



Public Generating Pool
Comments on Governance Pathway Initiative
January 12, 2024

Introduction

The Public Generating Pool (PGP) appreciates the opportunity to provide comment on the proposed West-Wide Governance Pathways Initiative Initial Evaluation Framework for Pathways Options. Today, the 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.

General Comments

PGP supports the concept of an entity, governed independently, that can deliver market services throughout the West, including California. PGP also appreciates the significant work accomplished by the Launch Committee in a short period of time to quickly advance the evaluation of the operational and legal issues requested by many stakeholders, including PGP. Generally, the manner in which the Launch Committee has set forth the structural options for consideration and the framework for examining legal and operational issues is helpful and comprehensive. PGP recommends some additional concepts be considered as part of the evaluation and also suggests that the Launch Committee provide greater detail with respect to how the evaluation criteria and answers to the initial legal and operational questions will be used to create recommendations.

PGP suggests that it would be constructive for the Launch Committee to contextualize the options considered and the evaluation criteria applied with how the recommendations will ultimately be formed. In reviewing the options set forth, it is readily apparent that some options may be implemented more quickly with less complexity while other options are likely to take significantly more time and effort. It will be helpful for the Launch Committee to consider and distinguish between those options that may be interim steps and those that represent a

desired and achievable end state that fully meets the mission of the Pathways Initiative. As described in more detail below, PGP is supportive of the consideration of options that may increase the autonomy of decision-making over market rules in the short-term but strongly urges the Launch Committee to ultimately pursue an option that achieves complete independence. From PGP's perspective, complete independence means that the CAISO Board of Governors, who (absent legislative change) are appointed by the Governor of California, do not have an oversight or decision-making role in market design development decisions associated with services provided by the market operator. This is achieved when the decision-making body has sole filing rights and the decision-making body's authority is not revocable (e.g., the authority is not dual nor is it delegated). At least two of the options (Option 0 and Option 1), and maybe more, do not meet this standard. Therefore these two options should only be considered as interim steps rather than the desired end state.

PGP's responses to specific questions below are provided in this context.

1. Do the proposed evaluation criteria support a constructive and thorough assessment of the options?

With one exception, PGP is generally supportive of the evaluation criteria as defined. Ultimately it will be helpful to understand in greater detail how the criteria will be defined and weighed as many of the criteria would benefit from greater definition and information to understand how the Launch Committee will assess each option and, presumably, recommend a path forward.

PGP recommends one modification to the list of criteria. The Launch Committee has listed one criterion of seven as "a governance structure independent of any single state, participant, or class of participants." However, the entire purpose of the Launch Committee is to enable an independently governed entity. Given this purpose, an independent governance structure should be a threshold qualifier for evaluation versus one criterion of seven. As noted above, two of the options (Option 0 and Option 1) involve delegated authority or dual filing rights. So long as the CAISO Board of Governors has a role in the decision-making process, the governance structure is not independent of a single state and does not meet this threshold criteria. As noted above, PGP is supportive of considering Options 0 and 1 for thoroughness and to seek interim or short-term approaches that may increase the autonomy of decision-making but does not support consideration of these options as potentially desirable end states or as meeting the overall mission of the Pathways Initiative.

2. Are the bookends reasonably defined to set the boundaries for a timely, productive exploration of available structural alternatives to governing autonomy?

Yes, the bookends are reasonably defined. PGP does suggest that the Launch Committee distinguish its use of the term "autonomy" with that of how it defines "independence." While

enabling greater levels of autonomy for the EIM Governing Body or creating autonomy through the creation of an RO, greater levels of autonomy may or may not achieve the goal of independent governance. While PGP appreciates the bookends, it may be more constructive to evaluate the options with respect to whether or not they achieve independent governance versus the extent to which they expand autonomy.

3. Do additional options not encompassed above, but within the bookends, warrant exploration?

Within the bookends, there may be a separate suite of options that seek to modify the governance structure of the CAISO Board of Governors itself versus seeking to shift CAISO governance to a new entity or expand the authority of the WEIM Governing Body. PGP suggests that the Launch Committee explain whether it would consider options for modifying the governance structure of the CAISO Board of Governors. Under this approach, the CAISO Board of Governors would be selected in a similar manner used in other markets where individual states do not play a role. If the CAISO Board of Governors was itself independent, the issues associated with delegated authority may be significantly alleviated and the resulting structure would be similar to that contemplated under the Markets+ model whose governing body (the Markets+ Independent Panel (“MIP”)) has the highest level of authority for decisions related to the Markets+ market with the Southwest Power Pool Board of directors providing independent oversight, but providing significant recognition and deference to the MIP decision-making role. The Launch Committee could also consider whether it would be appropriate to expand the size of the CAISO Board of Governors, and potentially oversee a functional separation between CAISO’s market operator and balancing authority functions. While PGP recognizes this option will require legislative change, PGP does not believe that modifying the way in which CAISO Board of Governors are nominated and appointed would require significant modifications to the current structure of CAISO nor its purpose and mission. However, the Launch Committee could investigate whether this approach would require additional accompanying modifications to California law and/or the CAISO’s by-laws.

While PGP recognizes that this approach may be seen as politically challenging, it is nonetheless worth addressing as it represents a mechanically simple modification that could significantly alleviate independence concerns, engender greater confidence in any delegated authority model, and potentially avoid the complexity of shifting CAISO’s tariff to be administered by a new organization.

PGP also supports NV Energy’s suggestion that there may be additional avenues to explore between Option 0 and Option 1 for changes that may be possible as interim or shorter-term steps. PGP suggests adding the option of enabling the WEIM Governing Body to perform the decision-making role of the contemplated Regional Organization for some period of time. PGP suggests further that the Launch Committee consider removing Option 0 from consideration

unless it includes a significantly expanded scope of authority as compared to what was considered by the Governance Review Committee (GRC) when it considered this option. The GRC carefully considered the primary authority model, including dispute resolution, durability, and jump ball filing options, and ultimately rejected it in favor of the joint model after a lengthy public process. PGP agrees with NV Energy that the Launch Committee should consider bolder options.

4. Should other aspects of the new structure not identified in the comparison matrix in Appendix B be addressed within each option?

PGP recommends that the Launch Committee identify whether each option achieves independence as the Launch Committee has defined it versus takes steps to increase the decision-making body's autonomy from the CAISO board.

5. Are there additional threshold or high priority legal questions that should be addressed?

PGP suggests that it may be necessary to have answers to some of the initial operational questions to fully assess the legal implications of each option. Particularly with respect to the first operational question regarding the scope of functions encompassed within each option—it may be necessary to understand the scope of functions and authority that may be delegated or transferred to fully understand the legal implications.

Specifically, to that end, with respect to Question #4 regarding the extent to which the CAISO may delegate its Section 205 authority, PGP recommends a sub-question be added: “to what extent does the scope of the delegation affect the answer?” As described in Appendix A, the GRC’s recommendation for joint authority was in part to enable a broader scope of authority for both the CAISO board and the WEIM Governing Body. While the GRC’s recommendation was not necessarily rooted in a legal determination, it would be helpful for the Launch Committee and stakeholders to understand whether the scope of the delegation may affect its legality and, if so, where the line is drawn in terms of permissible versus impermissible delegations of authority. PGP recommends additional sub-questions of “must any delegation of authority be revocable?” and “can authority be delegated by contracting with the Regional Organization and under that model what is the durability of the delegation?” To answer these questions, it may be helpful to combine question #4 with question #6 (“what form of contractual relationship between the CAISO and the RO is required?”) as the answer to #6 may require delegation under #4.

6. Are there additional operational questions that should be addressed or prioritized?

No. PGP appreciates the operational questions and believes that the answers will be critical in assessing the feasibility and practicality of the options being evaluated.

PGP does recommend that some of the operational questions (specifically 1, 4, 9 and 10) should be prioritized because answers to those questions, even at a high level, will help inform further discussion of the identified option.

7. Are there additional issues or categories of issues that should be considered?

PGP requests that the Launch Committee provide greater transparency around the selection process for identifying the law firm(s) that will perform the legal analysis. It will be critical that this selection process and the selected law firm results in an analysis (or analyses) that is and will be perceived to be credible and unbiased.