are alternative approaches, apart from those that have been tried in prior legislative efforts, that may be workable to meet stakeholder interests. PGP provides some additional detail on this suggestion later in these comments.

With respect to Step 2 as described in the Straw Proposal, the RO will be a successor organization to the current EIM Governing Body. However, the Straw Proposal also discusses a process for seating a new board and/or adding new members to the initial board of directors for the RO. It would be helpful to understand whether the Launch Committee's vision would be to simply port over the current EIM Governing Body to the new RO or if an initial process would be conducted to vet and establish the board of directors for the RO. PGP's assumption is that once the RO is established, if legislation in California is successfully passed, the existing EIM Governing Body is no longer needed. PGP suggests that, for continuity, it may be helpful to transition the EIM Governing Body to the new entity. However, because this cannot be done prior to knowing whether California successfully passes legislation, it likely makes more sense to officially seat the RO board only once legislation is passed. If legislation fails, PGP recommends that the purpose and scope of the RO be re-assessed to reflect whether there is still a need for establishing the entity. Alternatively, the Launch Committee should more clearly articulate what the RO will do in the event legislation fails and, if legislation does not pass, whether it will still be appropriate to use the current funding mechanism for the WEIM Governing Body to fund the RO.

While much work can perhaps be done in advance to begin establishing the RO, PGP believes there is wisdom in waiting, at a minimum, for the 2025 legislative session to understand the likelihood of legislative change. The nature and function of the RO will be fundamentally different depending on this factor, and it may not be wise to stand up an organization which will require funding sources and presumably employ people and/or hire contractors, prior to knowing whether or not legislative change will occur.

PGP also sees some potential challenges associated with the administration of a single tariff by two different corporate entities. The precedent cited for this approach is in the context of establishing transmission revenue requirements in established RTOs. The transmission revenue requirement portion of an RTO tariff is relatively discrete compared to the highly entwined nature of the market and reliability functions performed by the CAISO. PGP expects that it may be more difficult to clearly delineate areas for the respective authorities. That said, it is also likely that bifurcating the tariff would be highly complex. As discussed in further detail below, a way to avoid this may be to transition the structure of the CAISO itself versus establish a new organization.

With respect to the eight evaluation criterion, "respect for state authority to set procurement, environmental, reliability and other public interest policies," PGP suggesting adding a reference to non-jurisdictional entities to clarify that states do not retain authority uniformly across these policies and differently situated market participants. PGP proposes the following modification: "respect for state *or local government* authority to set procurement, environmental, reliability and other public interest policies."

Step 2 – Institutional Independence and Responsibilities – Opportunities and Challenges

With respect to the discussion of the myriad issues associated with a transition from Option 2 to Option 2.5, PGP suggests that the Launch Committee recommend a step-wise and incremental approach. As a general matter, PGP would prefer the RO to have as much independent governance and institutional independence as is feasible. As demonstrated by the many issues set forth in the Straw Proposal, moving further to independent functioning is likely to create additional costs and risks. It may ultimately be that the RO itself is ultimately best able to understand the tradeoffs associated with taking on additional responsibilities or developing contractual relationships with the CAISO. Therefore, PGP recommends that the Launch Committee begin by establishing Option 2 but direct or leave room for the RO to ultimately create a decision-making framework to advance to Option 2.5 or beyond.

Other Structural Options

As noted above, PGP does recommend that the Launch Committee consider other approaches or structures to meeting the articulated goals of the Launch Committee and those interests specifically referenced in the Straw Proposal. In addition to the criterion specified by the Launch Committee, there are other elements that the Launch Committee has indicated are critical to the success of this initiative.

These additional elements are:

- Preserving CAISO's BA responsibilities subject to the ongoing oversight of the CAISO Board
- Keep CAISO within the purview of California elected officials and policymakers
- Do not ask the California State Legislature to regionalize the CAISO as an institution
- Seek change that is fundamentally different from prior legislative proposals

Prior versions of legislative approaches sought to "regionalize" the CAISO by enabling it to transform into a Western RTO with very little transition time or structural elements that would potentially address California stakeholders' concerns with such an abrupt transition. What PGP suggests that the Launch Committee consider is a modified governance structure for the CAISO that better reflects the reality that the CAISO *already is* a regional entity by virtue of its provision of reliability and market services broadly across the West. Rather than supplanting and transitioning the existing portion of CAISO that provides regional services to a new entity, PGP is curious if there are potential models to legislatively bifurcate the CAISO itself to avoid some of the cost and complexity of a transition to a new entity. The concept would be to create independent governance for the CAISO as a whole or just the regional services side while retaining a defined role for California elected officials and policymakers with respect to reliability and CAISO's balancing authority function. Under this model, the CAISO BA could still be a "recipient" of day ahead and real time market services comparable to other western BAs.

PGP is not advocating for a particular approach, and ultimately PGP may find it preferable to establish an RO because it offers the opportunity to develop a stakeholder process and approach that may better reflect PGP's principles for a representative governance structure. PGP also recognizes that there are very specific political hurdles to overcome to achieve legislative change. However, given the potential cost and complexity associated with setting up a new entity and creating a structure where two entities who will separately administer a single tariff, PGP believes that all other options for meeting the stated

objectives should be explored. The Launch Committee has not explored potential structures that may be accomplished through legislative change that do not involve establishing an RO. If the Launch Committee chooses not to explore such options, PGP requests that the Launch Committee articulate why it does not believe that such options are not viable.

Conclusion

PGP appreciates the opportunity to submit these comments and commends the Launch Committee members for significant work effort in developing the Straw Proposal.