

LAUNCH COMMITTEE
STEP 2 FINAL PROPOSAL
NOVEMBER 15, 2024



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LIST OF ACRONYMS

Balancing Authority (BA)
Balancing Authority Area (BAA)
Body of State Regulators (BOSR)
Business Practice Manual (BPM)
California Independent System Operator (CAISO)
Committee on Regional Electric Power Cooperation (CREPC)
Congestion Revenue Rights (CRR)
Consumer Advocate Organization (CAO)
Day Ahead (DA)
Department of Energy (DOE)
Department of Market Monitoring (DMM)
Energy Imbalance Market (EIM)
Extended Day Ahead Market (EDAM)
Federal Energy Regulatory Commission (FERC)
Generally Accepted Accounting Principles (GAAP)
Governance Review Committee (GRC)
Grid Management Charge (GMC)
Independent System Operator (ISO)
Information Technology (IT)
Internal Revenue Service (IRS)
Investor Owned Utilities (IOU)
Independent System Operator New England (ISO NE)
Launch Committee (LC)
Market Monitor Unit (MMU)
Market Operator (MO)
Market Surveillance Committee (MSC)
Market Redesign and Technology Upgrade (MRTU)
New England Power Pool (NEPOOL)
North American Electric Reliability Corporation (NERC)
New York Independent System Operator (NYISO)
Office of Public Participation (OPP)
Open Access Transmission Tariff (OATT)
Participating Transmission Organization (PTO)
Pennsylvania-New Jersey-Maryland Interconnection (PJM)
Power Marketing Authority (PMA)
Regional Issues Forum (RIF)
Regional Organization (RO)
Regional Transmission Organization (RTO)
Scheduling Coordinator Agreement (SCA)
Southwest Power Pool (SPP)
Stakeholder Representatives Committee (SRC)
Transmission Control Agreement (TCA)
West-Wide Governance Pathways Initiative (WWGPI)



Western Electricity Coordinating Council (WECC)
Western Energy Imbalance Market (WEIM)
Western Energy Imbalance Market Governing Body (WEIM GB)
Western Energy Market (WEM)
Western Energy Market Governing Body (WEM GB)
Western Resource Adequacy Plan (WRAP)



INTRODUCTION

The West-Wide Governance Pathways Initiative (Pathways Initiative) Launch Committee is pleased to present this Step 2 Final Proposal (Proposal) to enable independent governance over the Western Energy Imbalance Market (WEIM) and the Extended Day Ahead Market (EDAM) and the ability to add other voluntary regional services as the West desires. The recommendations in this Proposal are in response to a letter issued in July 2023 from nine regulators from five states, calling for a proposal “ensuring that the benefits of wholesale electricity markets are maximized for customers across the entire Western U.S.” The letter described an independently governed non-profit that accomplished several objectives:

- Includes all states in the Western Interconnection, including California
- Provides a platform for a full range of regional transmission operator services
- Uses a contract for services with the CAISO, including assumption of the WEIM and EDAM
- Avoids duplication of the investments and expenses of the market infrastructure that has already been created
- Avoids a deterioration of the benefits already accruing from broad coordination

The Launch Committee believes that if implemented, the Proposal presented here will create the foundation to achieve the regulators’ vision and enable the West to create a suite of voluntary wholesale electricity market services as stakeholders and participants desire and require, with each state retaining its unique decision-making autonomies and participating on a level playing field. Using an incremental approach and enabling the new Regional Organization to work with stakeholders to determine the scale and speed of future steps, the Proposal keeps costs down and ensures that the market benefits remain intact and grow. The Proposal also enables Western stakeholders to pursue options that work best for the ratepayers in their region, including how market and other electricity services evolve.

The electricity sector is changing at an unprecedented pace to deal with factors including enormous demand growth, aging infrastructure, evolving generation, new technology, wildfire, and extreme weather and climate events. These changes create additional pressure on consumers who are having to pay for new infrastructure and systems. Identifying steps that can build on current investments, break down barriers, and create efficiencies is critical to enabling reliability and minimizing costs to consumers. Creating as much flexibility as possible to identify and pursue those steps is also critical, knowing that change is happening and more is coming.

The Proposal represents a tried and true approach in the West - an incremental step that enables participants and stakeholders to build trust and familiarity with something new and with each other. The California Independent System Operation (CAISO) launched the WEIM with PacifiCorp in 2014 and over the last decade, twenty entities have joined with two more commitments for entry in 2026. The growing number of WEIM participants have been able to document the durable benefits of a broader market footprint. This expansion has also forced evolution of governance over these shared market services. As additional entities considered joining, the CAISO, on the advice of a representative stakeholder committee, created the WEIM Governing Body (now the Western Energy Markets (WEM) Governing Body) to enable more independent, regional oversight over the WEIM services. The governance evolution continued as



the CAISO developed EDAM, including a shift to joint authority between the WEM Governing Body and the CAISO Board of Governors. However, the existing governance structure is not going to lead the broadest set of utilities across the West to decide to pursue EDAM and other potential consolidated services such as transmission planning and operation.

Creating an independent structure for a more expansive suite of services has been a particularly challenging step that the West has struggled to achieve for years. Past efforts sought to make the CAISO a fully independent RTO on day one by removing California's role in appointing the CAISO Board and transitioning governance of the CAISO's transmission system and balancing area services to an undefined independent structure. This would have forced California to give up a level of self-determination that other entities would have retained. California customers would continue to rely on the services without the assurance that their investments, reliability and affordability would be protected.

For years, this approach seemed like the only way to achieve the goal of an independent structure for the CAISO's services so they could be utilized by a broader footprint. The West set this framework as the bar for success. This proved to be a step too far for everyone - California was unwilling to give up all control with so much uncertainty and other western entities were not ready to commit to corresponding participation. The July 2023 regulator letter planted the seed for a different approach. The Launch Committee cultivated this seed using recommendations from western stakeholders that build on current successes and focus on parity - giving each balancing authority the ability to evaluate what they need and when they need it. The result is the fully independent Regional Organization described in this Proposal that overcomes this decades-long challenge and creates the foundation for optionality and further evolution for the West.

This change in approach reflects and builds on the incremental path that Western stakeholders have chosen - a path that has created a real time market footprint that includes 80% of the load in the West and has delivered over \$6.25B to date in benefits. This next step will protect those investments and enable additional benefits to customers that accrue through the efficient and seamless operation of market services that include the diversity and scale of resources available in that footprint.

This Proposal is the result of extensive stakeholder feedback from dozens of diverse parties across the West. It includes specific recommendations about how this next incremental step should start, along with broader recommendations about components and structure that future steps could include. This approach creates optionality and opens doors that enable the West to continue to evolve without presupposing what western markets should evolve into in the future. It is rooted in maximizing benefits to consumers, protecting the public interest, and building on the success of past and current efforts, including doing no harm to the WEIM and EDAM. It respects the rights of each state to set energy policies and define its concept of the public interest while still enjoying the benefits of regional cooperation. The Launch Committee believes this Proposal represents the strongest set of customer and public interest protections of any regional transmission organization (RTO), independent system operator (ISO), or other electricity market-related construct in the country. Throughout this process, volunteers and stakeholders have demonstrated a desire and commitment to achieve the vision of "ensuring that the benefits of wholesale electricity markets are maximized for customers across the entire Western U.S."



The Launch Committee received feedback ranging from a desire to move slowly and take small steps, to a desire to make wholesale changes as quickly as possible. The Proposal acknowledges this spectrum and includes recommendations that if realized through legislative change in California, will achieve fully independent governance of the WEIM and EDAM, build trust, and create the opportunity for regional stakeholders to further evolve together based on their unique needs and interests. It recognizes the importance of autonomy and independent decision making, creating a solution that enables more viable choices for stakeholders.

This document is also a call to action. Success will require continued work by stakeholders, including the Launch Committee, to create the building blocks for implementation. It will require work with the California legislature to pass a bill enabling the changes necessary for the CAISO Balancing Authority and California investor-owned utilities to participate in independently governed markets. And it will require creative thinking and flexibility to overcome the inevitable and unpredictable challenges that will occur. The Pathways Initiative has demonstrated this is all possible and we look forward to continuing to build on the momentum created through this effort.

The Proposal begins with the Proposal Recommendations, followed by a background of the West-Wide Governance Pathways Initiative process, a detailed discussion of the different elements of the proposal, next steps for implementation, and an appendix with supporting information. It is important to note that this is not a CAISO recommendation or proposal. The CAISO has served as a technical advisor as outlined in a Letter of Agreement with the Launch Committee and has provided invaluable input and feedback as the Launch Committee has developed this Proposal.



PROPOSAL RECOMMENDATIONS

The Step 2 Proposal consists of five areas that make up the primary building blocks of the new independent Regional Organization (RO). These consist of the RO's scope and function, formation, governance, public interest protections, and stakeholder engagement process. Together these elements create the foundation to achieve the regulators' vision utilizing an incremental approach and enabling the West to create a suite of voluntary wholesale electricity market services as stakeholders and participants desire and require, without relying on the actions of any one state or balancing authority. Below is a compilation of recommendations in the Proposal, organized by the five categories.

RO Scope and Function

- The RO will launch in the form of Option 2.0 creating an independent RO with control over the energy markets.
- The RO will consider a transition toward Option 2.5 or a similar structure that will enable the RO to become a public utility and move toward greater responsibility and offer additional regional market services over a defined period of several years.
- The RO Board will perform a feasibility analysis, with a stakeholder process to scope the details of the analysis, to assess the costs, benefits, possible expanded regional and market functions, and implementation details of how to achieve the additional corporate responsibility described in Option 2.5 or other alternatives to be initiated within 9 months of the RO's formation.
 - The feasibility analysis would at a minimum evaluate: vendor management role, financial liability, existing regulatory contract changes, and future RO staffing needs.
- The RO will have full independent governance authority over market rules, with sole Section 205 rights, and ultimate authority over the associated business practice manual provisions.
- The RO will maintain a single integrated tariff under Option 2.0 rather than separate out two tariffs.
 - The Launch Committee recommends the Formation Committee work with the California Independent System Operator (CAISO) to explore ways to provide more clarity in the tariff that can be proposed to the RO Board once it is seated.
- The RO will continue to delegate emergency operational authority to CAISO staff during actual emergency conditions in the markets.
- Protections will be maintained for the CAISO to prevent the RO from establishing market rules or directing the CAISO to act in a manner that exposes the CAISO to excessive risks that endanger it as a corporation.
- The reliance on credit and financial security requirements imposed on market participants themselves as the primary financial protection for the CAISO and the RO against the risk of market-related defaults will be retained.
- The RO will be incorporated such that it would have an ability to issue bonds in order to raise capital.



- The RO will hire a minimal level of staff, maintain adequate reserves, and pay certain minimum direct expenses as an independent corporation.
- The Formation Committee will evaluate what, if any, contingency reserves would be appropriate for the RO in Option 2.0.
- The RO will be funded through a tariff-based mechanism under which the CAISO collects funding from market participants and remits the funding to the RO. The specifics of this mechanism and how it may interrelate with the CAISO’s current mechanisms for collection its Grid Management Charge (GMC) would be developed by the RO and the CAISO, pursuant to a stakeholder process and subject to FERC approval of the resulting tariff provisions.
- The RO Board will have advisory authority to provide non-controlling input on hiring and performance of one or more officer-level senior CAISO managers responsible for the business line (or “vertical”) that oversees the markets.
- The CAISO Board will consider the most appropriate way to enable the RO Board to advise on the hiring of any future CAISO CEO, such as by offering potential candidates for the CAISO Board’s consideration.
- The CAISO Board and the RO Board will jointly select future heads of the Department of Market Monitoring (DMM).
- The Market Surveillance Committee (MSC) will be jointly selected by the CAISO Board and the RO Board.
- The contract between the RO and the CAISO can provide an opportunity for the RO to offer an annual performance evaluation of the CAISO management personnel subject to the RO’s non-controlling hiring input, including the CAISO officer(s) overseeing market services and the DMM.
- The RO will have limited staffing at the outset with an estimated initial annual cost of \$1.25 to \$1.5 million, which could increase to \$10 to \$14 million over time as the organization develops.
- The CAISO should form a taskforce or standing advisory committee to address how the CAISO as a balancing authority (BA) should present BA-specific concerns alongside other BAs in proceedings overseen by the RO. The objectives of this advisory body should be to increase the transparency of CAISO BA-specific concerns (i.e., when the CAISO is “wearing” its BA “hat” as opposed to opining on the basis of its role as market operator) and foster more parity in how BA concerns of all Western Energy Imbalance Market (WEIM) Entities, Extended Day Ahead Market (EDAM) Entities, and the CAISO are brought forward and considered.
 - CAISO is not a market participant as it has no assets in the market, does not engage in market transactions, and does not have any financial interest in market outcomes.

RO Formation

- The RO will be incorporated as a 501(c)(3) nonprofit corporation.
- The RO will be incorporated in Delaware.
- The RO Board will determine its principal place of business, but strong consideration should be made for domiciling the organization in Folsom, California due to its close interactions with the CAISO as the market operator.



RO Governance

- A Formation Committee will be created to implement the recommendations contained in the Proposal. It will be a sub-committee of the Launch Committee whose purpose will be to coordinate with the CAISO and stakeholders on the detailed creation of the RO. The Formation Committee will consist of up to ten members from and selected by the Launch Committee and be assisted by a less than quorum of the WEM Governing Body and CAISO Board of Governors serving as liaisons. The Formation Committee is not a decision-making body.
- The RO Board of Directors will be a seven-member body and is intended to meet the definition of an independent board of directors.
- RO Board Members will be selected by a Nominating Committee comprised of sector members made up of a representative from each of the nine Stakeholder Representative Committee (SRC) sectors and a member from the BOSR and the RO Board.
- RO Board members will have one or more qualifications from the following areas: electric industry, markets, general corporate/legal/financial, and public interest.
- Board seats will not be reserved, allowing the Nominating Committee and stakeholder processes to provide stakeholder input on the selection of directors. There should be no restriction on the number of current Western Energy Market (WEM) Governing Body members that can serve on the new RO Board.
- In evaluating candidates for the initial RO Board, the Nominating Committee should give due consideration to including sufficient members of the current WEM Governing Body to ensure an adequate level of knowledge transfer to the new RO Board. The Formation Committee, in conjunction with the CAISO, should consider how best to ensure that the WEM Governing Body continues to be able to perform its current oversight function throughout the transition period.
- A Public Policy Committee (PPC) of the RO Board will be created and tasked with conducting outreach at key points in the stakeholder process to states, local power authorities, and federal power marketing administrations to collect input about the potential for adverse impacts on a state, local, or federal policy by an initiative. The input collected by the PPC will be incorporated in the stakeholder process and presented to the full RO Board before it votes on a final initiative proposal.
- The RO's foundational documents (corporate documents) will include language centering on protecting the public interest.
- The RO will conduct meetings and make decisions in an open process with transparent, documented rationales. Other than executive sessions, all meetings of the RO Board will be publicly noticed, available to remote participants, recorded and posted, open to the public, and subject to open records requirements. The location of meetings should reflect the intent for the RO Board to meet in various states throughout its service territory.
- The RO Board and CAISO Board will strive to maintain a collaborative relationship and consider holding joint meetings for matters under joint authority, while each Board meets separately for sole authority issues.
- The Formation Committee will develop the transition plan of the WEM Governing Body to the RO Board.



- The RO will provide periodic reporting to the stakeholder community on the progress of the transition in market governance and provide periodic market performance reports which at a minimum will include the current reports provided by the CAISO today.
- The Formation Committee will initiate pre-launch implementation efforts (e.g. – development of bylaws, tariff language, agreements) in parallel with the development of California legislation, but defer the start of formation efforts (e.g. - Nominating Committee process/board selection, staffing selection) until legislation is approved.
- Due consideration should be given to identifying start-up funding that would not compromise Board independence from sources such as Department of Energy grant funding or ongoing support from the Pathways Initiative 501(c)(3) funding via Global Impact.
- Long-term funding for the RO will be provided via an administrative charge to the market with funds transferred to the RO to control its own expenditures.

Public Interest Protections

- The existing WEM Body of State Regulators (BOSR) functions will be extended to the RO BOSR such as:
 - Maintaining the current self-governing and decision-making structures.
 - Maintaining the current membership.
 - Maintaining the role of advisory Public Power and PMA liaisons.
 - Maintain access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today; there should be no restrictions on the provision of information other than those imposed by FERC requirements.
 - Continue to engage with DMM and recommend to the RO Board any increases to DMM staffing if a DMM resource constraint limits or restricts sufficient access by states to data in the future.
- Funding for the BOSR will move under the tariff (with a billing determinant that would not subject POUs to these costs).
- A new independent Consumer Advocate Organization (CAO) will be created to facilitate engagement by each consumer advocate office authorized by state law in the stakeholder process and other RO engagement opportunities. Modest tariff-based funding will be included to facilitate their participation.
- A new Office of Public Participation (OPP) will be created within the RO to provide information and education to members of the public about issues and initiatives at the RO, including facilitating engagement in those processes.
- The DMM will report jointly to both the CAISO Board and the RO Board, and there will be shared decision making by both Boards in DMM upper management hiring.
- An equal number of RO Board and CAISO Board representatives will be added to the DMM Oversight Committee.
- The criteria for selecting Market Surveillance Committee members will be expanded to include consumer issues and public interest expertise.
- The WEM Governing Body Market Expert will be transferred to the RO Board with an expanded role to include evaluation that the market is operating consistently with public interest principles and the protection of retail consumers.



- State commissions and consumer advocates will have access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today. There should be no restrictions on the provision of information other than those imposed by FERC requirements.
- The reporting structure and delineation of roles and responsibilities of shared functions between the RO and MO will be defined.

Stakeholder Engagement Process

- The RO will establish a Stakeholder Representatives Committee (SRC), which will serve as the primary body responsible for developing policy proposals for Western energy markets, with a chair and vice-chair to provide administrative leadership in organizing the SRC.
- Nine SRC sectors will be established, based on level of market participation rather than business model. Each sector will have a set number of seats; seats are meant to purely serve a coordination function within each sector and do not provide additional power, influence, gatekeeping function, or control the ability for stakeholder input or participation. The sectors and seats will consist of: EDAM Entities (2 seats), WEIM Entities (3 seats), ISO PTOs (2 seats), Non-IOU load serving entities serving load from WEIM or EDAM (4 seats), PIOs (2 seats), Consumer advocates (2 seats), Large C&I customers (2 seats), IPPs, Independent Transmission Developers, and Marketers (3 seats), Distributed Energy Resources (1 seat).
 - 1 additional seat will be reserved for PMAs in either the WEIM or EDAM sector, assuming the PMA is either a WEIM or EDAM Entity.
- Organizations may participate in a sector so long as they have an “active interest” (e.g.: serving load, owning generation, making purchases, representing customers) in the market within the WEIM and/or EDAM footprint.
- The RO will create a category (not an SRC sector) for “other load-serving non-market participants” so entities that serve load in the Western Interconnection yet do not participate in the WEIM or EDAM and do not fit within one of the designated sectors may register with the RO to vote. This group of individuals or organizations may participate in the stakeholder process and submit comments that will be included in the package of information that goes to staff and/or the RO Board when appropriate. This category is not a sector and therefore does not have direct representation in the prioritization, Roadmap and Catalog process, Stage 1 and 2 of the Stakeholder Initiative Phases, or get counted towards the remand processes.
- Each sector may designate a trade association to fill their sector seat if so desired.
- The SRC will conduct a formal re-evaluation of sectors, the SRC structure, and voting at two future points in time: 1. at the RO implementation phase and 2. two years after implementation to ensure this structure is enabling consensus and achieving the goals identified in the Proposal.
- A classification system for initiatives will be established, distinguishing between Compliance/Non-Discretionary, Compliance with State and Local Public Policy, and Discretionary Initiatives. Each type of initiative will follow a tailored stakeholder process, allowing for more targeted and effective engagement.



- A stakeholder process will be established consisting of the following steps: 1. Issue Identification and Prioritization (Catalog/Roadmap process), 2. Stakeholder Phase (Issue Evaluation and Policy Development), 3. Approval by the RO Board.
- The decisional classification process will move to the stakeholder process and occur both at the initiation of an initiative and at the final proposal stage.
- Indicative voting will be included in the stakeholder process at the individual organization level tallied at the sector level, using an automated voting and reporting system administered by staff.
- Sector votes will be for the purposes of identifying “significant opposition” and are based on the results of a vote conducted by all of the registered organizations within each sector.
- Entities may choose from the following voting options: support, oppose, or abstain. The percentage of “support” or “oppose” is calculated relative to the sum of votes for support or oppose. Abstentions and non-voting do not contribute to the percentage.
- Votes will be conducted, at a minimum, during the Policy Roadmap Process and the Work Group/Initiative Process.
- Voting is ultimately advisory and provides visibility and information to the SRC, market operator, other stakeholders, RO BOSR, staff, and the RO Board.
- Developing a remand process that ensures voting has a meaningful impact on the decision-making process would benefit from additional stakeholder input. The Formation Committee will work with the Stakeholder Process Work Group and stakeholders to develop the remand process when “significant opposition” exists.
- An elective remand may be used. If the criterion for significant opposition are not met, but the RO staff is poised to make a recommendation or the RO Board is poised to make a decision that is counter to the recommendation from the stakeholder vote, the RO Board or staff could elect to send the issue back to the stakeholder process to address the stakeholder concerns prior to outright rejection. Similarly, the RO Board retains the flexibility to choose to send an issue/decision back to the stakeholder process even if it did not meet the significant opposition criteria.
- An elective override may be used. If staff strongly disagrees with the stakeholder vote, it may present a recommendation that is counter to the stakeholder recommendation. If that occurs, both staff and stakeholders would present their recommendation to the RO Board and the RO Board would make the decision. The RO Board could also override the stakeholder majority opinion (or specific “opposition” criteria) if the RO Board decides that a proposal should move forward nonetheless, notwithstanding stakeholder opposition.
 - Significant opposition is defined as either: one third of sectors at 70% or more oppose, or there is lack of consensus (a simple majority of sectors opposes).
- A tabulated report of all underlying votes will be available to the RO Board and will also be made public.
- To determine stakeholder process staffing, the Formation Committee will work with the Market Operator (MO) to refine the roles needed and determine which entity they would best sit with (the RO or MO).



BACKGROUND

In July 2023, a group of state regulators from Arizona, California, New Mexico, Oregon, and Washington sent a letter to the Western Interstate Energy Board (WIEB) and the Committee on Regional Electric Power Cooperation (CREPC), advancing a proposal “for ensuring that the benefits of wholesale electricity markets are maximized for customers across the entire Western U.S.”¹ The regulators contemplated creation of a new nonprofit regional entity to “serve as a means of delivering a market that includes all states in the Western Interconnection, including California, with independent governance.” Their vision included the eventual assumption by the new entity of the WEIM and EDAM, “avoiding a duplication of the investments and expenses of the market infrastructure that has already been created, and avoiding a deterioration of the benefits of those programs [...]”

With this guidance, volunteers from across the West with vastly different experience and technical expertise came together to form the Pathways Initiative. This group formed a 26-member Launch Committee comprising a diverse set of utilities, consumer advocates, public power, generators and power marketers, public interest organizations, labor, and others. Early on, the Launch Committee adopted its mission: to develop and form a new and independent entity with an independent governance structure that is capable of overseeing an expansive suite of West-wide wholesale electricity markets and related functions based on the following core principles:

- The entity should enable the **largest footprint possible that includes California**, and maximize overall consumer benefits;
- The entity will include **independent governance** for all market operations;
- The new entity will **preserve and build upon existing CAISO market structures** that serve over 80% of the Western Interconnection, including WEIM and EDAM;
- A primary goal will be to **minimize duplication and incurrence of costs** for both the market operator and market participants; and
- The structure should be flexible to accommodate the future voluntary provisions of **full RTO services** for those entities that desire to do so, but not mandate that any entity must join such a future potential RTO.²

The Launch Committee developed a range of potential market design options along with evaluation criteria, obtained legal expertise to help identify legal challenges, and began to pose potential solutions to the associated legal and technical questions related to independent governance for the existing and developing markets. After several months of discussion and stakeholder input, the Launch Committee coalesced around a 3-step process.

- **Step 1: Early success.** This step demonstrates early commitment to the regulators’ vision of independent governance by elevating the authority of the WEM Governing Body from joint authority with the CAISO Board of Governors to primary authority. These

¹ Letter available at: <https://www.westernenergyboard.org/wp-content/uploads/Letter-to-CREPC-WIEB-Regulators-Call-for-West-Wide-Market-Solution-7-14-23-1.pdf>.

² https://www.westernenergyboard.org/wp-content/uploads/Mission-and-Charter_Dec-21-Ex-B-FINAL.pdf



substantive changes in decision-making authority can occur within the current regulatory regime and the scope of existing law, while continuing to develop more ambitious pathways towards greater independence.

- **Step 2: Durable, independent governance of markets and other potential services.** This step includes forming a new, fully independent Regional Organization that would have sole authority over the WEIM and EDAM. If implemented, the Step 2 proposal would create the foundation to achieve the regulators' vision and enable the West to create a suite of voluntary wholesale electricity market services as stakeholders and participants desire and require, without relying on the actions of any one state or balancing authority. Step 2 requires a California legislative change to fulfill this vision.
- **Step 3: Beyond the Pathways Initiative.** As Step 2 matures, the Regional Organization may evaluate expanding the scope of regionalized functions and services offered by the Regional Organization. Proposing a particular design for these subsequent incremental stages goes beyond the scope of the Launch Committee's work, but Steps 1 and 2 have been developed with a clear line of sight to enable those potential voluntary future services to be extended beyond the scope of existing energy markets. The Launch Committee refers to this later evolution of additional services as Step 3.

In April 2024, the Launch Committee released a Phase 1 Straw Proposal³ that included a detailed proposal for Step 1. The Launch Committee's goal for Step 1 was to create a governance framework that maximizes independence under existing law over governance of the markets and centered on the public interest while preserving the CAISO's Board of Governors' oversight of the CAISO balancing authority. Step 1 was designed to facilitate the expansion of EDAM and the continued success of the WEIM, ensuring it remains a vital component of the Western electricity market.

Based on stakeholder feedback, the Launch Committee refined Step 1 and adopted a final recommendation at a public meeting on May 31, 2024. The Launch Committee presented the Step 1 proposal to the CAISO Board of Governors and WEM Governing Body in June 2024, who conducted a stakeholder process and unanimously adopted the final Step 1 recommendation on August 13, 2024. The joint bodies met again on November 7, 2024, and approved the next legal step for implementation once the trigger based on formal commitments to participation in EDAM is met. The trigger is a certain amount of geographically diverse load committed to joining the EDAM by signing an implementation agreement with the CAISO.

In addition to the Step 1 framework, the Phase 1 Straw Proposal also included several options for Step 2. The Launch Committee received initial stakeholder feedback on those options, but Step 2 required additional development and stakeholder input. In June 2024, the Launch Committee created six "Work Groups" to focus on the different aspects of the Step 2 proposal including: RO Formation, RO Governance, Stakeholder Process, Public Interest Issues, CAISO Issues, and Tariff. Over the course of the summer, the Work Groups drafted ideas, conducted seven public workshops, collected written comments, and developed the recommendations contained in the Draft Step 2 Proposal, released in September 2024.

³ <https://www.westernenergyboard.org/wp-content/uploads/Phase-1-Straw-Proposal.pdf>



There were some areas in the Draft Step 2 Proposal that lacked full consensus from the Launch Committee, requiring additional discussion and work. The Launch Committee held an additional workshop solely to discuss sectors for the Stakeholder Representative Committee (SRC) and had a four-week public comment period. We received 34 distinct sets of comments, and the Launch Committee spent three weeks reviewing and incorporating suggestions into this Proposal.

Overall, the recommendations in this proposal reflect the priorities, experiences, technical and political challenges, and above all, the spirit of collaboration and commitment to problem solving of the diverse stakeholders in the West. Balancing the history of success and failure of Western market efforts with the increasingly urgent need for more affordable, reliable, and clean energy to meet the growing demand and challenges of extreme weather was an underlying challenge and opportunity for the Pathways Initiative. With its diverse resources, politics, and geography, the West has chosen to move incrementally, taking deliberate steps that build confidence through demonstrated success and benefits. This approach has resulted in significant progress, and crucial trust building, which will enable continued forward progress.



CHAPTER 1: REGIONAL ORGANIZATION SCOPE & FUNCTION

SUMMARY OF RECOMMENDATIONS

The RO will launch in the form of Option 2.0, serving as a policy-setting organization for the establishment and oversight of market rules for the WEIM and EDAM. All references to “beyond 2.0” include at least the elements and goals originally identified in Option 2.5 and are meant to expand future options rather than limit them and are meant to increase the RO’s corporate responsibility for the markets.

Under Option 2.0:

- The RO will have full independent governance authority over market rules, with sole Section 205 rights, and ultimate authority over the associated business practice manual provisions.
- Market operations will continue to be performed and overseen on a day-to-day basis by the CAISO within the scope of its existing corporate authority, with varying levels of input from the RO. While the RO would not have direct day-to-day supervision of market operations, the RO would have audit rights and responsibilities to ensure the CAISO as market operator is following the tariff and business practices.
- The RO and CAISO rules will remain in a single integrated tariff. The existing CAISO tariff is expected to need a stakeholder process to enable clarification and/or reorganization to ensure accountability and responsibility is clear for each organization, as well as understanding the classification of existing provisions as sole RO authority, sole CAISO authority, or shared authority.
- The CAISO’s existing financial responsibility, liability, and compliance responsibilities related to the market will not migrate to the RO immediately, reducing the time and cost required for RO start up.
- The CAISO will remain the counterparty to existing market contracts, such as Participating Generator Agreements and Scheduling Coordinator Agreements.
- Market operator staff will retain emergency operational authority under FERC oversight, during actual emergency conditions in the market, as it does today.
- The Launch Committee has taken a high-level cut at what might be an initial RO budget. Based on a host of assumptions, the RO will have initial limited staffing with an estimated annual cost of \$1.25 to \$1.5 million, which could increase to \$10 to \$14 million over time as the organization develops.

The Launch Committee recommends that the RO consider a transition to a structure that will enable the RO to take on additional regional market services with components consistent with the list below. Although Option 2.5, as previously identified by the Launch Committee, presents one possible option, we anticipate that other options will be considered by the RO in its feasibility analysis. In that spirit, the feasibility study undertaken by the RO would assess the costs, benefits, possible expanded market functions, and implementation details including:



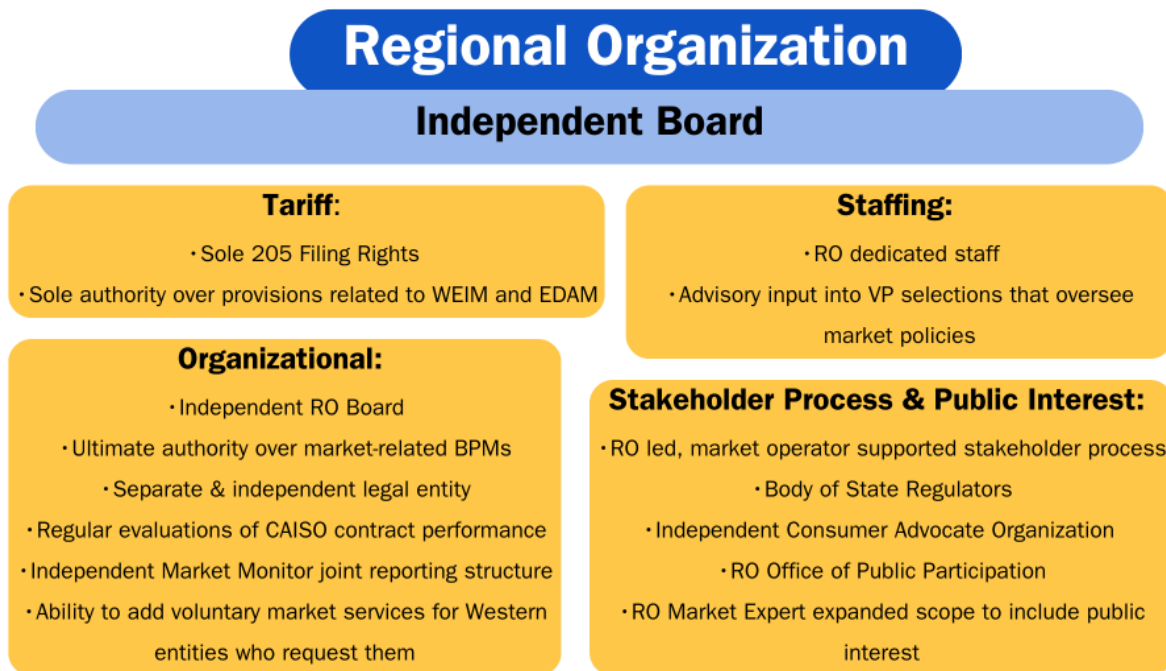
- Continued RO fully independent governance authority over market rules and associated business practice manual provisions and contractual responsibility for the operation of the market with sole Section 205 rights.
- Potential separation of the integrated CAISO/RO tariff into two separate tariffs, building upon the efforts contemplated for implementation of Option 2.0.
- RO assumption of the CAISO's ultimate financial responsibility, liability, and compliance responsibilities to FERC for the market operator function.
- Shifting the CAISO's operation of the markets from two entities operating under a single tariff to operating under a vendor contract between the RO and the CAISO.
- RO assumption of the CAISO's ultimate financial responsibility, liability, and compliance responsibilities to FERC for the market operator function.
- RO filing with FERC for full public utility status as defined by the Federal Power Act, if the RO assumes ultimate responsibility over the markets or other services or establishes a separate tariff.
- RO assumption of counterparty responsibility for existing market contracts, such as Participating Generator Agreements and Scheduling Coordinator Agreements, from the CAISO, requiring modification of these contracts and adding to the complexity of transition.
- More extensive RO executive staffing with an estimated annual cost of roughly \$25 million; the additional RO staff will enable the RO to meet its increased oversight responsibilities with respect to the markets. The feasibility study will examine, among other cost factors, the extent to which these RO cost increases would be offset by increases in expanded market products and participants and/or decreases in the administrative payments to CAISO.

By creating a new fully independent regional entity, the proposal creates a platform for the RO to offer any additional services desired by Western stakeholders on a voluntary basis. Such an evolution should provide opportunities to gain many of the benefits of broad participation in an expanded suite of RO services through co-optimization under a vendor contract with the CAISO.



INDEPENDENCE OF REGIONAL ORGANIZATION

The graphic below provides a visual representation of the RO's independence.



STAKEHOLDER FEEDBACK

Feedback on Draft Proposal

The majority of commenters were supportive of the Draft Proposal and the increase in independence of Option 2.0. There was an appreciation for the voluntary and incremental approach noting that it meets the goals of the regulators, would lower costs for ratepayers, increase reliability, and continue progress on reducing greenhouse gas emissions. The Draft Proposal included respect for the rights of each state to protect its concept of the public interest while still enjoying the benefits of regional cooperation and prioritizes the public interest and a stakeholder driven process. There was very strong support for the feasibility study to determine next steps and assess costs, benefits, and alternatives past Option 2.0. Some supported moving as quickly as possible past Option 2.0, others suggest a slower approach to give the RO operating experience before contemplating next steps. Many commenters expressed a desire to move towards an RTO.

Minority voices stated that the proposal does not go far enough in providing the level of desired independence. Additional reasons for lack of support noted too many uncertainties (no details of proposed legislation), no clear or guaranteed path for an RTO, firewall protections are undefined (a single entity has oversight of both the Market Operator and as a participating BA), uncertainty



about moving past Option 2.0 and what that timeframe would be, lack of an independent tariff, independent contracts, and that the Pathways Initiative schedule is too aggressive for thorough feedback.

Feedback on Stepwise Approach

The majority of commenters were very supportive of utilizing the incremental stepwise approach and expressed a desire to progress past Option 2.0. It was noted that starting with Option 2.0 would not significantly disrupt the current organizational structure of the CAISO and it minimizes costs and duplication of staff and structure. Commenters saw starting with implementing Option 2.0 as laying the groundwork for progressing towards further corporate responsibility and being the most expeditious way to get further faster. Commenters viewed this approach as a way to ensure that the governance structure is capable of evolving in response to stakeholder feedback and allows for practical experience and for assessing costs and benefits of continued evolution. The stepwise approach would allow the needed time for contract reassignment/updates to make the RO a counterparty, tariff restructuring work, an easier transition for potential CAISO staff, and an opportunity to build and right size the RO staff. Some commenters wanted a definite timeline and commitment for moving past Option 2.0, while others felt the RO should determine these elements.

Minority voices stated that Option 2.0 does not provide meaningful independence and the path towards additional independence is undefined, not guaranteed, and lacks a timeline. Some noted additional steps towards more independence may take too long, while others expressed a desire for a slower timeframe and a recommendation to delay the start of the feasibility study until the RO has 2 years of market operations.

SUMMARY OF PROPOSAL

The Launch Committee recommends that the RO launch in the form of Option 2.0. This will create an independent RO with control over the energy markets. The Launch Committee further recommends that the RO consider a transition toward Option 2.5 or a similar structure that will enable the RO to become a public utility and move toward greater responsibility and offer additional regional market services over a defined period of several years. Option 2.0 is an incremental step that creates an entity and structure that will be able to undertake the transition of the governance over the market services relatively quickly while minimizing costs to ratepayers. It is also an entity that can grow into additional responsibility at the pace the Board determines. The Launch Committee believes starting at Option 2.0 will increase the likelihood of a successful and efficient transition to accelerate the short and long-term evolution of the RO. The Launch Committee also recommends that the RO Board perform a deeper feasibility analysis, with stakeholder input, to assess the costs, benefits, possible expanded regional and market functions, and implementation details of how to achieve the additional corporate responsibility described in Option 2.5 or other alternatives.

The fundamental Step 2 question that the Launch Committee deliberated over is whether the RO should be a corporation that primarily supports a policy-setting board, with the CAISO



continuing to hold ultimate operational, compliance, and other responsibilities, or a corporation that bears ultimate supervisory authority and responsibility over the energy markets. We have described the former as “Option 2.0” and the latter as “Option 2.5” with a focus on this distinction of corporate responsibilities. We anticipate that other options will be considered by the RO in its feasibility analysis. For this reason, the Proposal does not limit its discussion of future structures to Option 2.5 and highlights the major components of a future structure that the RO will evaluate to meet the goals outlined without presupposing specific details and enabling flexibility for the West to determine what structural elements should be built into the new RO over time to meet the needs of Western stakeholders. Throughout the Launch Committee’s evaluation, we focused on the differing degrees of corporate responsibility, complexity, and cost. We have included proposals for the structure for Option 2.0 and recommendations for future RO expansion while recognizing that there are many details and prioritization that are premature to evaluate at this stage.

The feasibility analysis should be one of the RO’s initial priority tasks and should be initiated within 9 months of the RO’s formation through a stakeholder process to scope the details of the analysis. The analysis should assume that Option 2.0 is a transitional structure. The overall objective of the analysis should be twofold: (1) that the RO takes a form under which it assumes responsibility and accountability commensurate with its supervisory authority over energy markets, and (2) that the RO has a structure that will strengthen its ability to host or oversee additional regional services beyond WEIM and EDAM energy markets.

The feasibility analysis recommended here builds in an opportunity for the RO itself to analyze and possibly refine our tentative recommendation as one of its first acts as an independent corporation. If the RO diverges from our overall recommendation, we believe that this independent judgment is precisely the point of forming a new governing corporation. In Option 2.5, deeper division of liability between two corporations, overall higher cost both to the CAISO and RO, and to stakeholders as a whole, plus the extensive negotiations we anticipate will be involved to rework dozens of *pro forma* regulatory contracts prevent us as a Launch Committee from recommending Option 2.5 as a starting point. At the same time, we recognize the generally strong, but not universal, support expressed by a variety of stakeholders for reaching Option 2.5 or beyond, at least after a transitional period. We present this recommendation to stakeholders in the hopes of forming an institution that will attract the broadest possible array of market participants across the West, and thus lead to deeper, stronger energy markets overseen by the RO and a stronger starting point for future services beyond markets.

OPTION 2.0

In the April 10, 2024 Straw Proposal, the Launch Committee concluded that our primary objective of securing truly independent governance over the energy markets and future services hinged primarily on vesting sole Section 205 filing rights in a new entity. Option 2.0 achieves that objective. Since then, we have further refined our thinking through extensive deliberation and engagement through stakeholder workshops and written comments, and we have concluded that this criterion (sole Section 205 filing rights) is a necessary but not the only aspect of corporate responsibility for the markets.



Option 2.0 represents a materially more independent way to govern the WEIM and EDAM than either the status quo when we completed our Straw Proposal (Joint Authority) or the Step 1 change underway at the time of this writing (Primary Authority of the WEM GB, once it is triggered).⁴ Under Option 2.0, the WEM GB successor, the RO, would have this sole authority. This represents a fundamental break with the governance of energy markets operated by the CAISO since the origin of the WEIM in 2014: an external entity with a board independent of any single state, participant, or class of participants would control policy decisions related to energy market design.

1. Central Structural Recommendations

In Step 2, the Launch Committee makes several further recommendations that complement the core recommendation.

a. Single Tariff

Maintain a single integrated tariff under Option 2.0 rather than separate out two tariffs. The Launch Committee believes that the most seamless and expedited transition from Step 1 (WEM GB primary authority) to Step 2 (RO Board sole authority) is maintaining an integrated tariff with sole and shared Section 205 rights dispersed between the CAISO and RO at the outset.

b. Business Practice Manual Oversight

Vest the RO Board with the ultimate authority to resolve disputes about any market-related business practice manual (BPM) that carries out a tariff provision under RO sole authority. In Step 2, the Launch Committee recommends that the line of review and authority shift to RO executives and the RO Board as the ultimate authority over the associated BPMs that relate to the WEIM and EDAM, consistent with the sole Section 205 rights vested in the RO.⁵ We anticipate that the CAISO staff, as market operators, would likely continue to administer the day-to-day, or week-to-week, process of developing potential changes to BPMs, but the RO Board's oversight role would be an important change in approval of the BPMs.⁶

⁴ The Primary Authority model referred to here was adopted unanimously by the CAISO Board of Governors and WEM Governing Body on August 13. As adopted, it will take effect once the trigger described in our Step 1 Recommendation: Final Draft (our May 24, 2024) is reached. Adoption also depends on modifications to the CAISO's bylaws and tariff, the latter subject to FERC approval.

⁵ The Launch Committee is unaware of any case in which a BPM was appealed by a market participant or stakeholder beyond the level of a committee of CAISO executives to the CAISO Board, which today would be the general ultimate decisionmaker in the case of such an appeal. Thus the practical effect of our recommendation may not be significant.

⁶ We note that FERC's rule of reason requires that any provisions that constitute or significantly affect rates, terms, and conditions of wholesale service must be included in the tariff itself rather than in BPMs. BPMs can only be used for provisions that don't meet FERC's test and are instead classified as implementation-related details. Except in some emergency situations, the CAISO's current business



c. Sole Section 205 Rights

Vest sole Section 205 rights in the RO such that the RO Board has exclusive and unilateral authority to have filings made at FERC for areas under its domain. Sole Section 205 rights in Step 2 means that the CAISO Board does not have any lingering unilateral authority to authorize a Section 205 filing at FERC. Under our proposal for Step 2, CAISO as a corporate entity would retain governing authority in the form of sole Section 205 rights for rules applicable to the CAISO Balancing Authority or the CAISO-controlled grid. Further detail for sole and shared authority is explained below.

d. Emergency Conditions

Continue to delegate emergency operational authority to CAISO staff during actual emergency conditions in the markets. Today, CAISO management and market operations staff have delegated authority from the CAISO Board to respond in real-time to emergency conditions experienced in the control room and in the broader electric power system. In those conditions, the operators in the control room are not expected or supposed to seek discrete advance blessing or consultation from the CAISO Board or, in some cases, CAISO management, to respond to most real-time conditions. Indeed, doing so could delay and undermine their response actions. This emergency operational authority rests within the bounds of the tariff approved by the CAISO Board and FERC and is, to our knowledge, standard practice in both RTOs/ISOs and balancing authorities for empowering real time operators. The Launch Committee is strongly in favor of retaining the same approach going forward and does not propose interjecting the RO Board as a discrete decisionmaker in emergency conditions in the control room. To be clear, the appropriate place for the RO Board to assert itself is at the tariff level, and delegated authority under emergency conditions can and should be addressed in the tariff, in the RO's contract with the CAISO, and possibly in the RO's governing documents.

e. Corporate Protections

Maintain protections for the CAISO to prevent the RO from establishing market rules or directing the CAISO to act in a manner that exposes the CAISO to excessive risks that endanger it as a corporation. We described this important boundary around the RO's authority in Step 2 in the Straw Proposal with a discussion that we repeat here:

practice change management process provides stakeholders opportunities to comment on potential BPM changes. Final decisions adopted by the BPM change management coordinator can be appealed to a panel of CAISO executives. It is our understanding that this appeal process has occurred twice in the past 15 years. Under the current process, there is no approval role for the CAISO Board of Governors or WEM Governing Body for BPMs, but appellants may raise a concern following the appeal process to the CAISO Board. As noted above, we are not aware of stakeholders having pursued this last potential point of appeal (to the CAISO Board) in the past. (The relevant BPM about the business practice change management process is available here:

<https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=BPM%20Change%20Management.>)



“For example, adopting a market rule that would require the CAISO to dramatically increase its financial bonds or jeopardize its credit rating would not be permissible. Similarly, adopting a market rule that required the CAISO to violate the laws of physics in market operations would not be permissible. The Launch Committee anticipates that these types of unilateral RO actions would be delimited in the agreement between the RO and the CAISO. They pertain to corporate risk rather than policy judgments about the energy market rules and their implementation.” (p. 22)

In our past presentations about this topic, the Launch Committee has summarized the meaning of “corporation protections” to be that the RO cannot compel the CAISO to do things that attempt to violate physics, break the law, or would cause the CAISO to become insolvent. Stakeholders have given us feedback that the scope of these protections requires more explicit elaboration,⁷ and we agree. We have also received further comments on the draft proposal seeking further clarity on this topic.

With the benefit of that input, we have considered whether the extent of “corporation protections” required under Option 2.0 may need to be defined somewhat more expansively than in our previous formulation in order to account for the liability and risk that the CAISO will continue to bear as the FERC-jurisdictional public utility in this context. The Launch Committee believes accounting for liability risk is necessary and requires development of a contractual provision in the RO-CAISO implementing agreement that covers broader circumstances where a course of action would impose unmitigated liability or financial risk to the CAISO as a corporate entity. As discussed in our draft proposal, the resulting provision should pertain only to the risk to the CAISO as a generic corporation in carrying out a service under the direction of a third party (the RO), and specifically would not serve as a means for imposing policy judgments or preferences about market design and operations from its perspective as a BA or transmission operator. Within this set of parameters, we believe the RO and the CAISO will be best situated to negotiate the exact contours of such a provision, as well as any processes the two organizations would follow in any context where the contractual protection may come into play.⁸

f. Primary Market Liability Protection

Retain the reliance on credit and financial security requirements imposed on market participants themselves as the primary financial protection for the CAISO and the RO against the risk of market-related defaults. The Launch Committee provides further detail below about how the formation of a new governing corporation will result in the RO being exposed to certain financial

⁷ See the comments of Six Cities (the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California) at p. 1 and San Diego Gas & Electric at p. 1-2 on the August 5 CAISO Issues and Tariff Analysis Workshop, available at: <https://www.westernenergyboard.org/wp-content/uploads/H.-Six-Cities-Comments-WWGPI-CAISO-Issues-and-Tariff-Analysis.pdf> and <https://www.westernenergyboard.org/wp-content/uploads/J.-SDGE-Pathways-Comments-on-CAISO-Issues-and-Tariff-Analysis-8.19.24.pdf>, respectively.

⁸ We also emphasize that this contractual provision likely becomes much less significant in the step that may follow the RO’s feasibility analysis of how to evolve beyond Option 2.0, if the RO elects to assume deeper responsibility and accountability over the energy markets (Option 2.5 or some alternative).



liabilities specifically related to overseeing WEIM and EDAM and generally related to being an incorporated entity. What we do not foresee or recommend changing is the pass-through nature of most financial exposure to market defaults or volatility by the CAISO or the RO. Namely, the CAISO's tariff today has credit standards that require market participants to post collateral (or maintain an equivalent line of credit) that is equal to their estimated liability. This requirement protects the CAISO from bearing the risk of loss if a market participant defaults on payment. Those losses do not come off the CAISO's balance sheet. In addition, the CAISO effectively has a lien on market revenues (a priority claim against market-related receipts) as a further layer of protection against defaults in payment.⁹ These are common provisions in organized markets to mitigate the financial risks to the market operators themselves.

g. Access to Capital

Incorporate the RO such that it would have an ability at some point to issue bonds in order to raise capital. The Launch Committee does not anticipate that the RO would have capital needs at least in its early years, given its contractual agreement with the CAISO to operate the markets and to continue to own and manage the associated fixed assets (real estate, physical plant, etc.). But we believe that a corporation with the level of policy-making authority that we envision for the RO, and the associated range of fiduciary duties and financial liabilities that this authority may entail, suggests that the ability to raise capital may be an important tool for the RO. Indeed, access to capital by the RO directly is one important indicator of the institution's relative independence from the CAISO. The section of this paper related to our incorporation recommendation addresses this point as well, but we include it here as well as part of our overall governance structure recommendation.

h. Basic Payroll and Direct Expenses

Hire a certain minimal level of staff, maintain adequate reserves, and pay certain minimum direct expenses as an independent corporation. The Launch Committee provides an illustrative estimate of costs and staffing for the RO for Option 2.0 and a potential future structure with more robust responsibilities and authority below. The RO will need to hire a certain number of personnel and carry out certain functions regardless of how it evolves beyond Option 2.0. We anticipate that those common direct costs include:

- Basic payroll for RO employees, including systems for establishing and paying compensation, expense reimbursement, benefits, and payroll services
- Legal services (in-house, on retainer, or external hourly)
- An external affairs division
- Annual budget development
- A commercial bank account
- Annual tax filings
- Certified public accountant and bookkeeping services
- Corporate insurance (e.g., directors & officers, professional liability, workers compensation)

⁹ See section 11.29.9.6.1 of the CAISO tariff. We explore this topic in more detail below.



- Facility costs (leased or owned)
- A reserve account for unanticipated expenses

The Launch Committee does not have a specific recommendation about which “side of the fence” (the RO or the CAISO) professional stakeholder facilitators or subject-matter experts closely involved in stakeholder processes should reside. The Formation Committee should work with stakeholders and the CAISO to determine where to house staff closely involved in stakeholder processes, but we note, at least conceptually, how shifting the responsibility and housing of the stakeholder process may not result in a major incremental cost to market participants, since the cost for the current stakeholder process is already embedded in the GMC and other fees paid by market participants.

This Proposal also does not address incremental services beyond WEIM and EDAM and any associated staff. The RO will evaluate staffing needs as additional services are identified and developed through stakeholder initiatives.

2. Key Issues in CAISO/RO Contract Under Option 2.0 and Beyond Option 2.0

The Draft Proposal included detailed analysis about financial liability, existing contracts, and staffing. The applicable recommendations regarding those issues to Option 2.0 are contained herein. See below for a detailed analysis of those issues for inclusion in the feasibility analysis.

a. Financial Liability

We anticipate that as the RO evolves, the contingency reserve would need to be larger to address the RO’s higher liability exposure, as the entity ultimately responsible for the provision of market services. However, at the outset, Option 2.0 will have minimal exposure to market-related legal liability, general litigation costs, and potential regulatory fines. The Formation Committee should evaluate what, if any, contingency reserve would be appropriate for the RO in Option 2.0.

The RO’s potential assumption of greater responsibility may reduce equivalent liability and associated expense currently borne by the CAISO, but we have not conducted an examination of how many offsetting costs might conceivably shift from the CAISO to the RO. This topic will require further examination by the Formation Committee and the RO Board itself.

An additional area requiring further evaluation is how the RO would fund its operations under Option 2.0. We anticipate that this would occur through a tariff-based mechanism under which the CAISO collects funding from market participants and remits the funding to the RO. The specifics of this mechanism and how it may interrelate with the CAISO’s current mechanisms for collection its Grid Management Charge (GMC) would be developed by the RO and the CAISO, pursuant to a stakeholder process and subject to FERC approval of the resulting tariff provisions. We observe that the CAISO’s triennial cost of service study, revenue requirement, and FERC-regulated market participant charges (with various allocations of costs based on CAISO’s lines of service) may need to be changed to accommodate Step 2.



b. Staffing Input

In this subsection, we discuss a recommendation for the RO to provide input and shape management-level hires overseeing energy markets at the CAISO.

i RO Input on CAISO Management Hires

Under a typical arms-length contract, if a party is dissatisfied with the performance of the other party, the first party may exercise termination rights specified in the contract or elect not to renew the contract (or execute a similar one) upon its expiration. Either party retains the choice not to do business with one another in the future. They can shop or sell elsewhere.

Because the RO and CAISO will operate under a contractual relationship in Option 2.0 and beyond, the RO and the CAISO would indeed be separate and independent corporations whose corporate interests and fiduciary responsibilities may diverge. Any contract between them would have some elements of a traditional arms-length arrangement, particularly in cases where the RO could elect to forego the services of the CAISO and instead either contract with some other party or bring the services in-house. For example, the Launch Committee envisions information technology (IT) services as an obvious candidate for potential initial reliance on the CAISO on a vendor basis, but in the future the RO Board may decide that the RO would be better served by having its own IT team or hiring an outside firm, of which there are many.

The same is not true for the real-time market operations of the CAISO that largely take place in the CAISO control room. One premise of the Pathways Initiative is that consumers across the West would be better served by drawing on the existing CAISO software, hardware, facilities, and expert operators, rather than designing, building, and paying for this infrastructure and expertise from scratch. This premise goes hand in hand with the notion that the widest possible integrated footprint, inclusive of California, would be better for consumers than the alternative.

In this regard, the Launch Committee does not envision actual market operations as akin to IT services. For market operations, the RO would have little to no recourse to seek out some alternative service supplier. The RO would be more or less required to use the CAISO, and vice versa. While separate and independent to an extent, the corporations would remain somewhat intertwined. The agreement about core services like market operations would resemble a sole-source contract. Beyond understanding this basic point, the Launch Committee has sought ways to mitigate how it might negatively affect the RO's independence.

When considering these points of proximity in the relationship between the two corporations, we have returned repeatedly to the notion of a bundle of elements that are designed to respect the decision-making authority of the RO. No single element guarantees RO market decisions are always respected. It is rather the collection of different elements, as well as clear divisions of authority, that would create a stronger, more capable RO.

Primary RO Hiring Input Recommendation: We recommend advisory authority of the RO Board to provide non-controlling input on hiring and performance of one or more officer-level senior



CAISO managers responsible for the business line (or “vertical”) that oversees the markets. Our objective with this recommendation is to help ensure that the markets perform effectively across corporations.

The current CAISO Bylaws (Article VI, Sections 1, 2, and 10) specify that the Board of Governors shall appoint all officers of the CAISO, both those named in the bylaws and any additional officers that the Board may appoint.¹⁰ We recommend that the CAISO Board retain this ultimate authority to appoint all corporate officers but delegate to the RO Board the authority to sign off on one or more officers at the Vice President level who oversee market services whose policies will be governed by the RO. We do not recommend any particular change in the process of how the CAISO recruits and considers candidates for these manager positions apart from including senior RO management in the interviewing process for, and securing RO Board agreement prior to, hiring a candidate. In this arrangement, the CAISO Board would still retain a controlling interest over the ultimate hiring in the form of a veto of any proposed candidate that received RO Board approval. In other words, a candidate could not be forced on the CAISO or hired over the objections of the RO Board. This approach could be carried out through a veto option or an affirmative concurrence by the RO Board.

The applicable officer or officers would be hired by the CAISO and would be employees of the CAISO, not the RO. They could only be fired by the CAISO, not the RO. We recognize that the CAISO would probably need to reorganize its current internal structure in order to consolidate business units involved in market services under one or more verticals overseen by one or more Vice Presidents. We do not suggest that the RO Board have input on any hires below this CAISO officer level; in fact, we recommend against such an approach, for two reasons. First, it would expose the RO to a deeper level of joint employer risk, entailing significantly more litigation and financial exposure, particularly for wage and hour claims. Second, it could become an overly intrusive form of input by one corporation into the depths of the staffing structure and hiring autonomy of another corporation. Instead, we view RO influence over management-level hiring plus performance expectations and standards in the contract between the two corporations to present an appropriately balanced level of influence.

We favor this approach because it would allow the CAISO staff involved in markets at multiple different levels to continue to operate integrated functions, but would place them (and future hires) under the supervision of officers whose selection was directly influenced by the RO. Disaggregating a wide array of CAISO personnel, and splitting them across two corporations, could have a significant downside in reducing the familiarity of some staff, for example, with the practical realities of actually operating the markets. Conversely, our recommendation could alleviate to some degree the need to transfer or house as many business units under the RO directly. In this sense, it offers potentially significant cost savings.

Based on feedback from outside legal counsel, we believe that this arrangement would be permitted under both corporate law and labor law in California (assuming legislation passes in 2025 that enables Step 2 as a whole).

¹⁰ Available at: <https://www.caiso.com/documents/iso-corporate-bylaws-amended-and-restated.pdf>.



We add one important caveat about labor law: the arrangement described above appears permissible and in fact a somewhat common way for two separate entities to establish a closer working relationship, but it does create a potential risk of joint employment claims by the affected CAISO management hires.

In general, an entity that directs and controls the performance of job duties and terms of employment may be found to be a “joint employer.” Determining whether this is the case is a fact-based inquiry into the degree of control. It depends highly on the particular circumstances and also depends on the claim being brought. Entities found to be joint employers can be exposed to similar liability as the formal or actual employer of the applicable employee.

Because the CAISO would retain ultimate authority over the final hiring and firing decisions, we anticipate that this joint employer risk is somewhat lower. Similarly, an annual performance evaluation by the RO Board of how CAISO officers and the business units that they manage are carrying out market services would be one of several inputs, and a non-binding input, that might determine bonus compensation decisions, for example, by the CAISO CEO or Board.

The Launch Committee considers the risk of a joint employment claim, since it is limited to only one or at most a handful of white-collar employees, to be real but manageably small, and worth the added influence and accountability this arrangement provides the RO and stakeholders served by the markets overseen by the RO. We note that contract indemnification is one potential way to mitigate exposure to joint employment claims, but we do not at this stage recommend any particular approach to mitigation.

We anticipate the need for further evaluation in the feasibility analysis about which business units are most suited to staying integrated within the CAISO’s structure and subject to the arrangement above, versus being established within the RO directly.

ii Other Staffing-Related Recommendations

In addition to the primary recommendation above about RO input on CAISO management hires, we make four additional recommendations:

- (1) *CAISO CEO*: We recommend that the CAISO Board consider the most appropriate way to enable the RO Board to advise on the hiring of any future CAISO CEO, such as by offering potential candidates for the CAISO Board’s consideration. We believe that the CAISO Board should retain both primary and ultimate control over any CEO hiring decision, for both legal and practical reasons.
- (2) *DMM*: We recommend that the CAISO Board and the RO Board jointly select future heads of the Department of Market Monitoring (DMM), given the critical role that DMM plays in monitoring the markets overseen by the RO. Because the DMM monitors activity in services offered by the CAISO (including ancillary services or congestion revenue rights) that fall outside the RO’s authority under Option 2.0, we do not at this time



envision a logical way for the DMM to report solely to the RO or to become solely a function of the RO. A joint hiring approach by the two Boards provides both corporations appropriate oversight authority. Today DMM reports directly to the Board rather than the CEO, consistent with FERC's directives. The Launch Committee is recommending a change to DMM's reporting structure, moving to a shared joint reporting with the CAISO Board and the RO Board (See Chapter 4).

- (3) *MSC*: At present, the members of the Market Surveillance Committee, an independent body of industry experts that evaluates and comments on CAISO market issues and market monitoring, are jointly selected by the CAISO Board and the WEM GB. We recommend retaining this approach in Step 2, with the RO Board supplanting the WEM GB. See Chapter 4 for further discussion on the MSC.
- (4) *Ongoing Performance Evaluations*: We recommend that the contract between the RO and the CAISO provide an opportunity for the RO to offer an annual performance evaluation of the CAISO management personnel subject to the RO's non-controlling hiring input above, including the CAISO officer(s) overseeing market services as well as the DMM.

We have considered alternatives, such as recommending a *controlling* interest by the RO in CAISO management or staffing hires, or shifting more staff and business units from the CAISO to the RO, or duplicating more CAISO staff and business units at the RO. We mention those alternatives while recognizing and endorsing the need to be sensitive about how to portray potential corporate restructuring and employment. Talented, dedicated staff currently and ably perform the services we describe here, and the Launch Committee anticipates that the overall size of the combined CAISO and RO is likely to be higher than the CAISO alone at present.

We see no reason to extend the proposals above for RO hiring input beyond the specific market services for which the CAISO is essentially the sole supplier. For example, legal, auditing, and compliance services, and IT and human resources, are important to the functioning of any large organization, but we anticipate that the RO could shop elsewhere for them if it so chooses. It can thus seek to secure that recourse in contract provisions related to the services and vendor performance of the CAISO (and likewise for the CAISO).

RO'S FEASIBILITY ANALYSIS OF EXPANDED CORPORATE RESPONSIBILITY

Option 2.0 offers a governance structure over energy markets that is fully independent of any single interest; however, as a committee, and as discussed above, we have found it difficult to conclude that Option 2.0 is a robust enough institutional home for the aspirations of the Pathways Initiative and the vision of Step 3. Therefore, the Launch Committee recommends that the RO initiate a feasibility analysis within 9 months of its formation that looks at potential ways to increase the RO's corporate responsibility beyond Option 2.0, taking into account the status of the transition and the resources available to conduct such analysis. While Option 2.0 breaks with the past with respect to Section 205 rights and formation of a new corporation, additional steps will be necessary to achieve the full vision of the original regulator letter. At the initiation of the



feasibility analysis, the RO should conduct a stakeholder process to scope the analysis. As a starting point, the Launch Committee's evaluation of the Options and input from stakeholders have helped define what those steps might be for the RO to evaluate.

1. Vendor Management Role

In Option 2.0, the core function of the RO is to support a policy decision-making board that determines the content of the market operator's service offering. As the market operator, the CAISO offers and operates the service. The RO should evaluate the costs, benefits, and process to transition to an entity that assumes ultimate oversight responsibility for market services that are operated by the market operator under contract. The Launch Committee recommends that the RO evaluate an evolution of the RO into a structure where its primary function would be vendor management. This point is fundamental. This responsibility would include policy decision-making over the markets and supplanting the CAISO as the outward-facing entity that offers organized energy markets to market participants and bears regulatory and financial responsibility for them. It also includes bearing most consequences for failure, as a legal, financial, and compliance matter. The CAISO would continue to operate the markets, but the ultimate responsibility for them as a service regulated by FERC, would rest with the RO. Vendor management would become a primary day-to-day responsibility of the RO.

Converting the CAISO into the role of a vendor subject to a service contract with the RO would be a fundamentally different arm's length relationship between the two corporations. While Option 2.0 significantly increases the authority of an external decisionmaker over energy markets, it largely avoids increasing the accountability of that decisionmaker for its decisions. The RO should evaluate how the responsibility and liability of the RO increases commensurate with its new authority over the markets.

The RO would not be a second independent system operator or a competing organization to the CAISO; the RO would continue to contract with the CAISO for services. However, the RO would need sufficient staffing to ensure that the CAISO is performing such services adequately under the terms of the vendor services contract and that the RO is adequately protected from litigation or other potential liabilities. Those liabilities arise from the RO's position as the entity legally responsible for providing market services and complying with associated contracts, tariffs, business practices, laws, and regulations.

We recognize the stakeholder feedback we have received that favors a completely separate tariff, as opposed to a shared tariff with both joint and sole filing rights over different subject matters: thus we recommend RO Board evaluate the cost, effort, and potential benefits of filing its own separate tariff at FERC for market services or other services as part of the feasibility analysis. The integrated tariff is discussed in greater detail below.

In addition, we recommend that the analysis evaluate a scenario that assumes that under the terms of the vendor services contract between the RO and the CAISO, the RO would retain the responsibility to evaluate periodically the performance of the CAISO as a vendor and to elect to establish some discrete services or business units directly under the RO, to be paid for by the



RO, rather than continue to contract for them from the CAISO. Such services might include, for example, information technology.

The following table identifies some potential roles and structure of the RO Board that the Launch Committee has distinguished between Option 2.0 and an alternative structure that involves deeper corporate responsibility and accountability. While we have labeled this latter structure Option 2.5 in the past, in fact, there are multiple different corporate structures that would encompass the same level of responsibility and accountability. Thus, here we have labeled the last column “Potential Future RO Structure.” We also note that this list is illustrative and is not intended to limit the potential structures and further evolution that the RO may consider, consistent with the two objectives described above for the feasibility analysis (first, ensuring that the RO takes a form under which it assumes responsibility and accountability commensurate with its supervisory authority over energy markets; second, ensuring that the RO has a structure that will enable it to host or oversee additional regional services beyond energy markets for as many market participants as desire that expansion).

	Option 2.0	Potential Future RO Structure
Board role relative to markets	Policy setting	Ultimate governance and operating responsibility through vendor management
Is it a merely advisory board?	No	No
Does it have significant sole Section 205 rights?	Yes	Yes
Must it bear the financial consequences of market-specific liabilities resulting from its decisions (not merely general corporate liabilities)?	No	Yes
Does it have a significant need for contingency reserves to protect against unanticipated market-related expenses?	No	Yes
Does it exercise ultimate supervision over the service offering and operation of the markets, not merely the content of market rules?	No	Yes
Does it exercise direct day-to-day supervision over the operations of the markets?	No	No
Is the corporation it oversees a public utility under the Federal Power Act?	No	Yes



Is one of its primary responsibilities to manage a vendor service contract?	No	Yes
Does it bear compliance responsibility to FERC?	No	Yes
Where does the buck generally stop in terms of legal accountability and financial consequences?	CAISO	RO
Which party is most likely to be sued in the event of a market-related dispute?	CAISO	RO and/or CAISO
Is the corporation it oversees a counterparty on any regulatory contracts with market participants?	No	Probably

2. Financial Liability

The Launch Committee recommends that the RO evaluate the anticipated size of the reserve needed by the RO as part of its feasibility analysis. In addition to a contingency reserve (described in more detail below), corporate insurance will also likely be significantly more expensive as the RO evolves. The RO would likely need expanded corporate insurance to cover the risks associated with the corporation’s greater responsibilities.¹¹

Collection Priority/Lien Authority

We noted in the Draft Proposal that because the coverage ratio of market settlements to the GMC has been consistently above 20:1 in recent years, there may be merit in providing the RO some form of subordinate lien authority to shore up its financial risk in addition to the primary protection of continuing to impose most of the market-related default risk on market participants themselves. We continue to think that this approach of a second lien authority deserves more evaluation.¹² We also observe that broader EDAM participation—driven in part by the

¹¹ In the illustrative cost estimates below, we have included a mid-range estimate of \$2 million in annual corporate insurance costs to the RO, based on preliminary industry research into insurance obtained by comparable entities. Our preliminary best guess is that insurance costs may range widely from approximately \$100,000 to \$5 million annually. Because the market for such insurance (specific to energy market oversight and regulatory compliance) is not large, and actual costs are confidential, competitively sensitive information of the insurance purchasers, the Launch Committee recommends that the Formation Committee and the RO Board conduct additional market research and obtain specific insurance quotes. The need for specific forms of insurance depends on the terms of the contract between the RO and the CAISO, including any indemnification provisions.

¹² The term “lien” in this case refers to the CAISO’s authority to collect the full amount of GMC that it charges on invoices issued to market participants each week. If one or more participants fail to pay their invoices, the CAISO can still collect the GMC out of the total pool of revenue received through market charges. Thus, failures to pay by individual market participants can be allocated to all market participants, who may thus receive less than full payment for the energy and other services they provided. This



governance reforms recommended in our proposal—may lead to higher market settlements, and thus an additional collection priority for the RO may be able to rely on even higher coverage ratios. Evaluation of this option would require a deeper study of the CAISO’s bond covenants.

We anticipate that a collection priority subordinate to the existing CAISO collection priority or drawing on funds separate from what the CAISO may draw on, is likely required under the existing bond covenants. The possibility of an additional collection priority, or lien authority, for the RO is not likely to be a decision on which the cost of Step 2 or the financial health of the RO hinges, but it could be a moderately supportive element of the RO’s financial protections.¹³

Indemnification

We anticipate that any contract-for-services agreement between the RO and CAISO as the RO evolves would include a variety of financial protections and indemnity provisions for both parties. The indemnity provisions would likely flow in both directions, depending on each party’s roles and responsibilities.

Contingency Reserve

The greater degree of financial liability for the RO as it evolves is from several sources. First is general exposure to more unanticipated expenses because the corporation itself is likely to be larger. We understand this exposure to include facing damages liability under standard tort law principles. More employees, higher payroll, and a larger institution generally mean more financial exposure.

Second is the increased degree of regulatory responsibility. This includes complying with FERC rules and with FERC directives to the RO itself, including in response to the RO’s own Section 205 filings. It also includes at least a limited degree of exposure to reliability standards. The Launch Committee observes that energy market oversight does not entail the same degree of reliability risk as overseeing reliability-focused functions such as balancing authority services and reliability coordination. Thus, we expect that the number of ways that the RO could violate FERC, NERC, and WECC reliability standards would be smaller than the ways that CAISO could violate them.

In general, the Launch Committee expects that as the RO assumes more responsibility, it would have to be equipped with personnel and financial protections to address the outcomes of periodic

authority of the CAISO is not a broader financial cushion to cover general unanticipated expenses exceeding what the CAISO is authorized to charge in the GMC. It applies solely to GMC shortfalls in the event that a market participant fails to pay. We note that FERC Annual Charges (charges that the CAISO collects from some market participants on behalf of FERC to fund the agency’s operations) also have a collection priority in the event of defaults on payment. Additional charges could, in theory, be added to the list of collection priorities to ensure that the RO received funds owed to it.

¹³ We have also conducted initial research into the use of second liens in similar organizations. For example, in U.S. public finance, CPS Energy (San Antonio’s municipal electric and gas utility) and JEA (Jacksonville, Florida’s municipal electric, water, and sewer utility) both have revenue bond obligations with subordinate second liens that have received high credit ratings. Our understanding is that this approach is more common in corporate finance, project finance, and high-yield bond structures.



FERC audits for compliance with applicable tariff sections and FERC regulations; FERC Office of Enforcement investigations and enforcement actions into market participants active in the markets overseen by the RO; Office of Enforcement review of potential tariff compliance issues; and FERC complaints and other disputes raised by market participants challenging the RO's compliance with the tariff.

Monetary Fines

We note that FERC has indicated that RTOs/ISOs may recover reliability-related penalties from market participants in some cases. FERC has indicated it will allow penalty recovery only after considering of a variety of factors: whether a compliance program was in place to prevent violations, whether violations were intentional or grossly negligent, whether management was involved in the violations, the ability of the RTO/ISO to pay the penalty, and the fairness of the assessment mechanisms proposed by the RTO/ISO.¹⁴ Section 14 of the CAISO tariff embodies this authority granted by FERC, but we understand that the CAISO has not had to rely on it. We also note that FERC has denied authority to cover FERC penalties for tariff violations. The case-by-case criteria listed above are not a blanket protection for an RTO/ISO, but they do mute the potential financial exposure. Nevertheless, we expect the RO would continue to have some exposure to penalties for violating reliability standards and failing to comply with the tariff sections for which it has sole responsibility. A contingency reserve would address this risk.

Based on public information about monetary penalties,¹⁵ the Launch Committee is aware of three instances since 2005 that the CAISO itself has paid regulatory compliance penalties or entered into related settlements with FERC.¹⁶ After the Southwest outage on September 8, 2011, FERC entered into settlement agreements with six entities, including the CAISO.¹⁷ This settlement agreement established a \$6 million penalty, which comprised a \$2 million monetary fine and credit for \$4 million of reliability-related enhancements implemented by the CAISO. The CAISO has also entered into settlement agreements that involved \$120,000 and \$200,000 penalties related to load-shedding events on November 7, 2008,¹⁸ and on April 1, 2010,¹⁹ respectively. The CAISO has not incurred FERC penalties in this same period related to violations of its tariff or FERC rules and regulations.

In sum, since Congress authorized FERC's reliability and enforcement authorities in 2005, CAISO's public monetary fines total less than \$3 million. It is the Launch Committee's understanding that none of these penalties resulted in a drawdown and subsequent replenishment

¹⁴ See *Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators*, 122 FERC ¶61,247 P 27 (2008).

¹⁵ In order to protect critical infrastructure, among other reasons, not all regulatory penalties imposed by FERC, NERC, or WECC are made public. Nevertheless, no other penalties have been large enough to be reported as material liabilities on the CAISO's public financial statements.

¹⁶ Congress gave FERC substantial authority in 2005 to establish enforceable reliability standards and impose significant monetary penalties.

¹⁷ See 149 FERC ¶ 61,189 (2014).

¹⁸ See FERC Docket No. NP13-56.

¹⁹ See 141 FERC ¶61,209 (2012).



of the operating reserve of the CAISO; instead, the CAISO had sufficient surplus funds collected in those years to absorb the penalties out of its operating revenue. We explain this track record in some detail in order to provide stakeholders a concrete sense of the potential regulatory penalty exposure facing the RO.

Legal Standard for RTOs/ISOs

Finally, we observe that FERC has approved protections for RTOs/ISOs that limit their damages liability to market participants for the performance or non-performance of the RTO/ISO's duties to instances of gross negligence or intentional wrongdoing.²⁰ FERC has set forth a general methodology for determining penalty amounts for violation of its orders and regulations, including tariff requirements and reliability standard violations. This methodology indicates that factors in calculating penalty amounts can include the "pecuniary gain" incurred by a violator or the "pecuniary loss" caused by the violation. To the degree that FERC extended the same approach to the RO as it assumes more responsibility, we anticipate that the financial exposure to regulatory penalties may be somewhat muted. Just as the RO would be protected structurally from some market-related financial risks by the pass-through nature of risk in the EDAM and WEIM tariff, the RO's lack of a pecuniary interest in any particular market outcome may insulate it somewhat from the liabilities faced by market participants.

Size of Reserve

The CAISO maintains an operating reserve as part of its revenue requirement. The operating reserve is 15% of the current year's operating and maintenance budget (it rose to \$38 million in 2024), or about two months cash on hand. The CAISO maintains separate debt service and capital reserves as well. Since we do not anticipate the RO issuing debt or having capital needs at the outset of Step 2, we have focused solely on the operating reserve.

Stakeholders may consider the CAISO's current operating reserve as a likely outer envelope of the absolute size of the reserve that the RO would need, given that most, if not all, of the financial protections for the CAISO's exposure to liabilities related to overseeing and operating the energy markets would continue in some form for the RO. Indeed, the size of the reserve may be much smaller than \$38 million, given all the other services and activities that the CAISO performs, including balancing authority, transmission, and reliability coordination services. We do not presume that 15% of the RO's operating budget would be sufficient financial protection against unanticipated liabilities, because the RO's financial exposure is more likely to resemble the CAISO's current overall exposure for its energy-market related activities.²¹

²⁰ See PJM Interconnection L.L.C. 112 FERC ¶ 61,264 at PP 9-10 (2005); Southwest Power Pool, Inc., 112 FERC ¶ 61,100, PP 36-44 (2005); Midwest Indep. Transmission Sys. Operator, Inc., 110 FERC ¶ 61,164 at p 29 (2005); *ISO New England Inc., et al.*, 106 FERC ¶ 61,280, at PP 220-231 (2004); and California Indep. Sys. Op. Corp., 123 FERC ¶ 61,285, at P 241 (2008) and California Indep. Sys. Op. Corp., 139 FERC 61,198 at P 17 (2012). This limitation is in Section 14.5 of the CAISO tariff and Section 22.1 of the Transmission Control Agreement.

²¹ Based on the illustrative cost estimate below, a 15% reserve on an operating budget of \$24 million would be \$3.6 million.



Recommendation: The RO should include an analysis of the appropriate size of a contingency or operating reserve for the RO as part of the feasibility analysis to be initiated nine months after RO formation.

Credit Rating Impact

The Launch Committee has engaged an independent financial analyst to better understand the potential effect of Step 2 on the financial health of the CAISO and the RO itself. We have sought to understand, for example, whether our proposal would have any effect on credit worthiness factors considered by rating agencies. These factors affected by our proposal include potentially diversifying risk to the CAISO (lessening the potential financial impact of a worst-case market failure); broadening of the credit quality of market participants who pay the CAISO's revenue requirement; and improving management of intermittent generation within the larger market footprint, potentially mitigating reliability challenges and extreme weather impacts. These factors would also be affected by implementation details such as the funding mechanism of the RO, what happens to the GMC, and the terms of the agreement between the CAISO and the RO. A preliminary analysis suggests that, all else being equal, our proposal would generally be credit positive, adding to a recent decade-long trend of the CAISO diversifying its revenue sources, reducing "concentration risk," and expanding the footprint of its services. This analysis is included as Appendix B.

Transitional Period

Given the potential size of the contingency reserve needed by the RO as it evolves, the need for a granular analysis to narrow the wide range of potential reserve targets (likely somewhere between \$4 million and \$40 million, as described above), and the value to market participants of building up such reserves incrementally over several years, rather than in a single year, we have concluded that a several-year transition period to achieve the structure recommended by the feasibility analysis makes the most sense. However, the ultimate decision on the transition time, and evolution would be determined by the RO Board per our proposal.

3. Existing Contracts

Our Straw Proposal (p. 29-30) noted the existence of approximately three dozen types of regulatory contracts between the CAISO and energy market participants that are included in or implicated by the CAISO tariff. What we mean by "regulatory" contracts is that they are subject to FERC's jurisdiction, as opposed to non-jurisdictional contracts (e.g., a vendor contract for food services). The feasibility analysis should evaluate the process for reworking or re-assigning most of these contracts in order to ensure that the ultimately responsible party (the RO) overseeing EDAM and WEIM becomes a direct party to the contracts. (We do not anticipate that Option 2.0 would require reworking these contracts in the same way.) Some of the affected contracts cover agreements with the CAISO that address services in addition to energy



markets.²² There are also a number of non-conforming agreements, outside of the *pro forma* contracts.

It is our understanding that the affected contracts do not contain explicit prohibitions on either party (the CAISO or a counterparty) reassigning the contract to a third party, including a successor organization or an entity like the RO. Instead, the contracts generally permit assignment subject to written consent by a contract counterparty, and such consent may not be unreasonably withheld, assuming the successor party accepts all obligations in the contract.

For example, here is the relevant provision in the *pro forma* Scheduling Coordinator Agreement (SCA) (Section 13.1):

Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 22.2 of the CAISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.

Yet a division of specified functions between the CAISO and the RO, and a shift in ultimate oversight responsibility to the RO, may be a more substantive reform of the existing regulatory structure than a mere re-assignment could address. After further consultation with the CAISO and hearing from a variety of stakeholders, we have concluded that in all likelihood the affected contracts would require not merely re-assignment, but a reworking in order to add the RO as a third party, or to separate out the markets-related and non-markets portions of some contracts.

For the same reasons that we have concluded a transitional time would be needed to develop contingency reserve targets and build up a reserve, we conclude that a similar time period would be needed to work through the regulatory contracts via a careful stakeholder proceeding. A proposal to change or replace affected contracts would need to be filed and approved by FERC, after which a time period would be needed during which the CAISO, RO, and affected counterparties could execute the approved contracts, as well as any non-conforming agreements.

4. Potential Future RO Staffing

In this subsection, we sketch out a preliminary proposal for how to build out the RO staff under Option 2.0 and a more robust structure with components proposed for evaluation in the feasibility analysis. We emphasize that this preliminary proposal is an illustration of an adequate but fairly minimal level of dedicated staff that the Launch Committee believes would be

²² For example, the Scheduling Coordinator Agreement (SCA) addresses the submission of information into market applications, including ancillary services, and resource adequacy related requirements. EDAM and WEIM today do not extend to ancillary service co-optimization in non-CAISO balancing authority areas, nor do they impose a single resource adequacy requirement through the resource sufficiency evaluation. Therefore, the SCA may need to be modified rather than just assigned.



appropriate for the two options. This exercise has allowed us to develop an illustrative cost estimate for two structures and to identify the likely different cost centers and incremental cost of evolving beyond Option 2.0. This cost estimate is not a budget and not a recommendation: it is a preliminary attempt to describe in some concrete detail the size, functions, and potential cost of the RO.

The illustrative cost estimates consist mostly but not purely of incremental costs. For example, the cost to market participants of the current WEM GB today is about \$640,000 annually, including compensation paid to GB members. For a governing board with two additional members, more responsibilities, and one to two dedicated support staff, we estimate an annual cost of \$1.25 to \$1.5 million. Our focus here is to float an organizational size that is seaworthy, as it were, and to illustrate the costs of being at least minimally seaworthy. These costs are mostly but not strictly incremental to the cost of running the WEIM and the upcoming cost of running EDAM. They include major non-labor costs as well.

As the RO assumes more responsibility it will likely have a need for at least one employee in the following roles. We indicate in footnotes here which roles we anticipate would not be needed or would be needed in smaller numbers in Option 2.0:

- A small executive and administrative staff, including a corporate secretary role focused on corporate obligations
- Lawyers (in-house or on retainer) with a non-conflicted ethical and professional responsibility toward the RO and not toward the CAISO²³
- Actual market experts on staff to help the Board exercise oversight responsibility over the CAISO as market operator, including compliance with the tariff and business practice manuals²⁴
- Compliance staff who are FERC regulatory experts to assist with FERC tariff compliance (but perhaps not NERC or WECC reliability compliance *per se*)²⁵
- Regulatory affairs to monitor Congress, states, and FERC²⁶
- Corporate finance staff who manage budgets and accounting
- A communications and external affairs desk²⁷
- Human resources staff, to the extent staff size grows large enough²⁸

²³ We anticipate a smaller legal team would be needed in Option 2.0.

²⁴ Since tariff compliance would not implicate the RO in Option 2.0, we anticipate fewer staff needed in this business unit. We also note that the WEM GB today has a market expert under contract, and so the incremental cost of this business unit in Step 2 is for staff or costs beyond the current market expert cost in WEIM and/or EDAM.

²⁵ This business unit is probably not needed in Option 2.0, given the RO's lack of direct liability to FERC.

²⁶ This business unit could probably be smaller in Option 2.0.

²⁷ In any option for Step 2, we anticipate that the RO would want its own independent capacity to communicate its positions and interface with external audiences.

²⁸ At least in Option 2.0, this function can probably be filled by the RO's executive director, corporate secretary, or legal counsel.



- External audit staff or consultants to help audit the CAISO’s compliance with its market operator role²⁹
- Staff or one-off consultants to vet elements of vendor management (e.g., to vet a hypothetical CAISO claim about the impracticality of an IT component of market design)

We suggest a minimally functional size, so the RO probably does not need the following current CAISO business units or functions *in-house*. Some of these functions may be needed by the RO but could be secured under contract from the CAISO or another party:

- An IT department
- Markets-related finance staff who manage market settlement distributions, allocations, and dispute resolution processes
- An internal audit team (e.g., focused on GAAP compliance)
- A capital budget finance team
- Discrete vendor management staff (e.g., vehicle fleet rentals; cleaning services)
- A customer relationship team (e.g., market participant account executives who track market operational questions and facilitate resolving disputes)
- Operating engineers
- Market operators
- Reliability compliance staff
- Operational readiness staff
- Short-term forecasting staff

The Formation Committee should work with the CAISO to determine whether the RO would need its own dedicated staff including a significant stakeholder process-related team (mentioned above), a customer relationship team (market participant account executives who track market operational questions and facilitate resolving disputes), and a markets policy staff.

Stakeholder Feedback on Illustrative Cost Estimate

The majority of commenters found the preliminary cost estimates to be reasonable. There was general understanding that they are high level and will need to be refined. Some noted that not all costs are incremental and there may be some decrease in CAISO’s own administrative costs that are not currently accounted for. Commenters made suggestions to compare the size of the proposed legal department to the size of CAISO’s legal staff, and pros and cons of having this particular capability fully in-house versus partially outsourced. One commenter questioned if the FERC legal fees were on the low side and may need to be increased in the eventual RO budget. Another commenter encouraged the Launch Committee and future Formation Committee to examine whether it would be appropriate to develop a tariffed cost allocation mechanism(s) that would allow any costs and benefits attributable to WEM policies to be allocated equitably across all market participants under Option 2.

Minority voices found the preliminary cost estimates to be too uncertain, high level, and that too much is in flux to be able to determine their reasonableness. Some noted the need for more

²⁹ This function may not be needed in Option 2.0.



specificity around Stakeholder Process costs and the staffing in this area for both the RO and CAISO, suggesting the budget estimates should also include costs for customer account management and other functions supporting market policy development and administration. Commenters noted that more work will be needed to identify potential duplication of roles, and costs for the Office of Public Participation (OPP) and the Consumer Advocate Office (CAO) were not included. One commenter suggested supplementing these illustrative cost estimates with a production cost model with inputs and assumptions informed by stakeholders, that utilizes the same assumptions as the budget estimate to provide useful information about all-in net benefits to ratepayers.

Summary of Illustrative Cost Estimate

The illustrative estimates below indicate an all-in annual cost for Option 2.0 of about \$14 million and about \$24 million for a more robust structure with the components and responsibilities described herein, with an all-in cost difference of about \$10 million annually. The RO will have limited staffing at the outset with an estimated initial annual cost of \$1.25 to \$1.5 million, which could increase to \$10 to \$14 million over time as the organization develops.

Apart from seven paid board members in both scenarios, the Option 2.0 illustrative estimate encompasses 23 full-time employees, increasing to 42 full-time employees in a potential next phase of evolution of the RO.

Labor costs in Option 2.0 are about \$11 million, and non-labor costs are about \$3 million. Labor costs in a future phase of the RO are estimated at about \$18 million, and non-labor costs are estimated at about \$6 million.

We have assumed an escalator of 1.5 for fully loaded personnel costs, including benefits and bonus compensation.

We have indicated a number of functions that could be outsourced, as well as their potential cost. We have also estimated a facility cost based on research into commercial leasing costs in the greater Sacramento area: approximately \$400,000 per year. (This assumes a \$2.50/square-foot/month cost, plus \$0.25/square-foot/month for utilities, for an office space of 10,000 square feet, plus a 21% contingency margin.)

The two main cost differences are the legal department and the cost of corporate insurance. The other major cost centers of a more robust RO structure are the vendor management business unit and corporate affairs.

The size of the legal department in Option 2.0 is proposed to be 14 people. We note that this rough attempt at calculating a staff size may be revised to substitute more subject matter experts who are not attorneys. We have attempted to reflect in Option 2.0 that the role of the RO in exercising its sole Section 205 rights may require intensive legal advice and assistance, even in the absence of the institutional liability and vendor management role of the RO.



Option 2									
	Organization FTE Cost					Outsourcing Costs	Total Costs	Total by Function	Vs 2.5
	#	Vs 2.5	Salary	Fully Loaded Cost (1.5x)	Total Costs				
1. RO Staffing Cost	1.5								
Board								\$1,275,000	\$ (225,000)
Board Members	7	0	\$100,000	\$150,000	\$1,050,000		\$1,050,000		
Board Support Staff	1	-1	\$150,000	\$225,000	\$225,000		\$225,000		
Executive Staff								\$1,575,000	\$ -
Executive Director	1	0	\$600,000	\$900,000	\$900,000		\$900,000		
Executive Assistant	1	0	\$150,000	\$225,000	\$225,000		\$225,000		
Corporate Secretary	1	0	\$300,000	\$450,000	\$450,000		\$450,000		
Legal								\$5,085,000	\$ (2,475,000)
General Counsel	1	0	\$400,000	\$600,000	\$600,000		\$600,000		
Assistant Counsel	0	-1	\$350,000	\$525,000	\$0		\$0		
Lawyer	8	-4	\$300,000	\$450,000	\$3,600,000		\$3,600,000		
Legal Operations Mgr	1	0	\$150,000	\$225,000	\$225,000		\$225,000		
Paralegal	2	0	\$120,000	\$180,000	\$360,000		\$360,000		
Legal Assistant	2	-1	\$100,000	\$150,000	\$300,000		\$300,000		
FERC Compliance	0	-1	\$250,000	\$375,000	\$0		\$0	\$0	\$ (375,000)
Regulatory Affairs								\$0	\$ (1,125,000)
Federal RA Director	0	-1	\$250,000	\$375,000	\$0		\$0		
State RA Manager	0	-2	\$250,000	\$375,000	\$0		\$0		
Market Vendor Mgmt								\$900,000	\$ (1,500,000)
Market Experts	2	0	\$300,000	\$450,000	\$900,000		\$900,000		
External Audit (of CAISO)	0	-2	\$250,000	\$375,000	\$0		\$0		
Other RO-CAISO Contract Oversight Staff	0	-2	\$250,000	\$375,000	\$0		\$0		
Corporate Affairs								\$1,775,000	\$ (1,425,000)
Finance									
Finance	1	0	\$300,000	\$450,000	\$450,000		\$450,000		
Accounting / Payroll	1	0	\$200,000	\$300,000	\$300,000		\$300,000		
Communications					\$0				
Communications Director	0	-1	\$250,000	\$375,000	\$0		\$0		
Social (outsourced)						\$250,000	\$250,000		
Graphics						\$250,000	\$250,000		
HR									
HR Director	0	-1	\$250,000	\$375,000	\$0		\$0		
Recruiter	0	-1	\$200,000	\$300,000	\$0		\$0		
HR Consultant (initial set up of docs/tools/processes)						\$300,000	\$300,000		
IT									
IT Director	0	-1	\$250,000	\$375,000	\$0		\$0		
Desk Top Support / support	1	0	\$150,000	\$225,000	\$225,000		\$225,000		
Total Cost Inhouse RO (incl. 7 Board Members)	30		\$ 5,870,000	\$8,805,000	\$9,810,000	\$800,000	\$10,610,000	\$10,610,000	\$ (7,125,000)
2. RO Non-Labor Costs									
Infrastructure (Office Lease)								\$400,000	\$ -
Unused 1						\$400,000	\$400,000		
IT Equipment								\$1,005,000	\$ (161,500)
Staff Equipment (laptop, phones)	30	-19	\$ 5,000		\$150,000		\$150,000		
Office Equipment (desks, chairs, other)	30	-19	\$ 2,500		\$75,000		\$75,000		
Software Licenses							\$0		
Desktop	30	-19	\$ 1,000		\$30,000		\$30,000		
Legal record management	1	0	\$ 500,000		\$500,000		\$500,000		
HR	1	0	\$ 250,000		\$250,000		\$250,000		
Insurance			\$ 100,000				\$100,000	\$100,000	\$ (1,900,000)
Travel			1,470,000				\$1,470,000	\$1,470,000	\$ -
Entertainment (Meetings, Conferences)			\$ -				\$0	\$0	\$ (800,000)
Conferences / Prof. Development			\$ 150,000				\$150,000	\$150,000	\$ (150,000)
Total RO Non-Labor Costs			\$ 2,478,500	\$0	\$1,005,000	\$400,000	\$3,125,000	\$3,125,000	\$ (3,011,500)



Another way to think about these costs is how they might translate in relationship to the GMC. These costs would only be able to be presented as “incremental” to the CAISO GMC as it is not certain how CAISO would choose to allocate these costs at this point. Nevertheless, the incremental cost in a GMC calculation of the two options would be predicated on the footprint and the load involved in that footprint. If one assumes a “conservative” notional footprint involving the utilities who have either currently committed to join EDAM or indicated a “leaning” to EDAM, the incremental cost in a GMC representation of Option 2.0 is estimated to be approximately \$0.0281/MWh. The incremental cost of a more robust RO in this “conservative” footprint is estimated as \$0.0498/MWh.

If one assumes a more robust footprint that involves most of the utilities in WECC west of the Rockies, the incremental cost of Option 2.0 is estimated at \$0.0182/MWh and the incremental cost of a more robust RO is estimated at \$0.0322/MWh.³⁰

RETAINING AN INTEGRATED TARIFF

1. History and Evolution of Tariff Scope of Authority

When assessing how the scope of authority may be divided between the RO and the CAISO, historical background is helpful to understand the evolution of similar governance rules over the WEIM and EDAM. The Pathways Initiatives builds on the progress made over many years while working to fashion a proposal that will be functional for a new RO. This is not an exhaustive review, but one focused on tariff scope-related issues.

a. The Transitional Committee and Creation of the WEIM Governing Body

The first set of fundamental governance changes were set in motion by recommendation of the Transitional Committee, which was formed by the CAISO Board of Governors at the outset of the WEIM. The Transitional Committee recommended formation of a separate and independently selected EIM Governing Body. Further, the Transitional Committee provided two roles for the WEIM Governing Body, differentiated by the nature of the market issue: (1) a decisional role, for WEIM-specific issues; and (2) a “key advisory” role on issues that affect the market. Specifically, the Transitional Committee recommended as follows:

The WEIM Governing Body would have a role in any changes to rules that affect the WEIM – either revisions to existing rules or adoption of new rules – including both: (1) market rules that are WEIM-specific insofar as they apply uniquely to WEIM Balancing Authority Areas, or differently to WEIM Balancing Authority Areas than to other areas within the ISO’s real-time market, and (2) tariff rules that apply to participation in the ISO’s entire real-time market, including rules that specifically govern the real-time market or rules that generally apply to any participation in ISO markets. The role of the WEIM Governing Body would differ depending on which of these two categories an initiative falls in. For initiatives in the first category, the WEIM

³⁰ This calculation is based on WECC load data for 2030, using a 2x load factor to reflect anticipated costs applying to both load and generation.



Governing Body would serve as the primary decision-maker. For initiatives in the second category, it would play a key advisory role. For initiatives that include elements of both, the role of the WEIM Governing Body would depend on the primary reason for the initiative – was it driven primarily by WEIM or by other factors?³¹

These categories of decision-making were often referred to as the “but for” and “primary driver” test. If the market rule would not exist “but for” the WEIM, the issues was under the primary authority of the WEIM Governing Body. Also, if the underlying rationale for moving a market initiative forward was the proper functioning of the WEIM, then too the market rule would be under the primary authority of the WEIM Governing Body. If approved by the Governing Body, the rule would go on the Board consent agenda and only affirmative negative action by the Board could prevent approval. The Transitional Committee went as far as to note that “pocket veto” of the Board were not permitted.³²

This structure worked well, and fostered trust in the workings of the WEIM and facilitated market expansion.

b. Establishment and Recommendations of the Governance Review Committee (GRC) and the “Applies to” Test

As the WEIM grew, and as EDAM was contemplated, a need was identified to pursue further governance reforms that reflected the growth of the market, and the future of the EDAM. The Governance Review Committee (GRC) was established to tackle these challenges. A primary task of the GRC was to address the scope of the Governing Body authority given the expansion of the market, the contemplation of EDAM, and the fundamental interplay between tariff provisions that sometimes confounds precise delineation of tariff sections as “WEIM” or “not WEIM.”

The GRC recommended the “joint authority” model. Specific to scope issues, the GRC recommended that the scope of authority be broadened by the “applies to” test, which moved from limited WEIM rules, to also include more applicable market rules. This test, which focuses on the entities to which rules specifically apply, also established a much more clear and definitive articulation of the specific rules subject to the Governing Body’s approval authority than the prior test, which relied in some contexts on a more subjective evaluation of the motive for the change. As stated by the GRC:

Joint authority extends to all proposals to change or establish any CAISO tariff rule(s) applicable to the WEIM Entity Balancing Authority Areas, WEIM Entities, or other market participants within the WEIM Entity Balancing Authority Areas, in their capacity as participants in WEIM. This scope excludes from joint authority, without limitation, any proposals to change or establish

³¹ *Final Proposal, Long Term Governance of the Energy Imbalance Market (August 9, 2015)* at 19-20. The proposal also included treatment of Category 3 and 4 “hybrid” issues that affected both markets, but these hybrid categories followed the same guiding principles.

³² *Id.*, fn 6.



tariff rule(s) applicable only to the CAISO Balancing Authority Area or to the CAISO-controlled grid. This definition would establish a clear and straightforward rule that is easier to interpret and apply than the previous definitions we have considered. If a rule applies to a WEIM Entity or to market participants within a WEIM Entity BA in their capacity as WEIM participants, then it is subject to joint authority. If a rule does not apply to such entities in that context, then the approval authority is held solely by the Board.³³

The Joint Authority outlined above for CAISO tariff rules(s) applicable to participants in WEIM, have subsequently been extended to include EDAM and are applicable to the EDAM Entity Balancing Authority Areas, EDAM Entities, or other market participants within the EDAM Entity Balancing Authority Areas, in their capacity as participants in EDAM as of 2023.

This recommendation, adopted and in place today, significantly broadened the scope of Governing Body authority to most of the tariff provision that set forth day-ahead and real-time market rules.

c. Pathways “Step 1” Proposals and Primary Authority

As a first recommendation, the Launch Committee proposed and the CAISO Board and WEM Governing Body have accepted, a return to a primary authority model, but with much broader scope than its initial “but for” or “primary driver” articulation. The details and mechanics were outlined in our proposal. Relevant here, the Step 1 recommendation maintained the broad “applies to” test to govern the scope of the newly fashioned primary authority governance model. This recommendation gives broad authority to the WEM Governing Body on a host of market issues. It is aptly described as combining the essentials of the earlier primary authority models with the broader scope and application of the joint authority model.

This history and evolution of the increasing scope of the WEM Governing Body authority is essential background upon which to consider application of new RO authorities to the current tariff provisions governing market operations and other matters.

d. Stakeholder Feedback on Tariff Approach

Many commenters supported maintaining a single integrated tariff and a stakeholder process to provide clarity and transparency through tariff changes. One commenter requested more information on which tariff provisions the Launch Committee believes would ultimately be in a separate tariff and what would remain in CAISO’s tariff. Another commenter noted that while stakeholder input and feedback is important, the role of the stakeholder process should conclude with a recommendation that would then move to the RO Board and the CAISO Board for approval, recognizing that the Boards are the ultimate decision makers. A comment suggested that the RO will have rights to audit CAISO’s requirement to follow the tariff. Prior to this audit they encouraged the RO to get stakeholder feedback to better understand areas where stakeholders would want to focus on having examined. Many suggested that tariff reorganization

³³ Western EIM Governance Review, Part 2 Draft Final Straw Proposal



work should be an early task for the RO or be kicked off by the Formation Committee if feasible. One commenter requested a firmer stance from the Launch Committee on moving to a single tariff and to use the new stakeholder process to conduct the reorganization effort.

Minority commenters voiced a desire to start with a single tariff to achieve the needed level of corporate responsibility. One noted concern that allowing joint authority in the instances recommended will result in confusion and excessive authority for the CAISO and felt the best option is for there to be no areas of shared authority in order to avoid subjective tests. Commenters questioned if the stakeholder process is adequately funded to achieve equitable results for non-CAISO participants. One commenter suggested that the RO should create a separate WEIM and EDAM tariff and re-evaluate each section from the perspective of what is best for the entire market footprint. Another commenter felt that the RO should determine if tariff reorganization is necessary and shouldn't be obligated to do so.

e. Tariff Authorities and the RO

As discussed above, the Launch Committee proposes to retain a single tariff administered by the CAISO under Option 2.0. Provisions in the tariff will fall within (1) the RO sole Section 205 authority, (2) the CAISO sole Section 205 authority, and (3) shared authority between the RO and CAISO.

The creation and operation of the RO generates new challenges. Whether it was the original articulation of primary authority under the “but for” or “primary driver” test, the joint authority model, or the Step 1 “primary authority” construct, the decisions are made under the same organization. Obviously, under the RO, a separate organization will be exercising autonomous authority of energy market rules and, in the future, potentially other services. Nevertheless, the tariff remains integrated, and the functions of each organization may overlap. We therefore propose the following delineations of tariff authorities:

- ✓ *RO Sole Authority*: Generally speaking, if a tariff provision governs the market operation, obligation of the market participant, or the market operator, in its capacity as RO market participants, the section will be elevated from primary authority under the Step 1 model to RO *sole* authority. The elevation of market functions to sole authority is a central feature of the Step 2 progression toward RO independence.
- ✓ *CAISO Sole Authority*: If a tariff provision governs an issue that applies to the CAISO BAA or the CAISO-controlled grid, the section will remain within CAISO *sole* authority. This is not a change from the current governance structure and our recommendations in Step 1.
- ✓ *Shared Authority*: If a tariff provision establishes a generally-applicable obligation for transacting business with the CAISO or the RO and is a matter of corporate or financial consequence to the RO or CAISO, the section will be treated as shared authority, similar to the joint authority existing today, but accounting for the new RO structure.



The ability to discretely articulate the application for decision-making is crucial for tariff transparency and comprehension, as well as stakeholder engagement and understanding.

f. Examples of Decisional Classification

The Launch Committee explored the existing CAISO tariff to assess how the tariff might be classified or organized to delineate areas of RO sole, CAISO sole, and shared authority more clearly. This was discussed at length in the public Tariff workshop held August 5, 2024.³⁴ We expect the RO/CAISO stakeholder process to refine any recommendations, and indeed as we note, consider tariff classification or reorganization to provide further clarity.

i RO Sole Authority

Presently there are two sections of the tariff that fit in the sole authority of the RO without modification (sections 29 and 33). Those two sections address the operation of the WEIM and EDAM. Since these sections focus solely on the operation of markets for WEIM or EDAM market participants they would fall within RO sole authority.

ii CAISO Sole Authority

There are multiple sections of the tariff that govern the operation of CAISO-only activities.³⁵ For example, procurement of reliability must-run resources to provide reliability to serve CAISO BAA load, resource adequacy within the CAISO, CAISO congestion revenue rights, interconnection to the CAISO controlled grid, and the CAISO's transmission planning process will not directly affect RO entities in their role as RO entities. These activities are particular to the operation and planning of the CAISO as it relates to the CAISO BAA. Since the activities are CAISO specific, they would fall under CAISO sole authority. On a comparable basis, the RO does not have an oversight role in the resource procurement, interconnection, and transmission provision of the non-CAISO Balancing Authority Areas participating in the WEIM and EDAM.

iii Shared Authority

Several sections of the tariff that govern general relationships and responsibilities in the tariff provide examples of areas of shared authority. These include the following: items like

³⁴ <https://www.westernenergyboard.org/wwgpi>.

³⁵ These include sections, 2 Access to the California ISO Controlled Grid, 3 Local Furnishing Other Tax Exempt Bond Facility Financing, 5 Black Start and System Restoration, 8 Ancillary Services, 9 Outages, 16 – 19 (Existing Contracts; Transmission Ownership Rights; Reliability Coordinator (note section 18 is not used)), 23 – 26 (Categories of Transmission Capacity; Comprehensive Transmission Planning Process; Interconnection of Generating Units and Facilities; and Transmission Rates and Charges), 36 Congestion Revenue Rights, and 40 – 43a (Resource Adequacy Demonstration for Scheduling Coordinators in the CAISO Balancing Authority Area; Procurement of Reliability Must-Run Resources; Adequacy of Facilities to Meet Applicable Reliability Criteria; and Capacity Procurement Mechanism)



definitions, credit worthiness, and confidentiality among others.³⁶ Since these sections govern general participation in any of the markets, or even non-market activities, they are not easily separable and would remain under shared authority.

iv Organization of Tariff Sections to Provide Greater Clarity

The proposed authority delineations and decisional classification elements in the proposal are expected to reduce the challenge of presenting a set of clear, transparent elements especially with a new separate sole authority entity, the RO. Using the proposed elements above and continuing to use the decisional classification test will enable forward progress.

Preliminary tariff analysis reveals several sections that could benefit from additional transparency and stakeholder comprehension to clearly define authorities. These sections would benefit most from consideration of tariff classification or reorganization to provide further clarity.³⁷ For example, Section 31 addresses the day-ahead market. Many of the elements in this tariff section apply to both the EDAM and the CAISO Day Ahead Market. Some of the language is specific to activities that only occur in the CAISO market and do not occur in the EDAM including elements such as ancillary services, reliability must-run dispatch, and residual unit commitment. In changes or modification to tariff sections, as Bonneville Power Administration (BPA) pointed out in their comments, care will need to be taken to ensure that elements which impact the system marginal cost of energy or congestion costs between areas have adequate oversight from both the CAISO and RO.

The Launch Committee recommends the Formation Committee work with the CAISO to explore ways to provide more clarity in the tariff that can be proposed to the RO Board once it is seated. During the feasibility analysis the Launch Committee suggests an assessment of ways to improve classification and organization of the tariff to gain further clarity within the integrated tariff along with potential tariff separation

BALANCING AUTHORITY SEPARATION

In this final subsection, we address the issue of the CAISO's balancing authority responsibility.

We have endeavored in this proposal to create a bundle of elements of institutional independence for the RO, energy market participants, and stakeholders in general. The Launch Committee has not placed its faith in any single element to ensure independent governance, such as a bare vesting of sole Section 205 rights in the RO Board. In our view, a number of complementary

³⁶ These include sections, 1 Definitions, 4 Roles and Responsibilities, 12 – 15 (Creditworthiness; Dispute Resolution; Uncontrollable Force, Indemnity, Liabilities, and Penalties; and Regulatory Filings)

³⁷ These include sections 6 Communications, 7 System Operations Under Normal and Emergency Conditions, 10 Metering, 11 California ISO Settlements and Billing, 22 Miscellaneous, 27 California ISO Markets and Processes, 28 Inter-Scheduling Coordinator Trades, 30 Bid and Self-Schedule Submissions in California ISO Markets, 31 Day-Ahead Market, 34 Real-Time Market, 35 Market Validation and Price Correction, 37 – 39 (Rules of Conduct; Market Monitoring; and Market Power Mitigation), and 44 Flexible Ramping Product.



elements of independence are needed to reinforce one another and deliver on the objectives of the Pathways Initiative. No single element is sufficient.

Recommendation: The CAISO should form a taskforce or standing advisory committee to address how the CAISO as a BA should present BA-specific concerns alongside other BAs in proceedings overseen by the RO. The objectives of this advisory body should be to increase the transparency of CAISO BA-specific concerns (i.e., when the CAISO is “wearing” its BA “hat” as opposed to opining on the basis of its role as market operator) and foster more parity in how BA concerns of all EDAM Entities, WEIM Entities, and the CAISO are brought forward and considered.

We note that this recommendation does not affect or dilute the CAISO or any BA’s responsibility and authority to carry out its functions. Rather, it directs the RO to create a better forum where all BA responsibilities and concerns can be identified more clearly and addressed. It is also important to note that the CAISO is not market participant because it has no assets in the market, does not engage in market transactions, and does not have any financial interest in market outcomes.

Stakeholder feedback included a suggestion the CAISO take steps to increase the degree of separation between its balancing authority and market operator functions.

We agree and note the commitment CAISO made to doing so in its comments on the draft proposal, which state the “CAISO is committed to exploring greater internal separation between our balancing authority responsibilities and our role in providing a platform for a range of regional services to meet the needs of Western stakeholders.”

We understand the CAISO is already evaluating steps it could take in this area as part of its ongoing EDAM implementation efforts and encourage this ongoing effort. Without attempting to prejudge or limit what such measures may entail, we recommend the CAISO continue to explore potential enhancements in areas such as: the degree of physical separation between the operating personnel performing balancing authority and market operations functions; refining or further defining the respective roles and responsibilities of such operating personnel; and evaluating potential ways to differentiate between CAISO staff that are involved in the design of regional market rules and those that are involved in developing or designing policy for the CAISO’s balancing authority function.



CHAPTER 2: FORMATION OF THE REGIONAL ORGANIZATION

SUMMARY OF RECOMMENDATIONS

Setting up the RO involves three primary decisions: the form of incorporation, the state of incorporation, and the location of its principal place of business. The Launch Committee recommends incorporating the RO as a 501(c)(3) nonprofit corporation. Nearly all regional organizations are structured as nonprofits, either under 501(c)(3) or 501(c)(4), and using a 501(c)(3) will preserve the option for tax-exempt financing if needed in the future. The Launch Committee also recommends incorporating the RO in Delaware, a neutral choice for the West that offers flexibility, ease of incorporation, and the most robust legal framework for corporations, along with an expertly trained judiciary. Additionally, several existing regional organizations are incorporated in Delaware. Finally, the Launch Committee anticipates that the RO will choose its principal place of business as Folsom, CA, due to the expected close interactions with CAISO during Step 2.0 and any structure beyond Step 2 that does not require full separation. However, RO Board meetings and SRC meetings should rotate among the market-participating states.

STAKEHOLDER FEEDBACK

Stakeholders provided comments pertaining to principal place of business supporting the recommendation that meetings be hosted in non-California locations regularly to provide inclusivity and convenience for non-California market participants and all stakeholders. A further suggestion was made that a review of principal place of business should be made for subsequent increases in governance past 2.0 to determine if a more neutral principal place of business should be selected to fully reflect the independence of the RO. Another commenter suggested using the following factors to determine principal place of business: ability to coordinate with CAISO, cost of doing business, ease of access for regional stakeholders, and the perception of single state bias that might arise. One commenter requested that if the RO determines Folsom as the best fit for principal place of business, RO Board members and support staff (as developed over time) not be required to relocate there.

In addition to principal place of business feedback, there was a request for greater clarification of the roles and responsibilities of the CAISO Board of Governors, transition plan, and legislative strategy, with clear documentation of what, if any, legislative change is required for each step. Additional discussion of stakeholder feedback will be addressed under the relevant sections of Chapter 2.

PROPOSED FORM OF CORPORATE ORGANIZATION

The Launch Committee has examined various types of exempt organizations and proposes that the Regional Organization (RO) be formed as a not-for-profit corporation and that it seek tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the Code), as a public charity under Section 509 of the Code. A public charity will provide the organization and various third parties with tax benefits along with assurances to such persons and



those working within the RO that its purposes will serve the public benefit. A 501(c)(3) will also preserve the potential availability of tax-exempt financing for long term debt.

As an alternative, the Launch Committee also evaluated a 501(c)(4) organization, as it can also provide similar assurances by the fulfilling of “social good” types of purposes, as discussed further below, and both types of nonprofit organizations were closely reviewed as being potentially workable as an RO. This section examines potential forms of organization in detail, exploring the potential nonprofit purposes that could be used by the RO to gain tax-exempt status and other aspects of nonprofit operation, including scope of activities, tax-exempt status, and lobbying and political activities.

1. Purpose of Nonprofit Organization

The formation of the corporation requires consideration of whether the organization will be a for-profit or nonprofit corporation. Tax-exempt status requires organizations to choose a nonprofit form of organization and to meet various organizational requirements. For this reason, most RTOs and ISOs are organized as tax-exempt nonprofit corporations. A nonprofit corporation files a certificate or articles of incorporation with a state governmental entity (usually the Secretary of State) and adopts bylaws as a corporate entity.

The formation of a nonprofit corporation, by itself, does not result in the corporation being exempt from federal income taxation. With certain exceptions, in order to have exempt status, an organization must file an application with the Internal Revenue Service. There are various types of organizations that are exempt from taxation. Among these types, most regional organizations have used three forms³⁸ of tax-exempt status set forth in the Code:

	Description	RTOs/ISOs
26 U.S. Code §501(c)(3)	Public Benefit	CAISO, ISO-NE, NYISO
26 U.S. Code §501(c)(4)	Social welfare not-for-profit	MISO, ERCOT
26 U.S. Code §501(c)(6)	Business league	SPP

a. Section 501(c)(3): Organized and operated exclusively for one or more public benefit purposes.

A Section 501(c)(3) organization must be organized and operated exclusively for exempt purposes as set forth in Section 501(c)(3) of the Code: religious, *charitable*, scientific, testing for public safety, literary, or *educational* purposes, or to foster national or international amateur sports competition ..., or for the prevention of cruelty to children or animals.

³⁸ PJM Interconnection LLC is organized as a for profit limited liability company rather than as a nonprofit corporation. See, e.g., PJM 2023 Financial Report [PJM_2023_Financial-Report-6.DT4ckEUv.pdf](#), PJM Settlement, Inc., however, is a Pennsylvania nonprofit corporation. [About Us \(pjmsettlement.com\)](#). Likewise, the Organization of PJM States Inc. is a 501(c)(4) nonprofit corporation. [Organization Of PJM States Inc - Full Filing- Nonprofit Explorer - ProPublica](#)



A Section 501(c)(3) organization may conduct revenue-generating activities, even if such activities are a substantial part of its activities. However, if such activities are a trade or business that is regularly carried on and that is not substantially related to an organization’s exempt purposes, such activities could be treated as an unrelated trade or business and be subject to the tax on unrelated business taxable income. If such unrelated activities become substantial, they could adversely impact the exempt status of an organization.³⁹

The Code further distinguishes and classifies Section 501(c)(3) organizations by the nature and extent of their public support, their activities, and their relationship with public charities. These classification requirements and definitions are set forth in Section 509 of the Code: These different types of Section 501(c)(3) organizations are treated differently under the Code, but all are exempt from taxation and contributions to them are deductible as charitable contributions.

The CAISO, NYISO, and ISO NE have tax-exempt status under 501(c)(3). Each of the three, however, relies on a different classification under Section 509.

The CAISO is incorporated as a public benefit corporation under California law, as required by California Public Utilities Code section 345.5. This statute directs the CAISO to operate as a “nonprofit, public benefit corporation ... consistent with the interests of the people of the state.” CAISO is classified as a Type I Supporting Organization.⁴⁰ A Supporting Organization generally “carries out its exempt purposes by supporting other exempt organizations....”⁴¹ In this case, the CAISO supports a governmental entity, the State of California.⁴² In addition, a Supporting Organization must have a governance relationship with a public charity, and in this case, CAISO is treated as a Type I Supporting Organization due to the power of the State to appoint a majority of the directors of the organization under Public Utilities Code §337. Given the nature of this type of classification, this classification likely would not apply to the RO.

The two other Section 501(c)(3) regional organizations are treated as public charities under Section 509(a)(2) of the Code. These are public charities that derive a sufficient level of public support by virtue of their activities.

b. Section 501(c)(4): Organized and operated to concentrate on social welfare.

A Section 501(c)(4) organization must operate exclusively for the promotion of social welfare. This requirement is met if it is primarily engaged in promoting in some way the common good

³⁹ For example, the U.S. Supreme Court has held that “the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption, regardless of the number or importance of truly educational purposes.” *Better Business Bureau v. United States*, 326 U.S. 279 (1945).

⁴⁰ The IRS classifies the CAISO deductibility code as SOUNK, “a supporting organization, unspecified type.” [Tax Exempt Organization Search Details | Internal Revenue Service \(irs.gov\)](#); see also CAISO 2021 Form 990, Schedule A [PDF TIFF Wrapper \(irs.gov\)](#). This classification sets a limit on deductibility of contributions of 50% or, for cash contributions, 60%.

⁴¹ Internal Revenue Service, [Section 509a3 Supporting Organizations | Internal Revenue Service \(irs.gov\)](#)

⁴² A governmental unit is classified as an inherently public charity under Internal Revenue Code Section 509(a)(1). *Public Charity or Private Foundation Status Issues*, p. B-3 [Public Charity or Private Foundation Status \(irs.gov\)](#)



and general welfare of the people of the community. A Section 501(c)(4) organization must be operated primarily for the purpose of bringing about civic betterments and social improvements.

The IRS has noted that providing an exact definition of what types of organizations can be exempt under 501(c)(4) remains flexible: “Although the Service has been making an effort to refine and clarify this area, section 501(c)(4) remains in some degree a catch-all for presumptively beneficial nonprofit organizations that resist classification under the other exempting provisions of the [501(c) provisions of the] Code.”

A Section 501(c)(4) organization may engage in unlimited lobbying activities provided that such activities are consistent with its exempt purposes. In addition, Section 501(c)(4) organizations may engage in political activities and support candidates for office, if these are not its primary activities. Contributions to a Section 501(c)(4) organization are not deductible as charitable contributions.

c. Section 501(c)(6): Organized and operated to focus on business improvements in a particular line of business.

A Section 501(c)(6) business league operates as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce, board of trade, or trade organization. Thus, its activities should be directed towards the improvement of business conditions of one or more lines of business or geographic areas as distinguished from the performance of particular services for individual people.

The Southwest Power Pool (SPP) was incorporated in 1994 and operates as a Section 501(c)(6) organization. In all likelihood, SPP chose this form of organization because, at the time of incorporation, it operated as a power pool for specific organizations.⁴³ Its bylaws continue to provide for approval of “Members” of the organization,⁴⁴ and “Membership in SPP is voluntary and is open to any electric utility, Federal Power Marketing Agency, transmission service provider, any entity engaged in the business of producing, selling and/or purchasing electric energy for resale, and any entity willing to meet the membership requirements....” Although SPP possibly could apply for recognition as a Section 501(c)(3) or Section 501(c)(4) organization, its membership structure and purposes place it comfortably within Section 501(c)(6), signaling a purpose of advancing the interests of a specific group of entities rather than for a charitable or social welfare purpose. The Western Power Pool is similarly organized as a Section 501(c)(6) organization “to help coordinate electric grid operations for the western United States and Canada”⁴⁵ and relies on a membership structure.

⁴³ [SPP Wavelength \(arcgis.com\)](https://www.arcgis.com)

⁴⁴ Section 2, [WPP Restated Bylaws May 30 2023 approved.pdf \(westernpowerpool.org\)](https://www.westernpowerpool.org)

⁴⁵ [WPP Restated Bylaws May 30 2023 approved.pdf \(westernpowerpool.org\)](https://www.westernpowerpool.org)



2. Other Key Considerations in Selecting a Nonprofit Form of Organization⁴⁶

a. Activities of the Organization

Section 501(c)(3) expressly prohibits an entity from engaging in more than an insubstantial amount of activities not in furtherance of its exempt purposes. Indeed, the U.S. Supreme Court has held that “the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption, regardless of the number or importance of truly educational purposes.”⁴⁷ On the other hand, a Section 501(c)(4) or (c)(6) organization may engage in more than an insubstantial amount of activities not in furtherance of its exempt purpose so long as it is primarily engaged in activities that further its exempt purposes. The IRS has addressed this issue for Section 501(c)(6) organizations in a number of Revenue Rulings:

- IRS Rev. Rul. 71-504 (city medical association), available at: <https://www.irs.gov/pub/irs-tege/rr71-504.pdf> (501(c)(6) organization)
- IRS Rev. Rul. 71-505 (city bar association), available at: <https://www.irs.gov/pub/irs-tege/rr71-505.pdf> (501(c)(6) organization)

b. Federal Tax Consequences

Tax-exempt status benefits organizations by lowering its costs through the reduction in the organization’s tax obligations and by providing an organization with the ability to utilize tax-exempt financing (Section 501(c)(3) only). All three types of nonprofit organizations described above are exempt from federal income taxes on the income raised or earned related to their exempt purposes.

One tax-related difference among the three types of exempt organizations lies with the tax treatment of contributions. Contributions to Section 501(c)(3) organizations are tax-deductible as charitable contributions. Contributions to Section 501(c)(4) and (c)(6) organizations are not deductible as charitable contributions.⁴⁸ Certain contributions or dues payments to (c)(4) and (c)(6) organizations may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer’s business, for example, payments of dues to the organization. Also, if an exempt organization charges for its services, payments for those services may be deductible as trade or business expenses.

Another tax-related difference among nonprofit organizations is their ability to engage in lobbying and political activities. As noted above, Section 501(c)(4) organizations may engage in unlimited lobbying activities provided that such activities are consistent with its exempt purposes. In addition, Section 501(c)(4) organizations may engage in political activities and support candidates for public office provided that these are not its primary activities. Contributions to a Section 501(c)(4) organization are not deductible as charitable contributions.

⁴⁶ IRS Publication 557 (Rev. January 2024) provides guidance on nonprofit organizations. [Publication 557 \(Rev. January 2024\)](https://www.irs.gov/publications/p557) ([irs.gov](https://www.irs.gov))

⁴⁷ *Better Business Bureau v. United States*, 326 U.S. 279 (1945).

⁴⁸ There are limited exceptions under (c)(4) for certain contributions to volunteer fire companies and war veterans organizations.



c. Lobbying and Policy Advocacy

The ability of an organization to engage in lobbying activities and the level of such activities could drive a choice of exempt status for the RO. Entities organized under Section 501(c)(3) face substantial restrictions in this area, unlike Section 501(c)(4) and (c)(6) entities.

A Section 501(c)(3) organization may not engage a “substantial part” of its activities” in the “carrying on propaganda, other otherwise attempting, to influence legislation....”⁴⁹ An entity that “conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax.”⁵⁰ The “substantial part” test is a rather subjective test, however, a Section 501(c)(3) organization may make a Section 501(h) election to be subject to a more objective, numeric limit on lobbying expenditures. This permitted lobbying amount is based on a percentage of exempt purpose expenditures subject to a total aggregate limit of \$1,000,000.⁵¹ The Code also limits “grass roots” expenditures to 25% of total permitted lobbying expenditures.⁵² Lobbying expenses exceeding the permitted amounts are subject to tax, and if the amounts exceed certain levels, such excess expenditures could result in a loss of charitable status.⁵³

In contrast, the statute places no such restriction on Section 501(c)(4) and (c)(6) organizations, which may engage in unlimited lobbying activities related to their exempt purpose. There are, however, deductibility restrictions on those dues paid by members of an organization if any portion of the dues is used for lobbying or political activities.

An organization is “attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.”⁵⁴ As noted above, if an organization has made the Section 501(h) election, it is subject to specific limits on direct lobbying and grass roots lobbying and there are definitions in the Code for both terms. The lobbying limitation does not, however, prevent involvement in public policy or issue advocacy. As the IRS explains: “organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.”⁵⁵ Another benefit to making the Section 501(h) election is that there are additional exceptions available to organizations that have made the election, and those exceptions are delineated and defined in the Code.

d. Tax-Exempt Financing

⁴⁹ 26 U.S. Code §501(c)(3).

⁵⁰ [Measuring Lobbying: Substantial Part Test | Internal Revenue Service \(irs.gov\)](#)

⁵¹ 26 U.S. Code §501(c)(3)(h); 26 U.S. Code §4911(c)(2).

⁵² 26 U.S. Code §501(c)(3)(h); 26 U.S. Code §4911(c)(4).

⁵³ [Measuring Lobbying Activity: Expenditure Test | Internal Revenue Service \(irs.gov\)](#)

⁵⁴ [Lobbying | Internal Revenue Service \(irs.gov\)](#)

⁵⁵ [Lobbying | Internal Revenue Service \(irs.gov\)](#)



A Section 501(c)(3) organization may qualify for tax-exempt financing⁵⁶ using “qualifying private activity bonds” under IRS Code section 103(a),⁵⁷ which can reduce the costs of financing capital investments, such as software systems. This type of financing, however, is subject to numerous limitations that could reduce their desirability.

The CAISO, as a Section 501(c)(3) organization, used tax-exempt bonds for its MRTU software investment and its Iron Point building. Tax-exempt financing subjects an organization to a variety of obligations and limitations, including for example, restrictions on private use (*i.e.*, use outside of its exempt purpose). The CAISO has historically used tax-exempt financing with the exception of its Series 2021 Bonds, which were issued in the taxable municipal market, because at the time, low interest rates could be achieved without the limitations of tax-exempt financing.

Tax-exempt financing is not available to Section 501(c)(4) or 501(c)(6) entities.

3. Discussion

The RO could be exempt from taxation under Sections 501(c)(3), (4) or (6) as demonstrated by the existence of all three forms among existing regional organizations, and all of these forms have the benefit of tax-exempt status. The Launch Committee proposes the use of Section 501(c)(3) for the reasons discussed below.

Recognition under Section 501(c)(6), which involves a membership structure, does not seem well suited to the RO; this form appears to be used only by entities that evolved from mutual benefit power pools, which were formed by member utilities. Moreover, a Section 501(c)(6) organization has no clear advantage over a Section 501(c)(4) organization in key areas such as tax exemption, lobbying, political activity, and financing.

Recognition under Section 501(c)(4) could be used depending on the organization’s priorities and focus. This form presents an advantage to the extent lobbying and political activity are important to the organization. It is not clear, however, particularly with a regional organization, that being positioned to engage in lobbying and political campaigns would be an advantage; it may be simpler to avoid the issue and foreclose pressure from any particular interest to engage in these activities. And, importantly, the Section 501(c)(4) advantage in this area would come at the expense of not being able to utilize tax exempt financing, which may be important in the start-up phase and as the organization grows. It is important to note that the restrictions on tax-exempt financing are often burdensome, so this benefit should be weighed against the benefits and flexibility of Section 501(c)(4) status. The relative benefits may change as interest rates fluctuate.

Recognition under Section 501(c)(3) provides a full complement of nonprofit benefits, including tax-exempt status, tax-exempt financing, and the ability to receive deductible charitable contributions.⁵⁸ The only material trade-off is the limitations on lobbying and political activities.

⁵⁶ [Publication 4079 \(Rev. 9-2019\) \(irs.gov\)](#)

⁵⁷ [Publication 4077 \(Rev. 9-2019\) \(irs.gov\)](#)

⁵⁸ CAISO reports that it has made use of the contribution exemption to handle the treatment of small residual account balances.



The CAISO and two other regional organizations have made this trade-off, and the CAISO reports no disadvantage stemming from its limits on lobbying and its inability to engage in political activities. Moreover, because the RO will span several states, taking these political factors entirely out of the equation for the RO may be beneficial.

Practical considerations include whether CAISO would anticipate greater potential disputes or costs if it were to transact closely with another type of nonprofit organization, although there are no significant legal differences relative to enforcement of contract or tort liabilities, since all of these organizations are organized as nonprofit corporations. In addition, the committee considered whether any particular type of organization could more effectively transition to operation of an RTO, and no significant difference was found related to scope of operations between operation or transacting to operate a day ahead market versus provision of RTO services.

STATE OF INCORPORATION: DELAWARE

The RO could incorporate in any Western state where members' service territories are located. Incorporating in a specific Western state, however, could present questions related to perceptions rather than valid legal concerns, but which may result in some increased costs. Stakeholders in other states may question the RO's independence if it appears to be tied to any particular member state's court system and rule of law, especially if the state of incorporation had little to no contact with the RO due to changing footprint within the market.

Incorporating the RO in Delaware would mitigate these problems. Delaware is known for a well-developed body of corporate law and knowledgeable judges. Although most nonprofits are formed under the laws of the state in which they hold a principal place of business, it is quite common for experienced nonprofit legal and accounting practitioners to recommend a sizable nonprofit be formed in Delaware, especially where the organization will be actively operating in more than one state. Delaware law has long been favored as being in support of best practices related to corporate governance, which extends to governance of nonprofit organizations. If a corporation is formed in Delaware, the Delaware law will apply unless alternative state law is clearly designated, with a basis for doing so.

Delaware does not have a separate nonprofit statute. Instead, nonprofits in Delaware are formed as nonstock corporations under the public benefit provisions of its corporate code.⁵⁹ In addition to the Delaware General Corporations Code, the Delaware Chancery Court has developed controlling common law principles relied upon by entities to attract strong leaders to serve as directors and officers.

The benefits of incorporating in Delaware include simplicity in corporate formation and operation. Corporate governance based on Delaware law is permissive, rather than prescriptive. No prior approval is needed from state agencies (such as is required in CA) to form a nonprofit in Delaware. Delaware does not require that nonprofits formed under Delaware law register with

⁵⁹ See 8 Del. C. § 361, <https://casetext.com/statute/delaware-code/title-8-corporations/chapter-1-general-corporation-law/subchapter-xv-public-benefit-corporations>.



and file annual financial reports with the attorney general (unless conducting activities in Delaware, when filing of the federal Form 990 is required.) Therefore, the initial start-up can be quite simple, which may provide a benefit to the RO, since the timing of our nomination and retention of directors may be fluid over the next 18 months. Delaware nonstock corporations that are exempt from federal income tax are automatically exempt from Delaware corporate income tax and are exempt from Delaware franchise tax. It is important to note, however, that the state designated as the principal place of business and locations where property is held by the RO may indeed apply their own sales and property tax laws, rules, and regulations, requiring separate applications for state tax exemption; these applications are often granted for activities consistent with the federal exemption. There are some built-in costs for out of state nonprofits that choose to form as Delaware entities, as is true in any state in which the corporation is registered to do business as a foreign corporation, such as the requirement to maintain a registered agent in Delaware and the likelihood of having to pay fees in both Delaware and all states in which it is actively doing business, or at least the state of domicile (*i.e.*, the principal place of business.)⁶⁰

The Formation Committee should further consider whether to investigate relevant differences among jurisdictions as they relate to the RO.

PRINCIPAL PLACE OF BUSINESS

The Launch Committee recommends that the RO Board determine its principal place of business, giving Folsom, California, strong consideration because of its interactions with the CAISO. A corporation's principal place of business is generally the location where its business operations are managed. Courts apply the "nerve center" approach to make this determination. The U.S. Supreme Court concluded that principal place of business

[R]efers to the place where a corporation's officers direct, control, and coordinate the corporation's activities. In practice it should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the "nerve center," and not simply an office where the corporation holds its board meetings.⁶¹

This approach suggests that a corporation must carefully consider where to establish its headquarters housing its direction, control, and coordination.

Establishing a principal place of business has three primary implications for a corporation. First, tax benefits vary by state. Because the RO will be a nonprofit corporation, and since some state taxes (sales and property taxes) will only be exempt upon application and approval by the domicile state and local authorities, state-by-state and local tax benefits or exemptions will differ. Second, if a Section 501(c)(3) organization is used, there are different registration and reporting requirements among the states with respect to charitable trusts and solicitations. California, for example, has the most expensive laws, and organizations that operate in

⁶⁰See Delaware Dept. of Revenue website re required tax filings, <https://revenue.delaware.gov/business-tax-forms/non-profit-corporations/>.

⁶¹ *Hertz Corp v. Friend*, 559 U.S. 77 (2010).



California are subject to the oversight by the California Attorney General, which actively tries to impose California law to organizations formed under other state's laws. Third, having a principal place of business in California, would likely subject the RO to the jurisdiction of the California courts and make it more likely that lawsuits would be filed in California.⁶²

The RO, in theory, could establish a headquarters anywhere in the Western states where it could house its board meetings, employees, and operate its stakeholder processes. In a model where the RO's business is closely integrated with CAISO operations—close collaboration between employees, decision-making for shared functions, integrated stakeholder processes, and operations in Folsom – justifying a headquarters in another state could prove challenging and result in incremental costs for RO operation. Such an ongoing relationship also could trigger qualification or registration in California and the oversight of its Attorney General.

Acknowledging these factors, the Launch Committee recommends that the RO Board establish its principal place of business, but that strong consideration should be made for domiciling the organization and most or all of its staff in or near Folsom, California. The close integration with CAISO operations and related cost efficiencies strongly suggests this result. To ameliorate concerns of bias with a principal place of business in Folsom, or indeed any state, these perceptions, while they cannot be eliminated, can be mitigated into the future using other measures. Whatever location the RO Board selects as its principal place of business, the following measures should be adopted: (1) a board nomination process and composition which draws nominees from areas throughout the market footprint and independent of any single state; (2) an advisory board of state regulators representing all affected states; (3) rotating monthly (or quarterly) public board meetings around the West; (4) facilitating the SRC and stakeholder processes, where feasible, in other states. In addition, the RO should consider the following factors in selecting its principal place of business: cost of doing business, ease of access for regional stakeholders, and the perception of single state bias that might arise. Some of these measures were suggested by stakeholders and this feedback has been incorporated into the proposal. A comment that was made but not incorporated was the suggestion that if Folsom is the location, RO Board members and support staff (as developed over time) not be required to relocate there. The RO Board will be responsible for making this determination as they hire staff for the organization. The Formation Committee should further consider whether to investigate relevant differences among jurisdictions as they relate to the RO.

⁶² In contrast, choice of law to govern a dispute may be specified by contract.



CHAPTER 3: REGIONAL ORGANIZATION GOVERNANCE

INTRODUCTION

In addition to creating a durable structure for the RO as detailed in the section above, its governance is an equally key foundational aspect of creating a robust, independent body centered around protections for consumers, ensuring affordability and reliability in market design and operations, as well as respecting state, local, and federal policies across the entire West.

The Proposal is the product of RO Governance Work Group discussions, Launch Committee input, feedback from stakeholders during the workshop, as well as written stakeholder comments. The Proposal also includes recommendations developed by the Public Interest Work Group to protect the public interest in the formation and governance of the RO. (See Chapter 4 for more information on the full suite of public interest tools recommended by the Launch Committee.) The culmination of this feedback informed discussions and adjustments to some elements of the initial proposal and resulted in the elements proposed below.

To implement the recommendations contained in the Proposal, the Launch Committee will create an RO Formation Committee whose purpose will be to coordinate with the CAISO in the detailed creation of the RO. The Formation Committee will consist of up to ten members from and selected by the Launch Committee and be assisted by a less than quorum of the WEM Governing Body and CAISO Board of Governors serving as liaisons. The Launch Committee members on the Formation Committee will be chosen to reflect a cross-section of the Launch Committee participants who also have an interest and ability to participate in the details of the RO formation. The Launch Committee shall have the discretion to make modifications to the composition and number of the Formation Committee. The Formation Committee will be a working/executive committee reporting to the Launch Committee. A charter for the Formation Committee has been developed by the Administrative Work Group of the Launch Committee which outlines what activities the Formation Committee will conduct, how it will report out and receive approval/concurrence from the Launch Committee, and how stakeholders will be engaged in the RO formation process. The Formation Committee Charter is included as Appendix C.

Additional details regarding the RO Board selection procedure are discussed in the Proposal and contained in Appendix D, but as a preamble to the RO Governance Proposal this description of the Formation Committee will hopefully help orient the reader about the structure and vision for implementing the following recommendations.

STAKEHOLDER FEEDBACK

One stakeholder recommended that “the Formation Committee should be an intentionally designed group with representation from across sectors and geographies, chosen by the members of those sectors, and Formation Committee members should bring specific management expertise, such as finance, human resources, governance and legal.” Another stakeholder



recommended that no sector have more than one representative on the Formation Committee and that the Launch Committee “allocate a place for public interest specifically.” The Launch Committee feels that leveraging the diversity of its membership, the willingness and dedication of members to continue this work, and the continuity will position the Formation Committee for success and be able to achieve the continued diversity both in sectors as well as in geography. The Formation Committee will also have the ability to create work groups as needed, should additional expertise or a wider breadth of perspectives on a particular topic or subject matter area be needed. The Formation Committee will actively seek public comment on its activities as part of its periodic updates facilitated through the Launch Committee processes and provide additional opportunities for stakeholder feedback, input, and engagement.

Stakeholders provided comments pertaining to WEM Governing Body member seats on the new RO Board and the process to which current WEM GB members would be subject if they desire to serve on the RO Board. One commenter recommended reserving a seat, nominated by a consumer advocate body, to serve the interests of ratepayers. Commenters also provided feedback on seats, composition, structure, and appointment of the Nominating Committee. There was a desire for additional clarity on the Public Policy Committee and better definition of “adverse impacts”, which is discussed in greater detail below and in Chapter 5. Additional discussion of stakeholder feedback will be addressed under the relevant sections of Chapter 3.

PROPOSAL

1. Selection of RO Board

The Launch Committee recommends that the RO Board of Directors be a seven-member body that exercises sole authority over the WEIM and the EDAM and is intended to meet the definition of an independent board of directors. Appendix D describes the recommended procedure for board member selection, including a specific procedure for selecting the initial RO Board of Directors. The procedure provides that the RO Board Members will be selected by a Nominating Committee comprised of stakeholder representatives. The use of a Nominating Committee process for selection of RO Board Members is comparable to what has been used for selection of the WEM Governing Body and other similarly situated boards. For the initial slate of RO Board Members, the procedure assumes that the Formation Committee will provide the approval of the final slate of initial Board Members as proposed by the Nominating Committee. Once the RO is established, Board nominees will be subject to approval by the RO Board of Directors in an open meeting.

a. Nominating Committee: Membership

There will be a Nominating Committee of sector members made up of a representative from each of the nine SRC sectors (identified in Chapter 5), as well as a member from the BOSR and the RO Board.

Because the Nominating Committee plays a critical role in selecting the RO Board, the Launch Committee agreed that including a voting representative from the BOSR was an important tool



for protecting the public interest in this part of the RO structure. The representative from the RO Board is a non-voting member and will serve two functions: they will help the Nominating Committee select nominees and serve as a liaison between the Nominating Committee and the RO Board, which will approve or reject the ultimate panel of nominees. Each of these bodies may determine its own method of selecting a representative to serve on the Nominating Committee, provided that the representative of the RO Board shall not be a member whose current term will be expiring.

Some stakeholders recommended that sectors representing consumers (consumer advocates, large C&I customers, potentially PIOs) should be allocated 50% or the dominant share of seats on the Nominating Committee. The Launch Committee feels that having the same set of sectors as the SRC enables consistency and sets clear expectations across the RO's functions and processes. SRC sectors will be examined at the re-evaluation points identified in Chapter 5. If future changes are made to sectors, these changes will flow through to the Nominating Committee as well.

b. Nominating Committee: Roles and Responsibilities

Each sector will determine its own method of selecting a representative to serve on the Nominating Committee and the term of service. A sector may designate a term of service for multiple years if it wishes to avoid the need to meet in the following year(s) to select a representative. The minimum term of service shall be one year.

The Launch Committee also recommends that the Nominating Committee members work directly with their sectors to provide input on the selection of board members, similar to the process used in other Nominating Committees across the West. This process is highly sensitive and confidential; Nominating Committee members should work with their sectors to solicit candid feedback on candidates, but this is not meant to be conducted as an open process and feedback may need to be held in confidence.

The Nominating Committee shall nominate a slate of RO Board candidates with one nominee for each seat on the RO Board for which the term is scheduled to expire. The Nominating Committee shall act on the consensus of its voting members. The voting members will be the representatives of the sectors, including the member from the BOSR but excluding the member from the RO Board. If the Nominating Committee cannot reach a consensus on a slate of candidates, the Nominating Committee may bring forward a slate for consideration based upon a super-majority vote. A super-majority shall be defined as 70% or more of the voting representatives. The other member of the Nominating Committee from the RO Board shall not have a vote; however, they are expected to share their views about the candidates and to participate fully in deliberations.

With assistance from an executive search firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. This can include allowing for self-nomination by potential candidates and recommendations brought forward from sector representatives by their respective sector participants if the Nominating Committee desires.



Optimally, the Nominating Committee's selections should ensure that the overall composition of the RO Board reflects a diversity of perspectives that may result from different areas of expertise, geographic background, ethnicity, gender and professional backgrounds, and life experience. Similarly, no one state or sub-region in the West should have excessive representation - meaning members whose place of residence or work history tends to associate them with a particular Western state. The Committee should strive to ensure that the RO Board includes at least one member with expertise in Western electric systems and markets. If the Nominating Committee can identify a qualified candidate with a Western background who has as strong overall experience and knowledge as the other candidates, and all other factors being equal, the Committee should prefer the candidate with a Western background.

Based on direction from the Nominating Committee, the executive search firm will seek out candidates having one or more of the qualifications listed below and will propose to the Nominating Committee candidates that complement, to the extent possible, the qualifications of the members whose terms are not expiring, with the goal that the RO Board should have broad expertise in the following areas; including experience in public interest work is another tool that the Launch Committee has identified to help protect the public interest in the RO structure.

- Electric Industry - such as former electric utility senior executives currently unaffiliated with any market participant or stakeholder, as described below; present or former executives of electric power reliability councils or power pools; retired military officers with relevant experience; or present or former executives of firms that perform professional services for utilities; or academics or consultants with expertise in electric utility issues.
- Markets - such as present or former financial exchange executives; present or former executives of commodity trading companies or commodities markets; executives or attorneys with extensive background in anti-trust law; present or former executives in other regulated industries; former state or federal regulators with deregulation experience; or academics or consultants with relevant market expertise.
- General Corporate/Legal/Financial - such as present or former management consultants or service industry executives; present or former chief executives; chief financial officers; chief legal officers or chief information officers of profitmaking companies or nonprofit organizations; present or former law firm partners; present or former law professors; present or former senior executives of financial institutions, investment banking or financial accounting/auditing organizations.
- Public Interest – such as former state or federal regulators; executives of environmental, consumer or labor organizations; former attorneys general or consumer affairs officials; former legislators, academics or economics experts with relevant public interest background; individuals with a demonstrated reputation and record of commitment to consumer issues, including representing consumer interests in legislative, lobbying, and litigation efforts; former energy officials; or public policy experts.



All potential candidates must possess a proven reputation for excellence in their areas of expertise, and optimally should reflect a diverse background (e.g., ethnicity, gender) and viewpoint. As suggested in stakeholder comments, the candidates should also have a proven track record in stakeholder engagement and responsiveness as the RO Board will be setting the cultural tone for the new organization.

The individuals submitted by the Nominating Committee shall be subject to approval by the RO Board in open session. If the individuals are accepted, the nominees will become members of the RO Board upon execution of a services agreement with the RO.

If any individual nominee is rejected by the RO Board, the Nominating Committee must reconvene and establish an alternate nominee(s). After the Nominating Committee submits its alternate nominee(s), the RO Board shall decide, in public session, to approve that alternate nominee(s). Individual stakeholders may submit letters of recommendation to the RO Board supporting either the entire slate or individual candidates.

2. Board Structure

a. Number of Seats on the New RO Board of Directors

The recommendation is for a seven-member board. This recommendation was based upon a discussion among the Launch Committee, many of whom have extensive experience serving on boards, using these factors: expanded scope of functions beyond current WEIM and EDAM, the need for efficient decision-making, and ensuring the range of desired skills and knowledge could be obtained. This recommendation was also supported by a majority of the stakeholder comments. Some stakeholders recommended different board sizes. The Launch Committee recommends that the board size be re-evaluated in the future should RO responsibilities expand.

b. Reservation of Seats on the RO Board of Directors

The Launch Committee recommends not reserving board seats and allowing the Nominating Committee and stakeholder processes to provide stakeholder input on the selection of directors. There should be no restriction on the number of current WEM Governing Body members that can serve on the new RO Board and any current WEM Governing Body member that applies will be interviewed, but they will be expected to go through the Nominating Committee process like other applicants. In evaluating candidates for the initial RO Board, the Nominating Committee should give due consideration to including sufficient members of the current WEM Governing Body to ensure an adequate level of knowledge transfer to the new RO Board. In addition, the Formation Committee in conjunction with the CAISO should consider how best to ensure that the WEM Governing Body continues to be able to perform its current oversight function throughout the transition period. This recommendation is based upon successful experiences with other Nominating Committee processes and was supported by a majority of the stakeholder comments. One commenter recommended reserving a seat “to serve the interests of ratepayers” nominated by a consumer advocate body subject to the same approval process used for an RO Board member. The Launch Committee agreed not to reserve seats for anyone on the RO Board



to enable it to be truly independent and has included public interest experience in the RO Board qualifications.

c. Public Policy Committee

Numerous public interest tools are discussed in Chapter 4, but an additional tool to help safeguard the public interest with respect to the RO Board is the creation of a Public Policy Committee of the RO Board. The Public Policy Committee would be a committee of the RO Board tasked with collecting information from states, local power authorities, and federal power marketing administrations about how a proposed tariff change or initiative could impact the policies of those entities and if there would be “adverse impacts”. The definition of and what constitutes “adverse impacts” will be determined by those entities. The Committee would not make a determination of the potential impacts itself but would share the information from states, local power authorities, and federal power marketing administrations with the staff running the stakeholder process and SRC for consideration in that process. The Committee would also check in with those entities for input at the end of a stakeholder process to ascertain whether the potential impacts still exist and report that information to the full RO Board before it takes a vote. See Chapter 5 for additional discussion about the Public Policy Committee’s role in the stakeholder process.

3. Corporate Documents

The RO’s foundational documents will include language centering on protecting the public interest. The RO will be a stand-alone corporate entity fully separate from CAISO and its governing structures and the governing structures of any individual state. To implement this Proposal, the Formation Committee will develop Articles of Incorporation, bylaws, and any other official policies and procedures (collectively the “Corporate Documents”) that become the foundational rules and procedures the RO will use to govern the WEIM, EDAM, and any other new program in the energy markets. The purposes and processes set forth in the Corporate Documents are enforceable under state corporation law and would be referenced in provisions of the tariff filed at FERC.

The stated corporate purposes would define what “public interest” means for the RO by incorporating principles and standards found in state and federal laws applicable to existing ISOs/RTOs. Language such as a commitment to expand public benefits by attracting new participants, as well as requirements to respect individual state and local generation preferences should be included. For example, the CAISO Articles state “the specific purpose of this corporation is to ensure efficient use and reliable operation of the electric transmission grid[.]”⁶³ The Launch Committee recommends that the recent amendment to the WEM Governing Body charter that clarifies that the Governing Body must preserve and enhance the benefits to customers that arise from participating in the energy markets as well as requiring the body to “respect state authority to set procurement, environmental, reliability, and other public interest

⁶³ CAISO Articles of Incorporation section II.B.



policies”⁶⁴ be included in the RO Corporate Documents. Additionally, the RO Corporate Documents should include a commitment to just and reasonable electricity rates for consumers as a result of RO participation by seeking efficient dispatch and appropriately disciplined price formation. The RO should incorporate these standards and purposes, with the addition of other relevant protections, into the Corporate Documents.

The Corporate Documents also set forth the standards and processes to govern the operation and decision-making of the RO designed to protect the public interest.

a. Open Meetings

The Launch Committee proposes that the RO conduct meetings and make decisions in an open process with transparent, documented rationales.⁶⁵ The bylaws should describe requirements for meeting notices, frequency and diversity of locations, and access. Other than executive sessions, all meetings of the RO Board will be publicly noticed, available to remote participants, recorded and posted, open to the public, and subject to open records requirements. The location of meetings should reflect the intent for the RO Board to meet in various states throughout its service territory. These documents will establish the standards and practices for the RO Board of Directors, who will have ultimate oversight and control over the RO policy and operations. The bylaws should also require that elected board members adhere to the purposes and standards contained therein and specifically pledge to protect the public interest when making decisions.

One commenter recommended ex parte rules apply to all communications with the RO Board. The Launch Committee is not including this recommendation. However, the Launch Committee recommends that the RO Board build on the success of the WEM Governing Body in their broad outreach to all sectors.

4. Relationship and Interaction with CAISO Board

a. Collaborative Relationship Between the CAISO Board of Governors and the RO Board of Directors

The Launch Committee recommends that the Boards strive to maintain a collaborative relationship and consider holding joint meetings for matters under joint authority, while each Board meets separately for sole authority issues. This recommendation is based upon the fact that there will initially be a single tariff for both CAISO BAA functions and RO market functions, and that the tariff will contain both joint authority issues and sole authority issues. The majority of stakeholder comments supported this approach, with several commenters highlighting the importance of this ongoing collaboration.

b. Transition Plan from Current WEM Governing Body to RO Board

⁶⁴ See Decision on West-Wide Governance Pathways Step1 Proposal, <https://www.caiso.com/documents/decision-on-west-wide-governance-pathways-step-1-proposal-motion-aug-13-2024.pdf>

⁶⁵ Like every entity, certain decisions and deliberation may be required to be in a closed session such as matters pertaining to litigation, personnel, or confidential business information. The corporate documents can describe these exceptions more fully.



The current WEM Governing Body will need to transition to the RO Board. The Launch Committee recommends deferring development of the transition plan to the 2025 timeframe and to use the Formation Committee to develop the transition plan. The Formation Committee will be better suited to develop the implementation details and deferring that development to run in parallel with the CA legislation would be the most efficient approach.

c. Progress and Status Reporting

The Launch Committee recommends that the RO provide periodic reporting to the stakeholder community on the progress of the transition in market governance. It is also expected that the RO will provide periodic market performance reports which at a minimum will include the current reports provided by the CAISO.

5. Timing and Funding of the RO

a. Timing for RO Launch

The Launch Committee recommends initiating pre-launch implementation efforts (e.g. – development of bylaws, tariff language, agreements) in parallel with the development of CA legislation, but to defer the start of formation efforts (e.g. - Nominating Committee process/board selection, staffing selection) until the CA legislation is approved. The CA legislative process could influence the details of development of these documents and keeping these efforts in parallel may save time in the long run. As noted above a more detailed description of the Formation Committee process has been developed and is included in the Formation Committee Charter as Appendix C. There was general stakeholder support for this approach.

b. Use of Startup Funding

The Launch Committee recognizes 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. The recommendation is to consider sources such as DOE grant funding or ongoing support from the Pathways Initiative 501(c)(3) funding via Global Impact. There was little stakeholder comment on this recommendation, though general support existed.

c. Long-term Funding

Long-term funding for the RO will be provided via an administrative charge to the market with funds transferred to the RO to control its own expenditures.



CHAPTER 4: PUBLIC INTEREST

INTRODUCTION

Centering on the public interest and customer benefits has been a core principle of the Launch Committee’s efforts to develop a governance structure that is fully independent of any single state. In their original July 2023 letter, state regulators set out a vision to maximize the overall benefits of wholesale electricity markets for customers through as large a footprint as possible across the Western United States. The Launch Committee’s Phase 1 Straw Proposal noted that “[t]he enabling statutes for the CAISO set a foundation and template for this focus on customer benefits that can be extended to all customers served by the market operator.” In Appendix D of that Proposal, the Launch Committee called out a framing for consideration of the options to ensure that “public interest and customer benefits remain centered” in the development and evaluation of potential options.

In the Phase 1 Straw Proposal, the Launch Committee identified two intertwined components:

- How customer interests, including affordability and reliability, are safeguarded in non-discriminatory market design and operations; and
- How state and local policies, even as they differ across the West, are respected in market design.

These components drove the Step 1 recommendation to modify the WEM Governing Body charter to include additional language specific to incorporating the public interest and protections for both consumers and each state’s authority in the Governing Body’s decision-making processes. These principles also served as the focus and definition of “public interest” for the Public Interest Work Group in Phase 2 to ensure that the Step 2 Proposal incorporates public interest protections holistically across the new RO’s structure and processes.

The Launch Committee established the Public Interest Work Group to ensure that the public interest is respected and protected through the legal foundation, governance and decision-making framework, and engagement by consumer advocates, stakeholders, and the general public. **The Public Interest Work Group’s goal was to identify a durable, enforceable combination of tools to protect the public interest across the entire footprint served by the RO in lieu of a single state statutory requirement.** The Work Group examined, incorporated, and enhanced tools derived from existing models, including CAISO, other western energy forums, and RTOs/ISOs across the country. The Launch Committee incorporated some of the tools into other relevant sections of this Proposal, along with others described in this section. As a comprehensive package, the Launch Committee believes these tools achieve protections for consumers and state policy beyond what the CAISO or any other existing RTO or ISO currently provides.

STAKEHOLDER FEEDBACK



Stakeholders supported and acknowledged the strength of the public interest protections contained in the Proposal and provided additional comments pertaining to the Office of Public Participation (OPP) having at least one staff member serving as a Tribal Liaison, amending the Market Expert’s mission to include consumer benefits and the public interest as critical aspects of success of WEIM and EDAM for all participants, moving BOSR funding under the tariff, reserving one seat for a consumer advocate representative and one seat for a BOSR representative on the DMM Oversight Committee, adding one consumer advocate representative and one BOSR representative to the joint hiring committee for any future DMM heads, revising the DMM charter to reflect the RO’s commitment to the public interest and in addition to giving the Consumer Advocate Organization (CAO) access to data and analysis from the Department of Market Monitoring including guaranteed access to transmission expansion models. Additional discussion of stakeholder feedback will be addressed under the relevant sections of Chapter 4 below.

RECOMMENDATIONS

The public interest tools fall into several broad categories, each described below.

Category	Recommended Tools
<p>RO Structure and Board: See Chapter 2 and 3 for more detailed information about the tools and recommendations in this category.</p>	<ul style="list-style-type: none"> ● RO Articles of Incorporation, bylaws, policies and procedures (collectively “Corporate Documents”) ● 501(c)(3) status ● Board member qualifications ● BOSR role in Formation Committee and Nomination Committee ● Consumer advocate role in Nomination Committee ● Transparent decision-making processes including open meetings, responses to stakeholder comments, and regular meetings with the BOSR ● Corporate obligation to respect state authority to set procurement, environmental, reliability, and other public interest policies ● Create a Public Policy Committee of the RO Board to collect input from states, local power authorities, and federal power marketing administrations about potential impacts to state, local, or federal policies at initiative development and before final board adoption of a tariff change or initiative through the stakeholder process
<p>RO BOSR: Section 1 of this chapter provides more information about the RO BOSR.</p>	<ul style="list-style-type: none"> ● Extend the existing BOSR functions to the RO ● Maintain current self-governing and decision-making structures ● Maintain current membership ● Maintain role of advisory Public Power and PMA liaisons



	<ul style="list-style-type: none"> ● Maintain access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today; there should be no restrictions on the provision of information other than those imposed by FERC requirements ● Continue to engage with DMM and recommend to the RO Board any increases to DMM staffing if a DMM resource constraint limits or restricts sufficient access by states to data in the future ● Move BOSR funding under the tariff (with a billing determinant that would not subject POU's to these costs)
<p>Consumer Advocate Engagement: Section 2 of this chapter provides more information about consumer advocate engagement.</p>	<ul style="list-style-type: none"> ● Create a new independent Consumer Advocate Organization (CAO) to facilitate engagement by each consumer advocate office authorized by state law in the stakeholder process and other RO engagement opportunities ● Include modest tariff-based funding to facilitate their participation ● Maintain access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today; there should be no restrictions on the provision of information other than those imposed by FERC requirements
<p>Office of Public Participation: Section 3 of this chapter provides more information about the OPP.</p>	<ul style="list-style-type: none"> ● Create a new Office of Public Participation (OPP) within the RO to provide information and education to members of the public about issues and initiatives at the RO, including facilitating engagement in those processes
<p>Independent Market Monitor: Section 4 of this chapter provides more information about independent market monitoring.</p>	<ul style="list-style-type: none"> ● Create a joint reporting structure for the Department of Market Monitoring to both the CAISO Board and the RO Board and shared decision making in DMM upper management hiring ● Equal number of RO Board and CAISO Board representatives on Department of Market Monitoring Oversight Committee ● Expand the criteria for selecting Market Surveillance Committee members to include consumer issues and public interest expertise ● Transfer the WEM Governing Body Market Expert to the RO Board and expand the role to include evaluation that the market is operating consistently with public interest principles and the protection of retail consumers



	<ul style="list-style-type: none"> ● Maintain access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today; there should be no restrictions on the provision of information other than those imposed by FERC requirements ● Define reporting and delineate roles and responsibilities of shared functions between the RO and MO
<p>Stakeholder Process: See Chapter 5 for more detailed information about the stakeholder process.</p>	<ul style="list-style-type: none"> ● Enhance opportunities for tracking and reporting stakeholder sentiments/preferences throughout the process ● Consumer advocate SRC sector ● Create a new initiative issue category: “compliance with state and local public policy”

1. RO Body of State Regulators

The Body of State Regulators (BOSR) will maintain its current structure and role and will transition to become the RO BOSR.⁶⁶ The RO BOSR will have a seat on the RO Board Nominating Committee and the RO Board will establish a standing item on its public meeting agenda to hear from an RO BOSR representative. The RO BOSR will continue as an independent advisor to the RO and may file written advice to the RO Board on any topic related to the operation of the WEIM or EDAM markets. The RO BOSR may also invite the RO Board to send representatives to attend RO BOSR meetings at the discretion of the RO BOSR.

The membership of the RO BOSR will also remain the same and include one utility regulator from each state that regulates a WEIM or EDAM entity, as well as two liaisons from the public power sector, and one liaison representing Power Marketing Authorities. Decision-making by the RO BOSR, including establishing positions and offering comments on behalf of the RO BOSR will be done by consensus, as is done currently by the WEM BOSR. Each state represented on the RO BOSR retains the right to assert its own positions independently to the FERC, the RO Board, or to any other entity.

The RO BOSR will be supported by the WIEB staff in the manner that the WEM BOSR is supported today. An important change that the Launch Committee is recommending is moving the BOSR funding under the RO tariff. As noted in comments from stakeholders and the BOSR’s comments specifically, moving funding under “the RO tariff would be more appropriate for several key reasons: 1) it would provide a stable, consistent and predictable source of funding, 2) it would safeguard the RO BOSR’s independence from external, variable funding sources, 3) a tariff-based mechanism offers greater transparency and accountability, as the RO tariff would ultimately be subject to review by the Federal Energy Regulatory Commission (FERC), and 4) a

⁶⁶ As it is today, the BOSR will be independent. It will not be a committee or sub-committee of or established by the RO Board and the BOSR will have control over its charter. If a transition is necessary, it will be included in the RO corporate documents. See, Charter Energy Imbalance Market Body of State Regulators March 1, 2016 (Revised April 30, 2021), available at: <https://www.westernenergyboard.org/wp-content/uploads/04-30-21-EIM-BOSR-Amended-Charter.pdf>.



tariff-based mechanism would bring the RO BOSR in alignment with the other public interest groups included in the Proposal as well as state committees in other regional markets.”⁶⁷ In its comments the BOSR notes that “[t]he BOSR’s current funding structure is the product of carefully negotiated terms and conditions between State-Regulated Market Participants, the BOSR, and WIEB. As the WEIM footprint has expanded and becomes more complex, the BOSR’s role in the market and membership has evolved accordingly.”⁶⁸ The modest funding that the BOSR receives today would continue and the same process for establishing the BOSR’s budget would also remain unchanged.

The Launch Committee also recommends that the tariff-based funding align with the customers the BOSR regulates and include a billing determinant that would not subject POUs or entities not regulated by the BOSR to be subject to these costs. While the BOSR budget is modest, there is concern that paying these costs could potentially raise questions around jurisdictional status. Moving the BOSR funding to the tariff with the carve out for POUs provides administrative ease, preserves the framework today for who pays these costs, allows POUs and other non-jurisdictional entities to not be concerned about their non-jurisdictional status, and to avoid challenges around the use of public funds for activities outside the scope of their service mandate.

The RO BOSR will maintain its ability to retain market and policy expertise to assess the market and policy impacts of the WEIM and EDAM markets on consumers and state policies. The expertise will be available to help all state commissions more effectively engage in on-going or potential stakeholder initiatives at the front end of the process. CAISO and RO market and policy experts will be available to the RO BOSR to assist with engagement on issues in an active stakeholder process or potential items for the stakeholder catalog and roadmap. The RO BOSR may also engage the Market Surveillance Committee (MSC) where the RO BOSR wishes to offer state perspectives on active or emerging market impacts.

The Launch Committee affirms its recommendation that state commissions and consumer advocates have access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today. Thus, there should be no restrictions on the provision of information other than those imposed by FERC requirements.⁶⁹ Additionally, we note that the DMM provides regular updates to the BOSR and continues to respond to state inquiries for specific market information, consistent with the data exchange framework established by FERC Order No. 719. The Launch Committee recommends that the BOSR continue to engage with DMM and is empowered under their own direction, to recommend to the RO Board any increases to DMM staffing if a DMM resource constraint limits or restricts sufficient access by states to data in the future.

2. Consumer Advocate Engagement

⁶⁷ BOSR Comments on Draft Final Proposal, November 1, 2024.

⁶⁸ Id.

⁶⁹ These recommendations are consistent with FERC’s requirements for market monitors as codified in *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73FR64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008).



The Launch Committee acknowledges and values the unique role of the consumer advocates authorized by state law in advancing the public interest in their respective states and has relied on representatives from state consumer advocate offices to include and enhance consumer advocate engagement in the RO design.

In public meetings and stakeholder comments throughout the Pathways Initiative, some Western ratepayer advocates have identified barriers to their participation, including being overall under-resourced, difficulties assigning those limited resources to regional processes that are unpredictable in timing, and potential restrictions for individual offices to use their own resources to coordinate with other Western state consumer advocates. To address these concerns and to be sure that consumers will be fully represented, the Launch Committee recommends a formally structured Consumer Advocate Organization (CAO) with modest tariff-based funding to facilitate its participation.

The Launch Committee recommends that the consumer advocates take the lead on developing the CAO and its governance structure. The CAO would be a new 501(c)(3) organization similar to the Consumer Advocates of PJM States, with membership by the state-designated utility consumer advocate for each state with a load-serving utility participating in any RO-governed market. The CAO would serve as a liaison between individual state-designated consumer advocates and the RO, monitor RO initiatives and identify work of interest and priority to the consumer advocates, convene and coordinate the consumer advocate members, as well as assist with general information sharing and support for advancing their collective positions. The CAO would be a separate entity from the SRC consumer advocate sector, but a staff member from the CAO could serve in one of the consumer advocate sector seats if so desired by consumer advocates. The Launch Committee also envisions that this organization would be able to collaborate with other consumer advocate-focused entities in the West.

As noted above, the Launch Committee affirms its recommendation that state commissions and consumer advocates have access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today. Thus, there should be no restrictions on the provision of information other than those imposed by FERC requirements.⁷⁰

The CAO will only be successful if it has ongoing, reliable funding. The Launch Committee asked stakeholders specifically to comment on the funding mechanism for the CAO in the Draft Proposal to better inform this Proposal. The majority of commenters supported tariff-based funding for the new CAO. Some noted that support levels should be limited and generally consistent with the support identified by the BOSR to facilitate WEIM oversight and participation today. One recommendation was to develop a process to ensure the budget and expenditures of the independent CAO are reasonable and focused on advancing regional market issues specific to the Consumer Advocates sector. Another commenter asked that additional detail about these organizations be included in its scope, as this would help participants understand the tariff mechanism these entities will be funded through. Also noted was if there is

⁷⁰ Id.



future consideration of increasing the size and budget of these organizations, stakeholders should have the opportunity to review and weigh in on those decisions through the stakeholder process.

Minority voices felt assignment of funding for consumer advocate coordination should align with the utility customers they serve and not through tariff-based funding for all market participants. One commenter noted that a policy should be implemented which guarantees any state's regulators will have equivalent access to data granted to any other state's regulators.

The Launch Committee proposes that funding be included in the tariff at an amount commensurate with the level of functions and processes of the electric utilities that are overseen by the RO. The Launch Committee recommends that routine updates reflecting general cost increases of the functions conducted by the CAO be approved via relative routine processes, with requests for more significant changes receiving an additional level of review and input from stakeholders.

Although this Proposal lays out the core elements of a CAO, the Launch Committee recognizes that many details are yet to be determined. The Launch Committee recommends, based on some of the recommendations offered in stakeholder comments, that the Formation Committee incorporates additional work on a CAO in their scope, which would include:

- Pursuing the administrative tasks necessary to establish a new organization such as where to incorporate, what organization to authorize for ongoing administrative obligations, and developing governance principles and documents;
- Developing a recommendation regarding the specific method and formula for including ongoing funding in the tariff;
- Encouraging the CAO to engage with independent consumer advocates in every state with participants in the WEIM or EDAM;
- Incorporating tribal interests in RO processes and decision-making.

One commenter expressed that providing the means for consumer advocates to sustainably engage in stakeholder processes will not address the need for the RO to transparently consider and incorporate the policy feedback provided by consumer advocates. In response to this comment, the Launch Committee notes that the stakeholder process (see Chapter 5) has been created to allow all stakeholders, including consumer advocates, different avenues to convey feedback and have their voices heard, including a consumer advocate sector with two seats on the SRC.

3. Office of Public Participation

The Launch Committee proposes to create an Office of Public Participation (OPP) within the RO structure. The OPP would be internal to the RO, tasked with educating and facilitating engagement by individuals, entities, and non-governmental interest groups in regional market issues and governance. It would also provide the RO Board and staff with direct feedback regarding the effectiveness of public participation. The OPP is modeled on the FERC Office of Public Participation whose mission is to “empower, promote, and support public voices in FERC



proceedings.”⁷¹ With this foundation, the OPP's mission would be *to empower, promote, and support public voices in the RO processes and decision-making.*

The OPP will work with the CAISO as appropriate to execute the following responsibilities:

- produce neutral explanations of policy proposals and roadmaps for public engagement on specific issues;
- proactively engage with members of the public across the region by hosting in-person meetings, publishing documents, and producing other content through a variety of media to explain issues being considered at the RO and the methods for further public participation;
- engage in external communications related to neutral education and not advocacy;
- periodically review the RO stakeholder and decision-making processes to ensure effective and inclusive public participation; and
- report to the RO Board periodically on the results of the review of stakeholder processes and suggest improvements based on these reviews.

This model addresses a portion of the capacity and funding barriers faced by individuals, smaller entities, and non-governmental public interest groups by providing accessible, reliable, and neutral explanations of RO processes and issues. These technical barriers are the most common hurdle to effective participation by these types of public interest-oriented entities. This model also provides the RO Board and staff with a regular assessment of the effectiveness of stakeholder engagement at an operational level that will help the RO Board and staff improve processes to represent public interest values in RO decision-making.

The OPP complements other tools across the RO to protect the public interest by providing neutral explanatory materials on a variety of topics and processes including RO governance and Board procedures, stakeholder process initiatives, and other engagement opportunities. The OPP will work with other staff, including the DMM, to leverage existing work and complement the detailed technical and policy work available. The OPP is distinct from the CAO, but its work would also benefit the CAO’s mission and purpose.

The Launch Committee recognizes that the proposed OPP functions may be closely related to stakeholder engagement functions of the CAISO Stakeholder Engagement and Customer Experience team. The Launch Committee envisions the OPP to be a complementary organization to these teams and is not recommending any staffing changes at the CAISO.

As suggested in stakeholder comments, the Formation Committee will identify appropriate scope of work and organizational structure to complement and leverage these existing tools and teams while building an office focused on the regional market.

Some stakeholders also supported including the OPP as an internal department of the RO. One commenter recommended not predetermining the number of staff and to clarify that the funding

⁷¹ See “About the Office of Public Participation” section of the FERC OPP webpage available at: <https://www.ferc.gov/OPP> (Accessed September 5, 2024).



would be part of the RO overall operating budget. Another commenter suggested the funding levels should be generally consistent with the support identified by the BOSR to facilitate WEIM oversight and participation today. The Launch Committee recommends that the RO Board and staff determine OPP budget and staff, similar to our recommendations for other components of the RO. A commenter further encouraged the creation of a funding mechanism through the OPP to support engagement by stakeholders with limited resources, specifically travel and technical expertise. The Launch Committee is not including this recommendation at this time, but re-evaluation of this need could be a component of the feasibility analysis.

4. Market Analysis & Monitoring

Market monitoring provides a critical oversight function in concert with FERC. The Department of Market Monitoring provides transparency, oversight, market design recommendations, and market power mitigation. This section discusses the role and function of market monitoring at the RO, including the Market Monitoring Unit (MMU), Market Surveillance Committee (MSC), and the use of an independent expert.

a. Stakeholder Feedback

The majority of stakeholders supported the joint reporting structure for DMM and shared RO decision making in DMM upper management hiring. Some noted that this approach maintains independence and gives the RO needed input. There was an acknowledgement that the current DMM structure functions well and a caution not to make more changes than what are absolutely necessary- “don’t fix what’s not broken.”

A commenter suggested that re-evaluating the DMM structure when moving past 2.0 would be prudent. Another commenter noted the unique functions and interactions of the CAISO BAA within the market and that CAISO BAA-specific functions should be delineated in materials and standard reports; the WEM performance reports have moved in this direction, but oversight and guidance to continue this transition under the RO would be beneficial and add confidence to the new reporting structure.

Some commenters expressed a desire for an external market monitor and felt the joint reporting structure and shared hiring input over the DMM may be insufficient to ensure the market monitor is independent from CAISO or the RO. One commenter expressed that the lack of detail on the functions and activities of the RO’s Market Monitor reinforces concerns about dependence on CAISO. Another commenter felt strongly that reserving one seat for a consumer advocate representative and one seat for a BOSR representative on the DMM Oversight Committee was necessary and that one consumer advocate representative and one BOSR representative should be added to the joint hiring committee for any future director of DMM. Additional discussion of stakeholder feedback will be addressed under the relevant sections below.

b. Market Monitoring



Embedded market monitoring is the foundation of FERC’s market oversight framework. The market monitor performs a critical function, extending FERC’s enforcement authority into each ISO/RTO to perform “a vital role in reporting on the state of the markets and ferreting out wrongdoing by market participants.”⁷²

FERC established marketing monitoring as one of the six “core functions” of an ISO/RTO in Order No. 2000 Regional Transmission Organizations, noting “Market monitoring is an important tool for ensuring that markets within the region covered by an RTO do not result in wholesale transactions or operations that are unduly discriminatory or preferential or provide opportunity for the exercise of market power. In addition, market monitoring will provide information regarding opportunities for efficiency improvements.”⁷³ In other words, a market monitoring unit must be established in the tariff in order to be certified as an ISO/RTO, or to maintain certification as an ISO/RTO.

In 2005, FERC issued a Policy Statement on Market Monitoring Units stating that they perform an important role in enhancing the competitiveness of ISO/RTO markets by consistently and impartially evaluating ineffective market rules, identifying potential anticompetitive behavior, and providing analysis to inform policy decision making.⁷⁴ In 2008, FERC required that each independent system operator include “goals to be achieved by the MMU, including the protection of both consumers and market participants by the identification and reporting of market design flaws and market power abuses.”⁷⁵

In 2008, FERC issued Order No. 719 Wholesale Competition in Regions with Organized Electric Markets establishing the requirements for the market monitoring unit’s core functions: evaluating market rules, tariff provisions and market design elements for their effectiveness, and proposing recommended changes; reviewing and reporting on the performance of the wholesale markets; and referring suspected wrongdoing to the Commission.⁷⁶

Market monitoring units must provide these core services; additional functions that go above and beyond these regulatory requirements are permitted provide they do not interfere with the performance of these core responsibilities. Specifically, FERC lays out the core functions as:

- (1) evaluating existing and proposed market rules, tariff provisions and market design elements, and recommending proposed rule and tariff changes not only to the RTO or ISO, but also to the Commission’s Office of Energy Market Regulation staff and to other interested entities such as state commissions and market participants;
- (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities such as state commissions and market participants; and

⁷² Order No. 719 is 73 FR 61,400 (Oct. 28, 2008), FERC Stats. & Regs at 341.

⁷³ FERC Order No. 2000 89 FERC ¶ 61,285 (1999) pg 462.

⁷⁴ FERC Docket No. PL05-1-000

⁷⁵ Order No. 719 is 73 FR 61,400 (Oct. 28, 2008), FERC Stats. & Regs.

⁷⁶ Ibid.



(3) identifying and notifying the Commission’s Office of Enforcement staff of instances in which a market participant’s behavior, or that of the RTO or ISO, may require investigation, including suspected tariff violations, suspected violations of Commission-approved rules and regulations, suspected market manipulation, and inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.

Additionally, FERC Order No. 719 requires that the market monitor “report to the RTO or ISO board of directors, with management representatives on the board excluded from this oversight function. Removing the MMU from reporting to management will give it the separation needed to foster independence.”⁷⁷ FERC explicitly requires the market monitor to report directly to the board and declined to establish a hybrid state/federal oversight committee for market monitoring. FERC found that the independent board is critical to ensuring the overall independence of the market monitor from market participants, management, or stakeholders.

FERC Order No. 719 also expanded information sharing between market monitoring units and states, including the ability for state commissions to “make tailored requests for information from the MMUs, so long as the request is limited to information regarding general market trends and the performance of the wholesale market.”⁷⁸ This limitation is intended to ensure that the market monitoring units are able to prioritize the three functions described above. FERC notes “This limitation is needed in light of the limited resources of the MMUs, whose first order of business is evaluating market design, monitoring the markets, and referring suspected wrongdoing to the Commission. If this limitation were not imposed, the MMU could rapidly become an unpaid consultant for the states and would be unable to perform its core functions.”⁷⁹

Of particular importance, FERC also notes that Order No. 719 “is not intended to limit existing arrangements between MMUs and state commissions regarding the provision of information, subject to appropriate restrictions related to confidentiality concerns.”⁸⁰

i Department of Market Monitoring (DMM)

The CAISO’s Department of Market Monitoring (DMM) mission is to “provide independent oversight and analysis of the CAISO [m]arkets for the protection of consumers and Market Participants by the identification and reporting of market design flaws, potential market rule violations, and market power abuses.”⁸¹ The DMM is structured as an internal business unit of the CAISO, but is fully independent of CAISO management and instead reports directly to the CAISO Board. The DMM may rely on CAISO for legal support, provided there is no potential for a conflict of interest, but can also use outside legal counsel. The DMM has direct access to the full Board, and each individual Board member at any time, as it deems necessary.⁸² The

⁷⁷ Order No. 719, 73 FR 61,400 (Oct. 28, 2008), FERC Stats. & Regs. At 339.

⁷⁸ 73 FR 61, 446

⁷⁹ Id.

⁸⁰ 73 FR 61, 416

⁸¹ CAISO Tariff, Appendix P.

⁸² https://www.aiso.com/documents/appendixp_caisodepartmentofmarketmonitoring_asof_apr1_2017.pdf

⁸² <https://www.aiso.com/documents/department-marketmonitoringoversightcommitteecharter.pdf>



Launch Committee appreciates the thoughtful recommendations from commenters regarding enhancements to the overall market monitoring structure. While the Launch Committee adopts many of these recommendations, we note that the overall Step 2 Proposal must be consistent with FERC regulations that govern Public Utilities and ISO/RTO markets as they are enforced today. It is beyond the scope of the Launch Committee to initiate a generic rulemaking regarding market monitoring. Therefore, the Launch Committee has applied FERC’s “consistent with or superior to” standard of review regarding the recommendations received on the Draft Proposal and adopts a subset of the recommendations that meet both this standard as well as receive broad support across stakeholders.

First, the Launch Committee affirms its recommendation that the DMM have a joint reporting structure to both the CAISO and the RO for the initial startup under Option 2.0. As market monitoring is a core function of ISO/RTO markets under Order No. 2000, the Launch Committee believes this joint reporting structure maximizes RO oversight of the market monitor to the greatest extent possible without compromising CAISO’s status as a certified ISO under FERC regulations. Additionally, there continues to be strong functional justification for this reporting structure, since the DMM has oversight of the energy markets operated by CAISO including ancillary services and the congestion revenue rights auctions that remain under CAISO Board authority.

While the Launch Committee affirms its recommendation of a joint reporting structure for the market monitoring unit to both the CAISO and the RO, we modify our recommendation, consistent with stakeholder feedback, and recommend that the Independent Market Expert’s scope and function be expanded to include additional market monitoring tasks. Specifically we recommend that the Formation Committee review best practices for market monitoring structures and recommend a delineation of responsibilities between the existing DMM and the expanded role for the Independent Market Expert that best reflects the core duties of market monitors as well as the Launch Committee’s emphasis on independent assurance that the RO’s market is operating consistently with the public interest principles and the protection of retail consumers. While we note that FERC does not see a material difference between internal and external market monitors so long as they are independent, we agree with stakeholders’ recommendations to adopt a structure that provides additional, independent monitoring capabilities and we task the Formation Committee with evaluating overall market monitoring best practices.

The Launch Committee finds that expanding the Market Monitoring approach can better serve the public interest by providing additional, independent assurance that the RO’s market is operating consistently with the public interest principles and the protection of retail consumers put forward by the Launch Committee. While we noted above that the DMM’s mission today includes protections for consumers, we agree with commenters that additional oversight that reports directly to the RO Board can provide both added protections for consumers as well as oversight of the contractual relationship between the RO and the CAISO so that market participants gain comfort and assurance that the market is operating consistent with the expectations of the RO Board.

We find that expanding the role of the Independent Market Expert provides an opportunity to meet these goals without unnecessary duplication of costs. We direct the Formation Committee



to evaluate this expanded role to meet the public interest and oversight objectives described here and develop detailed recommendations to delineate the roles and responsibilities of the existing DMM and the expanded Independent Market Expert.

The Launch Committee declines to adopt the recommendation to reserve one seat for a consumer advocate representative and one seat for a BOSR representative on the DMM Oversight Committee and to add one consumer advocate representative and one BOSR representative to the joint hiring committee for any future director of DMM. These recommendations are inconsistent with FERC Order No. 719’s requirement that the market monitoring unit solely “report to the RTO or ISO board of directors.”⁸³ Under the Step 2 Proposal, consumer advocates are members of the SRC and function as stakeholders in that context. Having stakeholders provide oversight of the market monitor compromises independence under FERC’s existing regulations. For example, the Launch Committee expects the new consumer advocate organization to enhance the participation and advocacy of western consumer advocates in the stakeholder process. Since the DMM has responsibility for evaluating proposed changes to market rules, FERC finds that placing the DMM in a position to evaluate a market rule that was advocated for by the consumer advocate sector would compromise the independence of the evaluation if the consumer advocate representative was also on the DMM oversight committee. Similarly, FERC finds that placing states into an oversight role “raise[s] jurisdictional concerns”⁸⁴ regarding the separation of wholesale and retail ratemaking. Therefore, the Launch Committee is unable to adopt recommendations that would be better addressed under a generic FERC rulemaking.

The Launch Committee affirms and expands on its recommendation that state commissions and consumer advocates have access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today. While this recommendation was included in the Step 2 Draft Proposal, we expand on this recommendation as commenters requested additional clarification.

Under an MOU dating to 2004, the CAISO DMM supports the evaluation of resource adequacy by responding to an annual data request issued by the CPUC.⁸⁵ The California Public Advocates Office is included in this data access. We note that FERC Order No. 719 expressly allows existing agreements to continue.

As noted above, the Launch Committee affirms its recommendation that state commissions and consumer advocates have access to at least the same amount of data and analysis as the California agencies and the California Public Advocates Office receive today. Thus, there should be no restrictions on the provision of information other than those imposed by FERC requirements.⁸⁶ Additionally, we note that the DMM provides regular updates to the BOSR and continues to respond to state inquiries for specific market information, consistent with the data exchange framework established by FERC Order No. 719. The Launch Committee recommends that the BOSR continue to engage with DMM and is empowered under their own direction, to

⁸³ 73 FR 61

⁸⁴ 73 FR 61,341

⁸⁵ See [CPUC CAISO Subpoena - May 2024.pdf](#)

⁸⁶ Id.



recommend to the RO Board any increases to DMM staffing if a DMM resource constraint limits or restricts sufficient access by states to data in the future.

ii Department of Market Monitoring Oversight Committee

The Department of Market Monitoring Oversight Committee⁸⁷ is a committee of the CAISO Board of Governors consisting of at least two Governors. The Committee advises the Board in its oversight of DMM's market monitoring functions. The Committee reports to the Board regularly including reviewing significant issues it identifies. The Committee delegates to the DMM Executive Director day-to-day responsibilities within the approved budget.

The Launch Committee recommends adding an equal number of RO Board members to the Market Monitoring Oversight Committee. One commenter recommended adding an additional seat for a consumer advocate representative and a seat for a BOSR representative. As discussed, FERC requirements limit the oversight of the DMM to the respective Board(s). However, the Launch Committee recognizes the importance of integrating public interest objectives and criteria in DMM oversight and included multiple layers of public interest considerations woven into the RO Board structure. These include public interest qualifications added to RO Board member qualifications, the advisory role of the BOSR, CAO, and OPP, and access to data and analyses for the BOSR and CAO. Lastly, the BOSR itself has not requested this additional role. However, as the RO plans for further structural evolution through the feasibility analysis, additional DMM oversight may be considered.

iii Market Surveillance Committee

In addition to the DMM and Oversight Committee, the CAISO established a Market Surveillance Committee (MSC)⁸⁸ to provide independent external expertise and recommendations to the CAISO Chief Executive Officer and CAISO Board of Governors. The MSC is separate and independent from the DMM and market participants. A minimum of three outside experts are nominated by the CAISO CEO and approved by the Board of Governors and the WEM Governing Body for staggered 3-year terms.⁸⁹ Their expertise is in economics, operational aspects of generation and transmission, antitrust or competition law in regulated industries, and energy and commodities trading financial expertise. The MSC serves to provide independent review of market performance and market power problems, develop a record of structural problems and propose corrective action, and review rule changes, penalties, and sanctions.⁹⁰ The MSC may also review and comment on DMM analyses and reports.

The Launch Committee recommends expanding the criteria for selecting MSC members to include consumer issues and public interest expertise. In addition, the Launch Committee recommends that the MSC would provide expertise and recommendations to both the CAISO

⁸⁷ <https://www.caiso.com/meetings-events/topics/department-of-market-monitoring-oversight-committee>

⁸⁸ <https://www.caiso.com/meetings-events/topics/market-surveillance-committee>

⁸⁹ <https://www.caiso.com/documents/marketsurveillancecommitteecharter.pdf>

⁹⁰ <https://www.caiso.com/meetings-events/topics/market-surveillance-committee>



and the RO, and that the CAISO Board and the RO Board have joint approval of the MSC nominations.

c. WEM Governing Body Market Expert

The WEM Governing Body receives its own independent market analysis through the Governing Body Market Expert. This individual reports only to the WEM Governing Body and is tasked with providing comprehensive explanations and technical opinions, as requested.⁹¹ The position came from a Governance Review Committee recommendation and was jointly approved by the WEM Governing Body and CAISO Board of Governors in the fall of 2021.⁹² This position is expressly not a market monitoring function, but rather advises the WEM Governing Body on the fairness and efficacy of market rules, business practices, and market design alternatives consistent with their mission to promote the success of WEIM and EDAM for all market participants.⁹³

The Launch Committee recommends that the Market Expert transition from the WEM Governing Body to the RO Board and to expand their function and scope to include the activities described in detail above. One commenter expressed interest in amending the Market Expert's mission to include consumer benefits and the public interest as critical aspects of success of WEIM and EDAM for all participants. We reiterate our position, above, that the WEM Market Expert provide the RO Board with an independent evaluator to review whether the CAISO is implementing the market consistent with the RO Board's direction and guidance and that the expansion of this role will continue to provide this important function.

Overall, the CAISO's approach to market monitoring today goes beyond the minimum requirements established by FERC in Order No. 2000, the Policy Statement on Market Monitoring, and Order No. 719. By expanding the role of the Independent Market Expert, we advance the oversight opportunities and protections for consumers in the RO's market monitoring framework. Additionally, the Market Surveillance Committee is a unique feature that goes above and beyond FERC's minimum requirements and provides an additional layer of oversight to ensure that the market is operating free from manipulation and consistent with the public interest. With the data sharing provisions that are recommended to ensure appropriate data access for all states, we establish a framework for DMM-state engagement and collaboration to provide additional transparency and value.

⁹¹ <https://www.westerneim.com/Documents/WesternEIMGoverningBodyMarketExpert-Role-Responsibilities.pdf>

⁹² <https://www.caiso.com/documents/weim-governing-body-announces-new-market-expert.pdf>

⁹³ <https://www.westerneim.com/Documents/Charter-for-WEIM-and-EDAM-Governance.pdf>



CHAPTER 5: STAKEHOLDER ENGAGEMENT

INTRODUCTION

In the rapidly evolving landscape of the Western energy markets, the role of stakeholder engagement has never been more critical. As these markets expand and adapt to new challenges, the development of inclusive and effective policies hinges on the active participation of a diverse array of stakeholders. Recognizing this need, the Launch Committee has developed recommendations for a robust stakeholder process designed to ensure that the voices of all interested parties are heard, considered, and integrated into policy development. This Proposal outlines a new approach to stakeholder engagement that aims to elevate participation, enhance transparency, and foster collaboration in shaping the future of WEIM and EDAM.

The Launch Committee agrees with the recommendation from commenters that proposed using the following “essential principles” from the North American Electric Reliability Corporation (NERC) standards development portions of the Rules of Procedure to frame the proposed stakeholder process:

- a. Openness – participation open to all persons;
- b. Transparency – transparent to the public;
- c. Consensus building – build and document consensus;
- d. Fair balance of interests – not dominated by a small number of sectors, and respect for minority positions;
- e. Due process – reasonable notice and opportunity to participate and to have views considered; and
- f. Timeliness – getting things done, not bogged down in stalemates⁹⁴

The Launch Committee believes these principles, with an additional focus on efficiency and cost minimization, capture the goals of this proposed stakeholder process well. The proposed process was crafted through a collaborative effort involving stakeholders representing a wide range of perspectives from across the West. To inform this effort, the Launch Committee engaged Gridworks to conduct a comprehensive review of Regional Transmission Organization (RTO) stakeholder processes across the United States and facilitate a series of workshops. These workshops provided valuable insights into existing engagement models and gathered extensive input from stakeholders on the goals, objectives, and desired design of the new process. Parallel to these workshops, the Stakeholder Process Work Group⁹⁵ convened to discuss the findings and refine the proposed stakeholder process design, ensuring that it aligns with the needs and expectations of market participants.

The Launch Committee and Stakeholder Process Work Group recognize staff working on the stakeholder process will be at both the RO and the Market Operator (MO). The Launch Committee anticipates that the RO and MO will work very closely on the stakeholder process in

⁹⁴ NERC Rule of Practice 304(1)-(6) (effective November 28, 2023).

⁹⁵ The Stakeholder Process Work Group is composed of members of the Launch Committee and an expanding working group of interested parties.



particular, especially given the MO staff’s extensive and critical subject matter expertise on the policies and procedures. The Formation Committee will work with the MO to determine staffing roles and responsibilities.

RECOMMENDATIONS

At the heart of this Proposal is the establishment of a Stakeholder Representatives Committee (SRC), which will serve as the primary body responsible for developing policy proposals for Western energy markets. The SRC, structured to include a broad spectrum of stakeholders, will work closely with staff to catalog and prioritize the regional market initiatives, define problem statements, and develop solutions. By incorporating sector-based representation, the SRC will ensure that a balanced range of perspectives is considered, promoting collaboration and consensus through sector-specific discussions. This structured approach will enable stakeholders to identify and address key issues collectively, thereby influencing policy development outcomes in a meaningful way.

To further enhance stakeholder engagement, the proposed process introduces a classification system for initiatives, distinguishing between Compliance/Non-Discretionary, Compliance with State and Local Public Policy, and Discretionary Initiatives. Each type of initiative will follow a tailored stakeholder process, allowing for more targeted and effective engagement. In addition, the Public Policy Committee of the RO Board will conduct outreach at key points in the stakeholder process to states, local power authorities, and federal power marketing administrations to collect input about the potential for adverse impacts on a state, local, or federal policy by an initiative. The input that the Committee collects will be incorporated in the stakeholder process and presented to the full RO Board before it votes on a final initiative proposal.

The process also includes indicative voting to gauge stakeholder sentiment and guide policy development, complementing the existing comment process. This combination of voting and commentary will provide a clearer picture of stakeholder positions and facilitate more informed policy development by the SRC and staff, as well as provide detailed information to the RO Board approval process.

The transition to this new stakeholder process will also require a cultural shift, emphasizing the importance of active and effective participation from all stakeholders. This Proposal acknowledges the need for a more decentralized approach, where both technical expertise and diverse stakeholder perspectives are valued and integrated into the process. By empowering the SRC and leveraging sector-based discussions, the proposed process aims to create a more dynamic and responsive stakeholder environment, one that is capable of addressing the complexities of the WEIM and EDAM markets and any future services. The Launch Committee notes the SRC will be a self-governing organization and recommends that the SRC reaffirms the elements of the stakeholder process at implementation and again after two years of RO operations to assess whether the stakeholder process is meeting its goals and to identify any needed adjustments.



Ultimately, this Proposal sets the stage for a stakeholder process that is not only more inclusive and representative, but also more capable of driving meaningful market evolution. Through the establishment of the SRC and the integration of structured engagement mechanisms, the process will provide a platform for stakeholders to actively shape the policies that govern these critical markets.

Stakeholder Process	SRC Role	Staff Role
(1) Issue Identification & Prioritization		
(a) Catalog Process: Issue/Initiative Identification	Identification of discretionary issues via roundtable.	Conduct annual process to identify Catalog initiatives and eliminate initiatives no longer needed. Publish Draft and Final Catalog, host stakeholder meeting(s), administer comment period and address stakeholder comments.
(b) Roadmap Process: Issue/Initiative Prioritization	Prioritization of discretionary initiatives with input from sectors and stakeholders. Provide input on Catalog and Roadmap to RO Board.	Create prioritization process for Discretionary Initiatives. Full discretion to include Compliance/Non-Discretionary Initiatives. Publish Draft and Final Roadmaps. Administer comment period(s). Administer vote(s). Transmit to RO Board.
(2) Stakeholder Initiative Phase		
(a) Stage 1 – Issue Evaluation: Refinement of the Problem Statement	Identify SRC sponsors. May provide input into elements of the Stage 1 working group process and timeline, including in response to stakeholder vote regarding readiness for initiative to move to Stage 2.	Conduct Stage 1 process. Determine, in consultation with SRC sponsors and based on stakeholder input through comments and/or voting, when the Stage 1 objectives are achieved. Conduct stakeholder vote(s).
(b) Stage 2 – Policy Development: Identification of solutions	Review and may provide input into proposals. For Discrete Initiatives, the SRC sponsors may take lead in the development of a straw proposal. Create Standing Committees and/or work groups as needed.	Conduct Stage 2 process. Develop proposals and review and respond to stakeholder comments. For Discrete Initiatives, staff are responsible for driving a solution (stakeholder meetings, comment periods, straw proposals). Conduct stakeholder vote(s).
(3) Initiative Consideration by RO Board	Produce document or opinion of the SRC for the RO Board to consider in its approval of Final Proposals. Provide overview of voting results if relevant.	Prepares materials for Board consideration and present Final Proposals to RO Board for approval.

BACKGROUND

The Launch Committee agrees that the stakeholder process is the primary tool to enable the market to evolve to meet the priorities of market participants, regulators, and stakeholders. Therefore, developing a robust, accessible stakeholder process for the new RO has been a critical component of the Launch Committee’s work. The Stakeholder Process Work Group was focused on identifying recommendations regarding the structure, functions, and authorities of the RO stakeholder process. Participants in the Stakeholder Process Work Group represented a broad and diverse range of stakeholder perspectives from organizations across the West, including a range of experiences and viewpoints regarding the stakeholder process, the way in which stakeholders interact with the RO and with each other, and how to allow stakeholders to influence and determine outcomes on important market design issues.

Recognizing the complexity and importance of the stakeholder process, the Launch Committee gave the Stakeholder Process Work Group some unique characteristics as compared to the other Phase 2 Work Groups. First, the membership of the Work Group extended beyond Launch Committee members to ensure that there was a diversity of experience and perspectives on stakeholder engagement that represents varying structures in the West. Second, the Launch



Committee engaged Gridworks to assist with research and information gathering and to provide an additional layer of independence to the facilitation of the workshops. And finally, the Launch Committee set the expectation that the efforts of this Work Group will extend beyond the release of the Step 2 Proposal to ensure thorough engagement with and input from stakeholders.

Below is a draft structure for a stakeholder process, which consists of the following components: a Stakeholder Representatives Committee, Sectors, Classification of Stakeholder Initiatives, Stakeholder Process, and Voting. This draft structure is based on feedback from the Stakeholder Process Work Group, the four workshops facilitated by Gridworks, and written stakeholder comments received to date. Significant written feedback was received on the Draft Proposal and the Revised Sector Proposal. Additional specifics are discussed in more depth in the relevant subsections below.

THE STAKEHOLDER REPRESENTATIVES COMMITTEE (SRC)

The Stakeholder Representatives Committee (SRC) will be the primary stakeholder body that works with staff to catalog and prioritize initiatives, as well as to define initiative problem statements and solutions. SRC representatives will work directly with staff, market operator staff, and other SRC representatives to shape the timeline and process for stakeholder initiatives, identify emerging issues, and develop initiative framing and solution sets. SRC representatives will actively communicate and engage with the organizations within their sector. The SRC is designed to promote compromise and collaboration within and across sectors on initiatives that will result in changes to the RO and market services it oversees. The SRC does not have decision making authority and SRC representatives' primary responsibilities are facilitating and coordinating with their sectors. As described in the voting section, voting is conducted at the individual entity level and the SRC does not vote outside of that process. The SRC is committed to promoting access and transparency for stakeholders across the West. Meetings of the SRC will be open, except for litigation, personnel or proprietary/confidential/security-sensitive information, meetings will be public, recorded, and available for remote participation.⁹⁶ The SRC sectors are self-organized and SRC representatives will be selected by the stakeholder organizations within each sector, along with any criteria to establish diversity on the SRC that is important to any given sector (e.g., geographic diversity, sector subgroups, etc.). SRC representatives will have responsibility for maintaining regular communication with and fairly representing the input of stakeholder organizations within their sector. The SRC structure is designed to ensure adequate and diverse representation for the work that body is tasked with, putting more emphasis on individual entity votes than the sector-level positions. The number of seats for each sector may evolve as market services at the RO evolve.⁹⁷

The Launch Committee recommends allowing each SRC representative to have one alternative to participate on behalf of that SRC representative when the primary representative is unable.

⁹⁶ Meetings convened by SRC representatives for the purpose of conducting organizational activities of the SRC may be non-public.

⁹⁷ For example, while the EDAM Entities have a single seat on the Regional Issues Forum today, by the time the RO is created and a stakeholder process is implemented, the number of utilities who have executed implementation agreements may have increased.



This would help spread the burden of participation and enable sectors to have more consistent representation in the SRC efforts.

1. SRC Role in Policy Initiative Identification and Prioritization (Catalog/Roadmap Processes)

As outlined in more detail below, the SRC will assist in the identification and prioritization of discretionary initiatives in connection with the annual RO process for development of a Stakeholder or Policy Initiative Catalog and Roadmap. While the specific process and timing for developing the Catalog and Roadmap remain to be determined, at a high level, the SRC will be responsible for the following tasks on an annual basis:

- Compiling input from sectors on issues or topics for discretionary initiatives
- Reviewing, assessing and organizing sector submittals
- Conducting a form of “roundtable” process – one or more public meetings to review candidate initiatives or topics and identify and discuss sector rankings/positions
- Publication of a report or other document to inform development by the staff of the Catalog/Roadmap

While the Catalog will serve as the repository for issues, ideas, and proposals for stakeholder initiatives, the Roadmap is intended to reflect the prioritization of initiatives that will be addressed through the RO stakeholder process for the next several years. Through the compilation of sector input each year, the SRC will participate in the initiative intake process for purposes of developing the Catalog. The SRC’s efforts are intended to supplement, but not displace, the RO’s process for identifying issues and proposals for the Catalog.

The SRC’s involvement in the Roadmap process will include several key touchpoints. It is envisioned that the SRC will take an active role in advising the RO regarding the prioritization of discretionary stakeholder initiatives for purposes of the Roadmap, but the staff will retain primary responsibility for implementing a public stakeholder process to identify and prioritize initiatives. Stakeholders will retain primary responsibility for advancing initiatives that are important to their organizations. The SRC will facilitate and assist in these efforts, but it will not replace the roles and responsibilities of either the staff or stakeholders.

In conducting the roundtable process and publishing a report or other work product documenting the outcome of that process and resulting recommendations for initiative prioritization, the expectation is that the SRC will identify a ranking of initiatives that, based on input from members of the SRC within the sectors, appear to reflect the top priorities of the stakeholder community. The ranking can be on a sector-by-sector basis, or, where practical, the rankings should reflect cross-sector priorities and common themes. To the extent practicable, the SRC will attempt to organize these priorities based on discretionary initiative category—i.e., whether the initiative appears to be a “discrete” initiative, or a broader, “conceptual” initiative.

Following the SRC’s roundtable process and publication of its report, the staff may request that one or more representatives of the SRC present an overview of the results of the report in a public stakeholder meeting conducted as part of the Catalog or Roadmap development process.



The staff may also coordinate with the SRC prior to publication of the draft, revised, and/or final Roadmap to ensure that the Roadmap reflects the input of the stakeholder community as documented through the SRC’s roundtable process and report and stakeholder comments submitted as part of the RO’s administration of the Catalog/Roadmap process. This coordination is not intended to supplant or displace the RO’s public meetings or process for obtaining input from the stakeholder community at large through the stakeholder comment process on drafts or the final Roadmap, but it is intended to ensure alignment of the Roadmap with stakeholder priorities as the public process for Roadmap development proceeds. As part of this coordination process, the staff may inform the SRC of the basis for its proposed decisions regarding Roadmap prioritization, including any relevant staff, budgetary, or software and other implementation constraints that might affect prioritization. The objective is that this collaborative process will result in a Roadmap prioritization that reflects the goals and priorities of stakeholders to the maximum extent possible given available RO resources to conduct initiatives for the three subsequent years.

Finally, at such time as the RO management and staff believes that the RO has completed the work necessary to conclude the annual Catalog and Roadmap process, as discussed below, the RO will arrange for a stakeholder vote on the final documents. Consistent with the process outlined in the section relating to voting, the SRC will provide a report to the RO Board detailing the results of the vote and any other relevant information for the RO Board to consider in connection with its review and action on the Catalog/Roadmap.

Following a decision on the Catalog and Roadmap by the RO Board (and assuming that the RO Board approves the Roadmap), the staff will inform the SRC in the event of a need to reprioritize any initiatives in a way that materially impacts whether the initiative will be addressed or the timing of an initiative. For example, if a stakeholder-prioritized initiative needs to be removed from the Roadmap or an initiative’s timing must be adjusted in a significant way (such as by deferring or advancing an initiative by a year or more), the expectation is that the SRC and the stakeholder community at large will be advised of the reason for the change. The SRC would retain discretion to address any concerns with the reprioritization with staff and/or the RO Board as appropriate.

In order for the SRC to accomplish the steps outlined above regarding initiative identification and prioritization, the SRC may adopt procedures and guidelines and may opt to elect to establish a subset or committee of SRC representatives to take primary responsibility for specific tasks. The intent of this Proposal is to set forth expectations regarding how the SRC will assist in facilitating stakeholder input into the policy initiative identification and prioritization process, and not necessarily to specify in detail how this work will be accomplished.

2. SRC Role in Stakeholder Initiative Phase (Stage 1 Issue Evaluation/Problem Statement and Stage 2 Policy Development)

The SRC may—but will not necessarily be required to—identify two or more sector “sponsors” for stakeholder initiatives who will help drive the initiative. Sponsors do not have to be SRC representatives and will act as “co-chairs” of the stakeholder process partnering with staff to



move the initiative through both Stage 1 and Stage 2. The SRC sponsors should advise and provide guidance to the staff throughout the stakeholder initiative, but the staff will retain primary responsibility for the administration of the stakeholder process. For example, the staff will be responsible for identifying guidelines for Stage 1 work, including the process, timeline, number of working groups, and scope of discussions, and for organizing and administering the Stage 1 stakeholder process, including public stakeholder working group meetings and comment periods. The staff can consult with and seek input from the SRC sponsors throughout the Stage 1 process, and the SRC sponsors may provide input and feedback.

The intent of this Proposal is that the SRC sponsors collaborate with the staff to shape the direction of the Stage 1 process to assure alignment of the initiative scoping and problem statements with the issues and topics identified in the initiative identification and prioritization process. The SRC sponsors may confer with SRC representatives and/or the sectors in advising the staff on its proposed approach to Stage 1 activities and could facilitate stakeholder involvement in Stage 1 working group meetings as presenters or participants as appropriate to the initiative. The staff may also consult with the SRC sponsors to determine when the Stage 1 Issue Evaluation and Problem Statement development may be completed, and the initiative can transition to Stage 2.

As with Stage 1, the expectation in Stage 2 is that the staff take primary responsibility for the administration of the stakeholder process, including determination of process and timeline for Stage 2 work as well as organizing public stakeholder meetings, drafting and publishing proposals, coordinating any data analysis to inform solutions, and reviewing and evaluating stakeholder comments. The SRC sponsors could provide input to the staff on these steps and facilitate the involvement of any stakeholders that wish to present proposals as a part of the Stage 2 process. The sponsors may confer with the SRC representatives and their sectors as appropriate during Stage 2; however, the expectation is that individual organizations will directly participate in the Stage 2 process.

While this Proposal certainly does not preclude a higher level of involvement in the Stage 2 stakeholder process by the sponsors in the event that, for example, the stakeholder sponsors want to participate in the drafting of proposals or facilitation of meetings, this Proposal does not contemplate that the sector sponsors would be expected to perform these tasks routinely or as part of their responsibilities as SRC sponsors. These activities will primarily reside with staff. As with the Stage 1 responsibilities, the SRC sponsor role will be one of providing advice and input to staff and not managing or conducting the stakeholder process.

Some initiatives, particularly conceptual initiatives, may benefit from the formation of smaller work groups of stakeholder participants to help shape both the Stage 1 Issue Evaluation/Problem Statement and the Stage 2 Policy Development phases or to work on a particular element of a stakeholder initiative. If the SRC sponsors, in collaboration with the staff, determine that a smaller work group would help advance the stakeholder initiative process (or an element of the stakeholder process) for a particular conceptual initiative, then the SRC sponsors will solicit participation from relevant sectors to form a work group. Work groups may not be needed for all initiatives, and the SRC and SRC sponsors would need to evaluate and use judgment to



determine where a work group would be helpful to the stakeholder process and represent a productive use of stakeholder time and resources. The intent with SRC work groups would not be to supplant or replace staff-led activities in the stakeholder process, but to assist in analyzing and addressing issues that are of particular importance, may raise unique technical concerns, or otherwise would benefit from the focused attention of a smaller group of stakeholders outside of the public stakeholder process. The work groups would be expected to provide the results of their work back to the public stakeholder process and to coordinate and collaborate with both the staff and the stakeholder community at large with respect to their assigned activities.

At the conclusion of the stakeholder initiative process, the staff will conduct a stakeholder vote. As outlined below, votes will be tallied for each individual stakeholder organization, and may be reported along a variety of dimensions, including by sector. The SRC will retain responsibility for reviewing the results of the vote and for reporting to the RO Board the positions of the sectors of the SRC on the final proposal of an initiative.

In order for the SRC to accomplish the steps outlined above in the stakeholder initiative process, the SRC may adopt procedures and guidelines and may opt to elect to establish a subset or committee of SRC representatives to take primary responsibility for specific tasks. As with initiative identification and prioritization, the intent of this Proposal is to set forth expectations regarding how the SRC will assist in facilitating stakeholder input into the issue evaluation/problem statement and policy development phases of the stakeholder process, and not to specify in detail how this work will be accomplished.

3. SRC Role in Advising RO Board Decision-Making on Initiatives

The SRC may provide reports or opinions to the RO Board on key decisional items. These documents could include reporting and analysis of voting results, summaries of stakeholder positions, identification of open or unresolved issues, and review of whether the outcome of the initiative adequately addressed the policy priorities of stakeholders as identified in the initiative prioritization process. Any such documents will be prepared by the SRC representatives, who will determine the level of coordination needed with their respective sectors, to enable the document to be issued by the SRC. This Proposal does not include detailed procedures for the SRC representatives to produce reports and opinions, with the expectation that the SRC will determine applicable procedures. In the event that SRC representatives are unable to state a consensus on any issues or positions because of differing opinions and perspectives as between stakeholders and/or sectors, the expectation is that the SRC representatives will work collaboratively to describe areas of disagreement for the RO Board to consider in its decision-making. Any documents produced by the SRC for the purpose of informing the RO Board are not intended to displace or supersede any communications to RO Board by any individual stakeholder or by the staff.

4. SRC Representative Roles, Responsibilities, and Expectations

As noted elsewhere, this Proposal contemplates that the SRC will be primarily responsible for delineating any guidelines and procedures for the conduct of SRC activities in the RO



stakeholder initiative process and does not prescribe the specific requirements for how the SRC will perform the responsibilities assigned to it. It also does not prescribe specific processes for the management of sector activities. This Proposal sets forth certain responsibilities for the SRC and SRC representatives, as well as stakeholders that are appointed by the SRC to serve in roles such as sector sponsors or work group members. In general, the responsibilities of individuals serving in these roles are to provide advice and input and to facilitate and support the participation of stakeholders in the stakeholder process, both individually and at the sector level. As such, the expectation is that persons appointed to roles on the SRC and on any adjacent groups will be committed to supporting and facilitating the participation of the stakeholder community and its members in the stakeholder process, even if a given stakeholder's perspective or position does not necessarily align with the position of the SRC representative or appointee's position on an issue, the position of the representative's company, or the position of the representative's sector. The SRC representatives should expect to participate in at least 80% of the meetings to ensure that there is full representation and an equal distribution of workload and responsibility across the SRC.

Several stakeholders have identified that this Proposal includes a series of roles and responsibilities for the SRC that are expanded (and potentially significant) relative to those assigned now to Regional Issues Forum (RIF) liaisons. While it is correct that this Proposal includes additional responsibilities, the Proposal's discussion of the SRC role in the stakeholder initiative identification and prioritization process largely aligns with the tasks performed by RIF liaisons currently in implementation of the roundtable process. Additional responsibilities include advising staff on the Roadmap development process and coordination with staff regarding mid-stream changes to the Roadmap. Moreover, any active role by the SRC in the consideration of specific initiatives would be a *significant increase* in the time and responsibility of the current RIF members. It is difficult to estimate the amount of time that may be required of SRC representatives in carrying out these activities.

Similarly, it is difficult to estimate the level of time commitment that would be required of the SRC or SRC representatives (or stakeholders) that are appointed to serve as sector sponsors, because this approach is new and not particularly analogous to any process used currently in the CAISO. It is also likely that the reporting activities of the SRC to RO Board will increase relative to the RIF, but the level of resource commitment required of the SRC to perform this function is likewise uncertain and may vary depending on what initiatives are being taken up.

This Proposal attempts to balance requests for more stakeholder-driven processes supported by some stakeholders with requests by other stakeholders to manage the level of resource commitment required for the stakeholder process overall. We also note that an increase in the level of time commitment required of SRC representatives to perform the actions described in this section may be balanced by a reduction in a current key task of the RIF, which is to provide educational and informational content, which will shift to the Office of Public Participation as described above in Chapter 4. The activities of the SRC are expected to shift from generalized discussion of issues to actions that are focused on carrying out the responsibilities of the SRC in the stakeholder initiative process. As noted previously, it is anticipated that there will be an



increased need for staff support of the SRC, including with respect to the production of written work product.

As the SRC is established, stakeholders should anticipate that the level of time commitment required to participate as an SRC representative may be significant and should consider if this level of commitment is in alignment with the desire for more stakeholder-driven processes.

a. SRC Chair and Vice-Chair

To help manage the SRC, the Launch Committee recommends creating an SRC Chair and Vice-Chair role. The Chair and Vice-Chair will serve as the primary point of contact with the staff and provide administrative leadership for organizing the SRC. These roles will not have any decision making or enhanced authority. The Chair and Vice-Chair roles will rotate on a yearly basis and be selected by the SRC, with each of the nine sectors casting a single vote (for those sectors who have more than one seat, the seated members will work together to determine who casts the vote) for the Chair and Vice-Chair. The Chair and Vice-Chair will be from different sectors. In general, the Vice-Chair will be nominated for Chair the following year after performing the Vice-Chair role.

SECTORS

As outlined in this Chapter, the role of sectors within the stakeholder process is to provide diverse input and guidance on the SRC and to coordinate with the organizations within each sector. The Launch Committee places an emphasis on sector definition and representation that appropriately addresses newer sector interests reflecting the evolving nature of the Western grid, the importance of respecting public interest goals, and the variety of consumer and commercial interests.

The Launch Committee received significant feedback on the Draft Proposal and Revised Sector Proposal. There were suggested changes to combining, eliminating, or adding new sectors and a range of suggestions for adding or subtracting sector seats. Some thought that customer groups were not adequately represented and that more balance was needed between commercial entities and consumers. The Launch Committee decided that the proposed sectors in the Draft Proposal will be retained but has decided to add an additional seat to the Consumer Advocate, PIO, and Large C&I customer sectors to allow for more coordination within these sectors. The sectors and number of representatives can be assessed as a part of the re-evaluation of the stakeholder process at both implementation and after two years have elapsed of the RO being operational (more discussion of this mechanism below). In addition to assessing if representatives are able to dedicate adequate time to the SRC, part of this assessment should include outreach to ascertain if the broader stakeholder community feels the process is sufficiently responsive and successful overall. Precedent exists for the West being interested and willing to make course corrections in stakeholder representation as evidenced in updates made to the RIF sectors and representation at their evaluation points. In addition to this openness to making changes, without weighted voting it will also be easier to add or collapse sectors, because no sector will be “giving up their share of the pie.”



1. Explanation of Sectors and Sector Representatives

The Launch Committee's recommendations regarding sectors and sector representatives are intended to promote the goals of the SRC and recognize the uniquely diverse stakeholder community that has a vested interest in the RO. It is also intended to leverage those diverse perspectives, ensure robust dialogue, promote market efficiency, guard against any market manipulation, and maximize benefits to customers.

For several sectors, the Launch Committee recommends the establishment of sectors based on level of market participation, including WEIM Entities, EDAM Entities, and CAISO PTOs. This is consistent with the approach taken today with the RIF. The alternative to this approach would be to establish sectors based on business model (e.g., investor-owned utility, public power utility). The Launch Committee finds that the approach of using level of market participation is more appropriate for the SRC for several reasons.

First, the voluntary, incremental approach to Western market evolution means that market participants could take a diversity of services from the Market Operator, from energy imbalance to full RTO participation. Each service offering has unique perspectives and priorities for market evolution.

Second, we find that it is the service level that provides more commonality among market participants than business model. Many participants in the WEIM today report enhanced value from sharing a sector that has both IOU and public power utilities. This shared approach and foundation for collaboration have created new, valuable relationships among market participants and an enhanced opportunity to share priorities and lessons learned.

Finally, the goal of the SRC is to promote collaboration and consensus building within the sectors. We find that the commonalities described above are better suited to promoting this outcome than a business model-based approach that might overlook the needs of entities who are taking different market services from the RO.

To balance this functional based approach, we recommend various numbers of sector representatives to ensure that the underlying unique business models are provided with an adequate voice. For example, we recommend three SRC representatives for the WEIM Entity sector as there are 20 participants in the WEIM Entity sector today. The three SRC representatives are intended to provide the flexibility to ensure that both public power and IOUs have representation, as well as enable geographically diverse representation from the Northwest, Desert Southwest, and California. Likewise, we recognize that PMAs have unique market perspectives and enable an additional representative to ensure that this perspective is carried into the SRC.

Finally, we recommend four SRC representatives for the non-investor owned utility load serving entities serving load from WEIM or EDAM to ensure the unique voices of public power, municipal utilities, cooperatives, and community choice aggregators are represented. However, if an entity participates collectively through an EDAM entity (e.g. BANC members), they cannot



also participate in a different sector as individual entities (i.e., generators or munis). Likewise, the IPP sector’s diverse membership is represented by three SRC reps.

The number of seats in other sectors reflect that the Launch Committee has recommended other resources to enable and enhance participation including the ability to have an alternate, the creation of the Consumer Advocate Office and Office of Public Participation, and the one entity-one vote structure.

Sector representatives should also have an option of identifying one alternate representative that can serve in case of absence of the primary representative, and that can help share in any duties as necessary. It is the primary representative’s responsibility to keep the alternate informed to enable meaningful participation.

We decline to “reserve” or mandate seats for any particular sub-sector or business model, with the exception of a PMA seat. The West has a long history of successful self-organization that has created an appropriate balance of representation among business model, geography, and resource availability.

The Launch Committee would like to emphasize that the number of seats for each sector does not provide that sector additional power or influence. Seats are meant to purely serve a coordination function within each sector. Seats do not provide a gatekeeping function or control abilities for stakeholder input or participation in the process.

	RO Sectors for Stakeholder Voting	Sector-based seats on SRC
1	EDAM Entities	2 seats
2	WEIM Entities	3 seats
	<i>[no PMA standalone sector]</i>	*1 additional seat reserved for PMAs in either EDAM or WEIM sector, assuming the PMA is either a WEIM or EDAM Entity
3	ISO PTOs	2 seats
4	Non-IOU load serving entities serving load from WEIM or EDAM.	4 seats * if an entity participates collectively through an EDAM entity (e.g. BANC members), they cannot also participate in a different sector as individual entities (i.e., generators or munis)
5	PIOs	2 seats
6	Consumer advocates	2 seats



7	Large C&I customers	2 seats
8	IPPs, independent transmission developers, and marketers	3 seats
9	Distributed Energy Resources (including distributed generation, storage and demand response resources, aggregators, and enabling hardware and software providers)	1 seat
		<i>Total: 21 seats on committee</i>

With a goal of collaboration, diversity of opinion and ideas, and an accessible and efficient process that organizations can effectively participate in, the Launch Committee is working towards a recommendation that ensures thorough and diverse input into critical processes for the RO with a manageable and balanced structure. Each organization should be able to see how their input is counted and incorporated into the RO processes.

The proposed Stakeholder Process has more opportunities for stakeholder input, with a potentially significant time and resource commitment for SRC representatives. However, the proposed indicative voting structure gives each organization an opportunity to vote and for the staff to track and tabulate voting data to provide much more data to staff and the RO Board that would potentially get lost in a more sector-focused voting structure. When the SRC conducts a vote of the stakeholders, every organization who is registered to vote will have the opportunity to register its support, opposition, or neutrality to the issue under consideration. Staff will provide administrative support for the vote and will tabulate the vote. The SRC representative will report on any specific splits that have been established by that sector, consistent with the self-organizing principle described above.⁹⁸ The results of all votes will be provided in materials related to the issue. More details on the proposed voting structure are below.

2. Sector Definitions

The following definitions are meant to provide additional clarity to help identify which sector different entities would fall within. Organizations may participate in a sector so long as they have an “active interest” (e.g.: serving load, owning generation, making purchases, representing customers) in the market within the WEIM and/or EDAM footprint.

EDAM Entities, as defined in the CAISO Tariff: Two SRC Representatives

⁹⁸ For example, the WEIM Entity sector may choose to report votes by 1) POU/IOU 2) geographic region or 3) load ratio share. Likewise, the IPP sector may choose to report by 1) generation asset owners/independent transmission providers/marketers or 2) generation type.



A Balancing Authority that represents one or more EDAM Transmission Service Providers and that enters into an EDAM Entity Agreement with the CAISO to enable the operation of the Day Ahead and Real-Time Markets in its Balancing Authority Area.

EDAM Entities can be investor-owned utilities, federal power marketing agencies, or publicly owned utilities.

WEIM Entities, as defined in the CAISO Tariff: Three SRC Representatives

A Balancing Authority that represents one or more WEIM Transmission Service Providers and that enters into a WEIM Entity Agreement with the CAISO to enable the operation of the Real-Time Market in its Balancing Authority Area.

WEIM Entities can be both investor-owned utilities, federal power marketing agencies, or publicly owned utilities.

There will be one additional seat in either the EDAM or WEIM Entities sector for a Federal Power Marketing Agency, assuming the PMA is either a WEIM or EDAM Entity. If there are no PMAs in either the WEIM or EDAM, there will be no PMA seat on the SRC.

ISO Participating Transmission Owners: Two SRC representatives

A party to the Transmission Control Agreement who has placed its transmission assets and Entitlements under the CAISO's Operational Control in accordance with the Transmission Control Agreement.

ISO Participating Transmission Owners can be investor-owned utilities or publicly owned utilities.

Non-IOU load serving entities serving load from WEIM or EDAM: Four SRC Representatives

Utilities or load serving entities located within the market footprint that are not included in another sector may include but are not limited to public power, municipal utilities, cooperatives, or community choice aggregations. May include trade associations.

If an entity participates collectively through an EDAM entity (e.g. BANC members), they cannot also participate in a different sector as individual entities (i.e., generators or munis). Stakeholders noted that additional clarity was needed around this distinction to better understand this nuance. To fall under this umbrella, participation through an EDAM entity is tied to the formal nature of this relationship and the relationship is meant to perform an advocacy role. This role is different from merely being a customer or embedded entity within an EDAM entity where the EDAM entity is not formally representing the interests of that entity in an advocacy role. Because this distinction may not always have a brightline, the sector is empowered to make a determination as to whether an entity falls under this category. This distinction is separate and different from trade association participation, which is discussed below.



Public Interest Organizations: Two SRC Representative

Public Interest Organizations are 501(c)(3) organizations that seek to influence market policy in favor of the general public or a broad segment of it, rather than focusing on the interests of its own members and are actively involved in energy issues within the market footprint.

Consumer Advocates: Two SRC Representatives

State sanctioned consumer advocates from states with load in the market footprint that represent residential and small commercial end-use utility customers. May include a representative from the Consumer Advocate Organization.

Large C&I Customers: Two SRC Representative

Large commercial and industrial customers with load in the market footprint. May include trade associations.

Independent Power Producers, Independent Transmission developers, and Power Marketers: Three SRC Representatives

Organizations within the market footprint that have generation, transmission or load but are not an electric utility, or organizations that engage in power marketing activities within the WEIM or EDAM footprint. This sector includes Independent Power Producers, Independent Transmission developers, and Power Marketers. May include trade associations.

Distributed Energy Resources: One SRC Representative

Companies that own, manage, or develop generation, storage, or demand response resources interconnected to the distribution grid (collectively referred to as Distributed Energy Resources or DERs), DER aggregators, and providers of enabling hardware and software that are active within the market footprint. May include trade associations.

3. Limit SRC participation to “entities with an active interest in the market”

The Launch Committee recommends creating a category (not an SRC sector) for “other load-serving non-market participants” so that entities that serve load in the Western Interconnection yet do not participate in the WEIM or EDAM and do not fit within one of the designated sectors may register with the RO to vote. For example, this could include a utility or BA that does not participate in the WEIM or EDAM but has an interest in the market policies. The votes will not count toward an SRC recommendation or remand threshold but will be shared with the staff and Board for information only. This group of individuals or organizations may participate in the stakeholder process and submit comments that will be included in the package of information that goes to the staff and/or Board when appropriate. This category is not a sector and therefore does not have direct representation in the prioritization, Roadmap and Catalog process, Stage 1 and 2 of the Stakeholder Initiative Phases, or get counted towards the remand processes. It does



enable additional information collection and sharing for this group of stakeholders in the overall process.

4. Trade Association Participation

Commenters noted that additional clarity was needed around the role for trade associations and how or if they would participate in sectors. The Launch Committee recommends that trade associations are able to join a sector. Each sector may have the ability to designate a trade association to fill their sector seat if so desired. The issue of duplicate representation by an entity participating in a sector and participating through its membership in a trade association was raised by stakeholders. The Launch Committee believes that the benefits of trade association participation outweighs the potential of duplicate participation. However, it is important to note this concern and if trade association participation is resulting in issues that are impacting achieving the principles of the stakeholder process, this element should be re-evaluated.

If a Trade Association does not meet the requirements of any of the SRC sectors, they would fall into the “other load-serving non-market participants” category and may still participate in the stakeholder process utilizing the tools of being able to attend and participate in all open and public meetings, submit written comments, have votes tabulated and that data provided to the RO Board (votes will not count toward SRC recommendations and will be informational only).

5. CAISO in the BAA Operator role participation

Commenters wondered where and how CAISO, in its role as the BAA Operator, would participate in the stakeholder process. One commenter noted the importance of the CAISO BAA being able to participate in the same way as any other BAA. In addition, CAISO is not market participant because it has no assets in the market, does not engage in market transactions, and does not have any financial interest in market outcomes. The Launch Committee has begun conversations with CAISO to determine where the best place for them to participate in the stakeholder process would be. The Formation Committee will continue to work with the CAISO to refine and explore where the CAISO BAA Operator would best fit within the sectors or within a different category.

6. Re-evaluation of Sectors, SRC Structure, and Voting

The Launch Committee recommends the SRC conduct a formal re-evaluation of sectors, the SRC structure, and voting at two future points in time: 1. at the RO implementation phase and 2. two years after implementation to ensure this structure is enabling consensus and achieving the goals identified in the Proposal which are:

- a. Collaboration
- b. Diversity of opinion and ideas and inclusion of minority opinions
- c. An accessible and efficient process that organizations can effectively participate in
- d. Thorough and diverse input into critical processes for the RO
- e. Manageable and balanced structure



As noted above, stakeholders expressed a range of potential changes to sectors and seats in comments. Re-evaluation should include an in depth look at these and consider both consolidation of sectors and re-organization or expansion of sectors to reflect necessary changes based on meeting these goals. It should also consider whether the structure successfully prevents sector shopping and astro-turfing, and whether it creates the right balance across sectors for achieving the market goals. Other stakeholders emphasized the desire to evaluate the imbalance between load and supply and whether the imbalance is causing issues for entities' ability to be heard.

To aid in capturing topics for re-evaluation, the list below reflects some of the issues expressed in comments that the Launch Committee wanted to ensure were captured at this early stage and can be preserved for re-evaluation:

- Balance between load and supply in sectors
- Balance between commercial interest and consumer/public interest
- Include clear questions to document outstanding concerns or areas for ongoing improvement of policy and/or reasoning for support and/or interest in a policy.
- The practice of voting “neutrality” or “abstention” from parties who see a de minimis impact from a particular policy proposal on their constituents or sectors should be recognized to be a reasonable and active participation in the process, rather than interpreted as negative.
- Include a mechanism for “Strong Minority Opposition.”
- Pre-establishing standing committees and/or forums.
- Develop a directory of individual stakeholders by sector for the benefit of the RO board.
- Continue to shift the stakeholder process towards increased roles for stakeholders.
- Explore if participation in 80% of meetings for SRC representative is an appropriate expectation.

CLASSIFICATION OF STAKEHOLDER INITIATIVES

Stakeholder Initiatives will be classified into three categories: Compliance/Non-Discretionary Initiatives, Compliance with State and Local Public Policy Initiatives, and Discretionary Initiatives. A description of each category is provided below. Additional clarification from stakeholders was requested around Compliance with State and Local Public Policy Initiatives and how a finding of adverse impacts would be handled and the role of the Public Policy Committee. Additional information is incorporated below and in Chapter 3.

1. Compliance/Non-Discretionary: Initiatives that address compliance with a FERC order or address a market design flaw or emerging reliability issue.
 - FERC Rulemaking responses
 - If a tariff change is required as a result of a FERC rulemaking process, there will likely be adequate time for a full stakeholder process. The initiative would be initiated by the RO Board or staff and will go into the



3. Discretionary Initiatives: Market improvements or evolution that can be brought by any stakeholder as well as the RO BOSR, the market monitor, the Market Surveillance Committee (MSC), the Independent Market Advisor, the staff, or from a workshop
 - Emergent Operational Issues
 - Tariff changes addressing a market design flaw, reliability impairment, or matter affecting a particular set of entities (for example, a market design problem that undermines the reliability of a particular balancing authority area) but fall short of exigent circumstances. These could include issues of importance identified by staff, the RO BOSR, the market monitor, the MSC, the Independent Market Advisor, or a market participant.
 - These initiatives would still be required to have a stakeholder process, but they would be handled with a greater degree of urgency than a normal discretionary initiative lacking the same time pressure.
 - E.g., Energy Storage Enhancements (ESE) stakeholder initiative
 - Discrete: clear ideas to address known problem statements
 - May be able to move directly to the policy development stage (Stage 2, identified below) of a stakeholder process; or
 - Proceed to resolution via another means, such as a Business Practice Manual change, if a tariff amendment is not required.
 - E.g., Inter-SC Trades in Regional Markets
 - Conceptual: broad topics where many stakeholders agree there is an opportunity to improve the market, but there is no clear consensus on solutions or problem statements at the beginning of the initiative. This topic needs one or more working group discussions at Stage 1 of the initiative (as discussed below) in order to determine scope and problem statements.
 - May include several subtopics
 - E.g., Energy Storage Enhancements, Greenhouse Gas Coordination, Gas Resource Management

STAKEHOLDER PROCESS

After initiatives are categorized, the Stakeholder Process can begin and will include three primary steps:

1. Issue Identification and Prioritization (Catalog/Roadmap process)

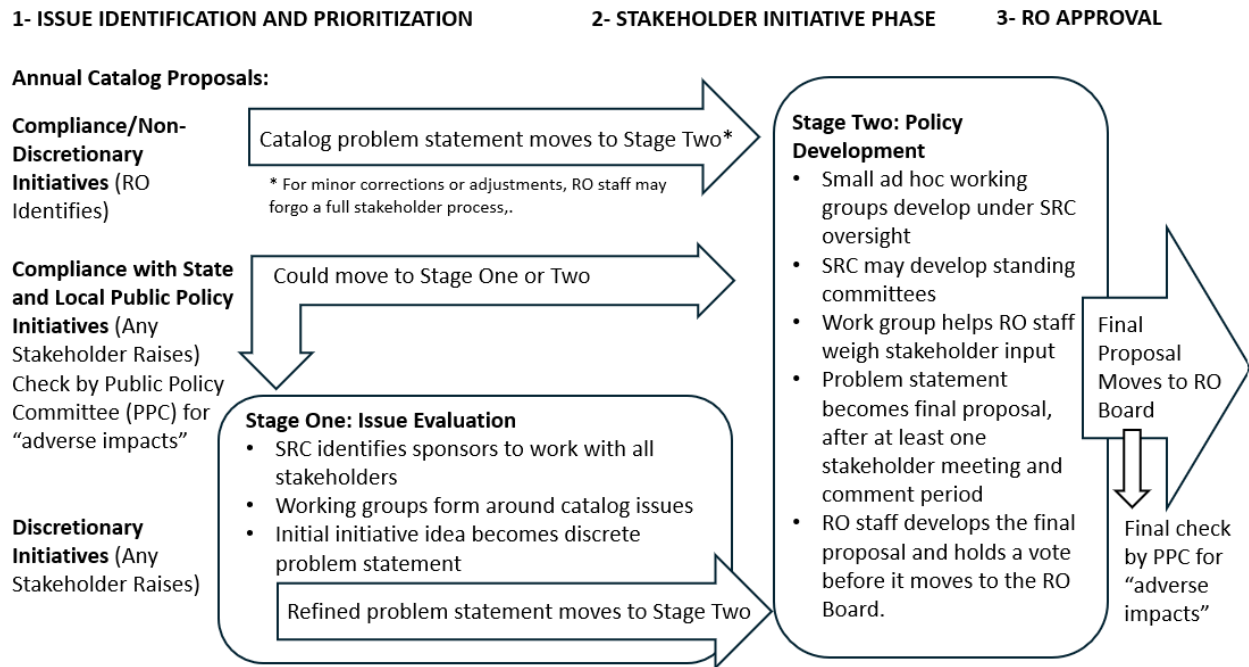
2. Stakeholder Phase:

- Stage 1 – Issue Evaluation: What is the objective of the stakeholder initiative and what are the issues and problem statements to be solved?
- Stage 2 – Policy Development: Identification of solutions

3. Approval by the RO Board



See the SRC section above for the specific roles and responsibilities for the SRC throughout this process. See Chapter 4 for the role of the Public Policy Committee in identifying state, local, and federal policies that might be adversely affected. The figure below demonstrates how the three stakeholder process steps interact with one another.



1. Issue Identification and Prioritization

Issue identification and prioritization will consist of a Catalog and Roadmapping process. The Catalog will be a listing of proposals (from all sources) for stakeholder initiatives. The Roadmap will be a document reflecting the stakeholder initiatives that will occur over a three-year period. Each document is updated annually.

The RO will collaborate and work closely with MO staff throughout the Roadmap and Catalog process to understand the MO’s budget, technology, ability to implement, and workplan. This collaboration will help shape work early on and may establish realistic expectations around implementability and timeline. The process for this collaboration will need to be created between the RO and the MO and will likely evolve and continue to be refined over time. The collaboration with the MO is not meant to act as an ability to veto or stand in the way of proposed work coming out of initiatives, but to provide useful input in these early stages that can help shape proposals.

a. Catalog Process – Issue/Initiative Identification



Staff will conduct a process each year to identify initiatives for inclusion in the Catalog. Initiatives that have been addressed or are no longer needed will be eliminated from the Catalog.

- Known Compliance/Non-Discretionary Initiatives will automatically be included in the Catalog, including those State and Local Public Policy Initiatives that meet this criteria.
- The SRC should assist in identification of discretionary issues for inclusion in the Catalog. This can occur through a roundtable-type process, where SRC representatives review, assess, and organize submittals by their sectors.
 - Roundtable process: The SRC obtains sector-level input to an annual process for identifying discretionary stakeholder initiative priorities, discusses priorities in one or more meetings, and produces a report or other work product identifying stakeholder prioritization that provides direct input to both the Catalog and the Roadmap. The SRC should act as a facilitator, not a gatekeeper, for identifying and incorporating new initiatives into the Catalog.
- A new discretionary, non-compliance initiative could originate from any source. This includes (but is not limited to): all stakeholders and market participants, staff, DMM, MSC, RO BOSR, etc.
- The Catalog should include a proposed disposition for all submittals by stakeholders—i.e., initiative (if tariff amendments may be needed), BPM change, process change, etc. Note that only initiatives that require a tariff change are included in the Catalog.⁹⁹ The SRC should review and advise the staff on the proposed disposition.
- The Public Policy Committee may conduct outreach to states, local power authorities, and federal power marketing administrations to collect input on potential adverse impacts for any initiative regardless of classification.
- Based on input from the SRC, staff will release a Draft Catalog and host at least one stakeholder meeting with a comment period. A Final Catalog will be released with the Roadmap.

b. Roadmap Process – Issue Initiative Prioritization

The SRC (or sub-committee of the SRC) would work with and advise the staff regarding prioritization of the discretionary initiatives identified in the Catalog for near-term (i.e., ~3 years) to create a stakeholder policy Roadmap. The SRC would conduct a vote on the Roadmap prior to presentation to staff.

Roadmap development includes the following steps:

1. Prioritization of Catalog initiatives by SRC representatives with input from sector members
2. Draft Roadmap published for public comment
3. Stakeholder meeting
4. Revised Roadmap
5. Staff revises and publishes the Final Roadmap
6. SRC votes on final roadmap

⁹⁹ For example, BPM changes are addressed through the BPM Change Management Process.



7. Staff recommends Final Roadmap to RO Board, with results of SRC indicative vote

c. What proposals are included in the Roadmap

1. Compliance/Non-Discretionary:
 - Staff has full discretion to include these in the Catalog and to reflect them in the Roadmap based on any required timing by FERC
 - Includes mandatory stakeholder process for tariff changes that were made due to exigent circumstances
2. Compliance with State/Local Public Policy:
 - If a State and Local Public Policy Initiative is determined to require a tariff change, the timing of the initiative would be based on the compliance timeline for the policy change's effective date, considering the RO's overall compliance obligations.
3. Discretionary Initiatives:
 - Emergent Operational Issues: Matters of urgent importance to the market or a particular set of participants facing reliability or economic challenges should be prioritized to reflect the urgency of the solution.
 - Discrete Initiatives: The staff will create a process to prioritize discrete initiatives in the Catalog. This can occur through a roundtable-type process, where SRC representatives review, assess, and prioritize initiatives by their sectors.
 - Roundtable process: SRC obtains sector level input in one or more meetings and produces a report or other work product identifying stakeholder prioritization.
 - If appropriate, the SRC could recommend grouping several related initiatives together to be handled through one stakeholder process.
 - Conceptual Initiatives: Also through the roundtable-type process, the SRC selects topics to enter the stakeholder phase of the Stakeholder Process, first starting with Stage 1 (working groups) and, then proceeding to Stage 2 (policy development), assuming that the outcome of the working groups is to proceed to Stage 2.
 - To move to Stage 1, described below, the initiative must have support from at least two sectors of the SRC.

Staff develops the Roadmap, including prioritizing Discretionary Initiatives based on the recommendations from the SRC and staff. This includes identification of recommended issues to move forward to a stakeholder process.

- As part of its evaluation of which discretionary initiatives to include in the Roadmap, staff may use as one criterion for inclusion whether an initiative is in the top 5-10 for at least two sectors. Staff can also include any initiative that is in the top 5-10 for any single sector with documentation on the value of the initiative.
- Staff must provide documentation to the RO Board regarding selection of initiatives included in the Roadmap.



There will be a formalized process for coordination between the SRC and staff to ensure that the SRC can understand staff capacity and tradeoffs in developing recommendations for prioritization.

The SRC will conduct a vote to recommend approval of the Roadmap in the process described in the Voting section. All voting results will be part of the recommendation to the RO Board.

Following completion of the Roadmap, the RO Board must formally vote to adopt the Catalog and Roadmap. This is an added layer of approval beyond today's informational presentation. In order to maintain flexibility and adaptability, the staff should have the ability to modify the prioritization of initiatives that are identified for a stakeholder process in the Roadmap at any time, but must notify the RO Board and SRC at the next public meeting and take comment. The SRC would also provide input to staff regarding emergent issues and would work with and advise staff regarding any needed reprioritization to address emergent issues and major changes to initiative timelines (like deferral of a topic into a future year, for example). This could include discrete initiatives with quick solutions that may emerge out of the Catalog cycle (e.g., Energy Storage Enhancements).

The SRC should provide a report to the RO Board on the process for developing the Catalog and Roadmap, including input from the Public Policy Committee.

2. Stakeholder Initiative Phase

Following the Catalog and Roadmap process, the Stakeholder Initiative Phase will commence consisting of Stage 1 Issue Evaluation and Stage 2 Policy Development.

a. Stage 1 – Issue Evaluation: Refinement of the Problem Statement

The focus of Stage 1 addresses the following question: What is the objective of the stakeholder initiative and what are the issues and problem statements to be solved? Most non-discretionary and discrete initiatives will have adequate problem definition in the Roadmap process and will not require a Stage 1 process; however, the RO may solicit stakeholder input on problem statements for more transformative or complex initiatives in this category (e.g., FERC Order 1920 Compliance). For conceptual initiatives that are prioritized in the Roadmap to move to the stakeholder process, the SRC would identify sector “sponsors” for the Issue Evaluation Stage. These sponsors act as stakeholder chair/co-chair of the Work Group and partner with staff to move the Work Group forward through to the policy development stage and ultimately to resolution. State and local public policy initiatives can follow either the “discrete” or “conceptual” path depending on the scope and definition of the change required to comply with the public policy.

The sector sponsors would also develop guidelines for the work in Stage 1, including a timeline, number of Work Group meetings, role of stakeholders in presenting/participating in Work Groups, and when the Work Group phase should be concluded and transitioned to policy



development phase. Staff and the SRC would determine, based on stakeholder input through comments and/or voting, when the Work Group’s objectives are achieved.

Once the initiative has one or more problem statements, the SRC conducts a vote to determine a recommendation for staff to move the initiative to Stage 2.

If the initiative already has a problem statement as proposed in the Catalog/Roadmap phase and does not appear to require additional problem statements and scoping, the initiative moves directly to Stage 2. As noted above, non-discretionary and discrete initiatives may have adequate problem statements identified as part of the Catalog/Roadmap process and may not require Work Group development as part of Stage 1. The SRC has the option to create a Work Group for discrete initiatives, however, where appropriate.

b. Stage 2 – Policy Development: Identification of solutions

The focus of Stage 2 addresses the following question: Who has responsibility for developing straw proposal solutions?

Responsibility is determined based on the classification category of the Initiative:

- a) Compliance/Non-Discretionary:
 - FERC Rulemaking responses
 - Staff should develop the straw proposal for stakeholder review.
 - Exigent circumstances tariff change review/adoption
 - Staff should develop the straw proposal for stakeholder review. This review should kick off no later than 30 days after FERC approval and must be approved by the Board within 6 months or the RO Board can extend the exigent tariff changes pending further stakeholder development.
 - Minor corrections or adjustments
 - Staff may forgo a full stakeholder process, but should notify the SRC, market participants, and RO Board.
- b) Compliance with State and Local Public Policy:
 - The initiative proponent can put forward a straw proposal or recommend a Work Group to identify and discuss proposals to address compliance with the state/local policy issue.
- c) Discretionary Initiatives:
 - Emergent Operational Issues
 - Staff should develop the straw proposal for stakeholder review.
 - Discrete Initiatives:
 - Staff are responsible for driving the initiative towards a solution, conducting one or more public stakeholder meetings and comment periods and preparing straw proposals. This is similar to CAISO’s current stakeholder process.
 - The SRC sector sponsors may take the lead in the development of a straw proposal.



- Conceptual Initiatives:
 - Conceptual initiatives from Stage 1 will evolve into discrete initiatives in Stage 2.

The Stage 2 Work Groups are ad-hoc committees whose meetings are open to all stakeholders. They are created specifically to address the topic of the Work Group, may include any stakeholders who want to participate, and are created and dissolved at the discretion of the SRC. Work Groups may continue work on an initiative for several years and may take on additional topics or initiatives as identified in future Roadmaps if they so choose. Work Group co-chairs may use indicative voting at any time to evaluate progress.

The SRC may create Standing Committees to work on initiatives within broad categories like GHG or other continuing issues.

The staff can establish the maximum number of Stage 1 and Stage 2 processes that the RO can support based on the annual budget for stakeholder initiatives and the scope of the initiatives/work groups that are established.¹⁰⁰ Staff support the Work Groups in coordination with the stakeholder co-chairs. One approach used in other regions that may encourage coordination and collaboration between the staff and a Work Group is the use of one stakeholder representative and one staff representative as co-chairs (or a chair and vice-chair).

During the policy development phase, the Work Group would continue to assist staff with weighing stakeholder input, on an as-needed basis, to help ensure alignment with issue statements developed during the policy development phase. Priority items can move into the formal stakeholder process phase or be deprioritized for a future Catalog/Roadmap. Staff would retain the primary role of weighing and responding to stakeholder comments and formulating proposal revisions for stakeholder consideration.

Once a straw proposal is developed, the staff should conduct a vote of stakeholders to make a recommendation for staff to move the straw proposal (or revised straw proposal, as applicable) to a final proposal, with at least one stakeholder meeting and comment period. The staff will develop the final proposal recommendation, and the stakeholders will vote on the final proposal before it moves to the RO Board. All voting results will be part of the recommendation to the RO Board.

i Decisional Classification

An additional aspect of the Policy Development phase will be including a decisional classification recommendation at both the initiation of the initiative phase (if known) and at the final proposal stage. This recommendation would apply to tariff language changes as a result of an initiative, and functions to clearly identify which entity holds the decisional authority (e.g.: RO sole authority, CAISO sole authority, or shared authority). Today, the current process (see

¹⁰⁰ The RO can identify staffing constraints based on the scope of an initiative (e.g., Bidding above the price cap is small vs. EDAM/DAME that is large) or expertise (e.g., an RO employee may be the SME for both price formation and ancillary services).



“Decisional Classification Guidance for the WEM Governing Body” (7/17/2024 v.1.4)) is performed by CAISO management and approved by the CAISO Board and/or WEM Governing Body.

The Launch Committee recommends that the decisional classification move to the Stakeholder Process and occur both at the initiation of an initiative (if the initiative is well enough defined that a classification can be made), as well as at the final proposal stage. It is not uncommon during the policy development process for scope to expand or contract which could change the decisional classification. As a check on potential scope evolution, a “re-assessment” or “confirmation” of decisional classification shall take place prior to being presented to the RO Board and/or CAISO Board. Legal review of the proposed decisional classification is also recommended prior to the initiative being presented to the RO Board and/or the CAISO Board of Governors. Performing this check will provide additional guidance and confidence to the Board/s that the decisional classification is accurate. If there is a dispute as to the decisional classification, then a dispute resolution process will apply. The dispute resolution process will be developed together by the RO and CAISO. Migrating the decisional authority responsibility from CAISO management to stakeholders represents a move toward transparency and independence for all those who are impacted by the decision-making process.

3. Initiative Consideration by RO Board

Upon issuance of a final proposal by the staff and voting by the stakeholders, the proposal is ready to be presented for approval by the RO Board. For initiatives with potential adverse impacts on state, local, or federal policies, the Public Policy Committee would reach out to states, local power authorities, and federal power marketing administrations to determine if those entities feel that the potential impacts were resolved or mitigated through the stakeholder process or if they still remain. If concerns about adverse impacts continue to exist in a proposal that goes to the Board, the Board will determine how to weigh and address this issue. The Board could remand the initiative back for additional stakeholder work to resolve the issue.

Staff takes the lead in preparing materials for RO Board consideration. Those materials should include all voting results and summaries of comments and positions from stakeholders as well as a “Statement of Reasons” that includes the rationale for the recommendation and a report from the Public Policy Committee. In addition to the votes of individual organization and tallies by sector and other criteria as appropriate (e.g. geography, business model, commercial vs consumer interest), the SRC may provide written reports summarizing stakeholder positions and the history of the initiative. The SRC provides opinions to the RO Board on key decisional items, most likely discrete initiatives in which the SRC elected to take an advisory role, and Conceptual initiatives. The SRC may:

- Produce documents for the RO Board in connection with policy decisions – e.g., an opinion reflecting stakeholder views on a proposal, identifying open or unresolved issues, and the results of the indicative organization and sector voting (in support of, in opposition to, or neutral on) a policy proposal.



- Analyze and report to the RO Board whether the initiative adequately addressed policy priorities identified by stakeholders.

VOTING

The Launch Committee recommends that voting be included in the stakeholder process. Including indicative voting at the individual organization level in the RO Stakeholder Process was important to members of the Stakeholder Process Work Group and the Launch Committee because it provides a way to capture stakeholder sentiment and preference throughout the stakeholder process and identify areas of potential disagreement earlier in the process. For those who are more used to the CAISO’s RIF process where there is no voting, it is an increase in structure that will require some culture change. For those who are more used to SPP’s Markets+ process where there is weighted determinative voting, this could potentially feel like a dilution of stakeholder input in the stakeholder process. The Launch Committee believes this is a good middle ground place to start that achieves the NERC principles listed in the original proposal:

- Openness – participation open to all persons;
- Transparency – transparent to the public;
- Consensus building – build and document consensus;
- Fair balance of interests – not dominated by a small number of sectors, and respect for minority positions;
- Due process – reasonable notice and opportunity to participate and to have views considered; and
- Timeliness – getting things done, not bogged down in stalemates¹⁰¹

Voting on initiative prioritization through the Roadmap and at critical junctures in the initiative process has a number of potential benefits for stakeholder engagement, for staff and RO Board awareness about stakeholder views, and in driving consensus towards market enhancements. Voting should be structured to motivate compromise and collaboration.

Voting should not be seen as a substitute for robust stakeholder comments and dialogue. While voting helps identify general support or opposition to a proposal, stakeholder comments help shape and guide an initiative. Comments provide the “why” behind a vote and help staff and especially the RO Board understand if a sector is opposed to the whole initiative or a specific component.¹⁰² Comments continue to be a critical component that provide guidance and direction from stakeholders to the RO on market evolution.

¹⁰¹ NERC Rule of Practice 304(1)-(6) (effective November 28, 2023).

¹⁰² For example, in the Price Formation Enhancements – Rules for Bidding Above the Soft Offer Cap stakeholder initiative, many commenters express concerns with the initiative when the proposal was scoped to apply to both the day ahead and real-time (WEIM) markets, while those stakeholders that supported the initiative were focused on the application to the WEIM. Because of these comments, CAISO staff were able to modify the proposal to only apply to the WEIM, creating a final proposal that reflected more of a consensus position among stakeholders. Without the comments, this middle ground may not have been identified. Another example is the Energy Storage Enhancements Initiative where a few targeted solutions were achieved that both industry stakeholders and consumer advocates generally agreed upon, such as the ability to restrict co-located resources to charging from on-site generation.



Voting processes should be automated and accommodate virtual voting to enable the maximum number of organizations to vote. Voting processes and tools would be managed by the staff. Voting results will be made public, identify the voting entity, and should be able to be tabulated across different groups and sub-groups to convey more detailed information. Voting is ultimately advisory or indicative but should serve as influential data for consideration by stakeholders, the staff, RO BOSR, and the RO Board in decision making processes. Significant opposition from a majority of stakeholders to a proposal will typically result in an extension of the stakeholder process unless the staff present a sufficiently compelling rationale to approve the proposal that is then approved by the RO Board.

1. Who votes?

The staff will create an automated voting and reporting system that can be used for all voting processes. The primary voting metric (detailed further below) is at the individual entity level. As described below, "significant opposition" is identified by individual votes tallied at the sector level. Staff will ensure the votes are tallied for each individual entity and then cross-tabulated by characteristics including sector.¹⁰³ Sector representatives may supply additional information or context about individual votes within their sector during subsequent meetings of the SRC or RO. In addition, the staff and RO Board may draw additional insight from the detailed cross-tabulations of votes by subgroup as described below.

The sector votes for the purposes of identifying "significant opposition" are based on the results of a vote conducted by all of the registered organizations within each sector. No more frequently than annually, each sector may develop its own threshold for determining the sector-level vote. For example, the organizations in one sector may determine that a simple majority may determine the vote, while another may prefer a 75% threshold. Each individual member of the sector should be able to vote as an input in the sector-level vote.

A sector is required to have a minimum number of entities voting as a quorum requirement. Sectors may self-define quorum requirements based on the size of their sector. All self-defined requirements will be reviewed and approved by the RO Board or a subcommittee of the RO Board.

Staff are responsible for sharing appropriate background materials, hosting meetings, and providing appropriate links and reminders of the voting system to all stakeholders. SRC representatives should maintain regular communication with the sector members and ensure that engagement opportunities are created for the sector when necessary.

To have a vote, a stakeholder must register in a specific sector with the RO and agree to a code of conduct, or similar formalization of expectations about how to participate, as a stakeholder (see Appendix C for an example of a possible Stakeholder Registration and Participation

¹⁰³ In order to avoid situations where only a small portion of a sector actually votes, we seek stakeholder feedback on whether a minimum percentage of eligible voters in each sector could be used for purposes of the remand criteria described below. For example, if less than 30% of the eligible stakeholders in the sector vote, then the sector's vote would still be reported along with every other sector, but the sector would not be counted as part of the remand criteria for that particular vote.



Agreement). There will be no fee for registration. As noted by a commenter, part of the Registration and Participant Agreement should include declarations of any financial interests in, or membership dues paid to, other participants in the RO. Staff will establish a process for a stakeholder to modify or cancel their registration as appropriate. Registration will be renewed annually to ensure accurate registration information. Individual stakeholder organizations are responsible for keeping their registration and contact information up to date. Disputes regarding sector assignments will be reviewed by the SRC (see section above on Sectors). This approach would be distinguishable from the formality of a “membership” and associated agreement. Stakeholders who elect not to agree to a code of conduct and registration could still participate and comment but would not be eligible to vote.

Each registered entity may cast a vote. Entities may choose from the following options:

- 1) Support
- 2) Oppose
- 3) Abstain

The percentage of support or oppose is calculated relative to the sum of votes for support or oppose. Abstentions and non-voting do not contribute to the percentage. For example, if a sector has 10 members, 6 support, 2 oppose and 2 abstain, then it would show 75% supporting and 25% opposed. The percentages are used in determining whether “significant opposition” among stakeholders exists.

Abstentions are not counted as votes in an effort to drive entities to collaborate and compromise towards a proposal that entities can vote on. Entities are encouraged to submit comments to support their vote. Comments would be particularly important if an entity is abstaining in protest rather than because they either have no opinion or feel they lack the subject matter expertise to vote.

2. When do the groups vote/what are the triggers for voting?

As discussed in the Stakeholder Process section above, at a minimum, votes are conducted at the following stages in the process:

Policy Roadmap Process

- 1) Catalog/Roadmap prioritization: vote to recommend approval of the Final Roadmap (Advisory to RO Board)

Work Group/Initiative Process:

- 1) Problem statement/scope definition: vote to recommend moving forward from Stage 1 (Issue Evaluation) to Stage 2 (Policy Development) (Advisory to staff)
- 2) Straw proposal/revised straw proposal: vote to recommend moving forward to draft final proposal (Advisory to staff)
- 3) Final proposal: vote to recommend taking to the RO Board for approval (Advisory to RO Board)



Note that some initiatives, such as compliance initiatives, may not pass through all the process above. The RO Board or staff may also call for a vote at other stages of the process at their discretion. Stakeholders may also propose holding a vote at other stages, and stakeholders as a whole would have to support proceeding to a vote at such additional stages.

3. How is voting used?

Voting is ultimately advisory and provides visibility and information to the SRC, market operator, other stakeholders, RO BOSR, staff, and the RO Board. Voting is indicative of whether widespread support exists for an initiative or issue and whether any particular sectors or similarly situated subgroups are strongly opposed. All organization votes will be reported and a remand to the stakeholder process could occur if the votes indicate a need for more collaboration or deliberation in order to generate more agreement.

Remand: The remand process is defined to ensure that the stakeholder vote has a meaningful impact on the decision-making process if there are significant barriers to agreement and compromise. The remand process is used on final proposals prior to an initiative being sent to the RO Board. However, the goal of the robust stakeholder process defined in this Proposal is to promote collaboration and compromise and successfully avoid the need for remands.

Although the voting is advisory, the Launch Committee recommends specific criteria to determine a threshold for “significant opposition” (defined below).

Suggested criteria for “significant opposition” (one condition must be met):

- 1) Strong opposition in sectors. Strong opposition is defined as: one third of sectors at 70% or more opposed (percentage refers to the underlying votes in the sector); Or
- 2) Lack of consensus. A simple majority of sectors opposes.

If a vote meets these criteria, the expectation is that the proposal would be reworked to address the stakeholder concerns and to achieve broader support. However, if staff believes the initiative is time-critical, is an exigent circumstance or has significant impact on the justness and reasonableness of the overall market, or to address particular circumstances of a market participant or group of participants and should proceed forward, they should seek and receive approval from the RO Board to continue moving an initiative forward despite the significant opposition.

A remand to the stakeholder process could apply to a full initiative or part of the initiative if these are severable. Thus, if an initiative had multiple elements, staff would have the discretion about which level or group of elements on which to conduct voting. Voting could either be broken up into each element, or a vote could be taken on the overall initiative and staff could determine which elements need further work based on written and verbal stakeholder comment.

The Launch Committee discussed several ideas for the remand process when there is “significant opposition” among stakeholders, each of which had its pros and cons. We have reflected how the



Stakeholder Process Workgroup conceptualized a potential remand process subject to the RO Board's discretion, without providing a direct Launch Committee recommendation. Ultimately, the Launch Committee determined that developing a remand process under these circumstances that achieves the above stated goal of ensuring that voting has a meaningful impact on the decision-making process would benefit from additional stakeholder input and therefore recommends that the Formation Committee work with the Stakeholder Process Work Group and stakeholders to develop the remand process when "significant opposition" exists.

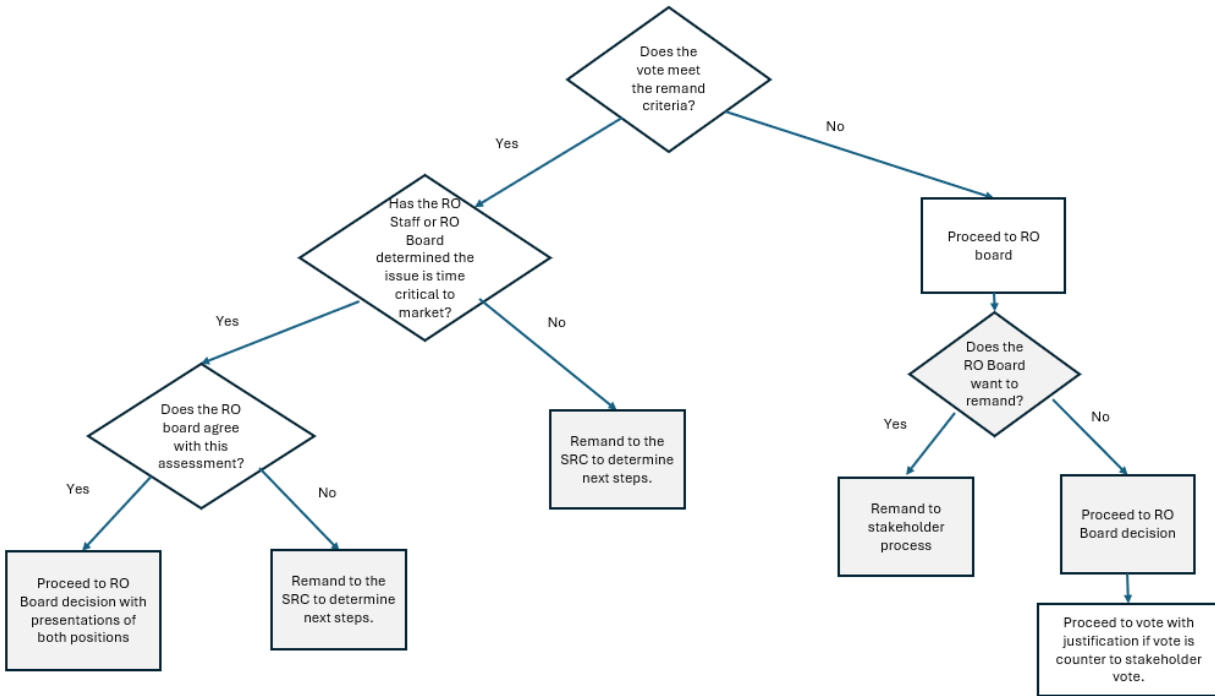
Elective remand: If the criterion for "significant opposition" are not met, but the RO staff is poised to make a recommendation or the RO Board is poised to make a decision that is counter to the recommendation from the stakeholder vote, the RO Board or staff could elect to send the issue back to the stakeholder process to address the stakeholder concerns prior to outright rejection. Similarly, the RO Board retains the flexibility to choose to send an issue/decision back to the stakeholder process even if it did not meet the "significant opposition" criteria. One rationale, for example, could be that while a majority of sectors support a proposal, entities that identify with a particular geographic region indicate deep opposition, suggesting a potential acute impact in that region. The different methods of remanding are a critical element for creating a stronger culture of responsiveness to stakeholders.

Elective override: If the staff strongly disagrees with the stakeholder vote, it may present a recommendation that is counter to the stakeholder recommendation. If that occurs, both staff and stakeholders would present their recommendation to the RO Board and the RO Board would make the decision. The RO Board could also override the stakeholder majority opinion or "significant opposition" if the RO Board decides that a proposal should move forward nonetheless, notwithstanding stakeholder opposition. Such an override should be based on consideration of the RO Board's overall responsibility for the markets. In that event, the RO Board would have to provide an explanation for the decision, such as an identification of overriding concerns like protecting consumer interests, addressing time-critical circumstances, or mitigating undue impacts on a particular region or group of entities. Factors in the decision could include, but not be limited to, opinions from the DMM, MSC or the Independent Market Advisor.

Votes at the scoping and straw proposal stage are advisory to staff.



Potential Conceptual Approach to a Stakeholder Remand Process Subject to RO Board, as produced by the Pathways Stakeholder Process Workgroup



4. What level of voting is visible to the members of the RO Board?

A tabulated report of all underlying votes will be available to the RO Board and will also be made public. This includes information about stakeholder characteristics that can create different stakeholder “groups”. Note that this tabulated report, and the metrics above reduce the emphasis on sector membership per se by diversifying the ways stakeholders are defined. Potential tabulations, informed by stakeholder input on the Draft Proposal, could include:

- Geography (e.g., Southwest, California, Northwest, Intermountain (or Mountain) West)
- Sector
- Line of business (Participating Transmission Owner, Investor-Owned Utility, Consumer-Owned Utility (cooperative, municipal utility, public utility district, etc.), Power Marketing Administration, Community Choice Aggregator, Independent Marketer, Independent Power Producer, Distributed Energy Resource Provider, Consumer Advocate, Large Load (Commercial or Industrial), Public Interest Organization, etc.)
- Supply and load: generation owning, load-serving
- For profit entity
- Non-rent seeking
- Public entity
- Balancing Authority Area
- Net supplier or net buyer of energy



Appendix E provides an example of voting cross-tabulation from the PJM Members Committee. This cross-tabulation is included purely for illustrative purposes of the type of report that could be generated based on entity characteristics and voting results and does not imply that the PJM model is recommended.

STAFFING

Throughout this Proposal there are descriptions of when staff will take various actions at different points in the process. To help better identify the staffing need to effectuate the proposed stakeholder process, the Launch Committee has attempted to categorize and identify the anticipated roles and responsibilities. At this time the Launch Committee is not making a recommendation about which entity (the RO or CAISO) would perform these roles. Instead, the Launch Committee recommends that the Formation Committee work with the CAISO to refine these roles and work collaboratively together to determine which entity they would best sit with. Below is a table to use as a starting place to begin these conversations:

Role	Responsibilities
Produce and Release Updated Catalog Annually (includes support to and working with SRC)	<ul style="list-style-type: none"> • Collect, contribute to, and organize potential initiatives • Support, guide and drive stakeholder process • Provide subject matter expertise, advice, and analyses: market design, budget, <u>resource (SMEs, technology, etc.) management</u>, FERC orders and procedures, etc. • Primary responsibility for reviewing, weighing and responding to stakeholder comments • Draft proposals • Manage votes • Administratively support SRC and sectors • Take lead in preparing Board material and administratively support the Board
Produce and Release Roadmap annually (includes support to and working with SRC)	See above.
Drive and support work in Roadmap (support of and working with SRC, working groups and other stakeholder committees that may be established)	See above.
Manage General Stakeholder Process	<ul style="list-style-type: none"> • Organize, manage, facilitate, and conduct general stakeholder meetings • Managing stakeholder engagement • Provide comment periods and comment templates • Review and respond to comments



	<ul style="list-style-type: none"> • Draft proposals • Provide subject matter expertise • Manage indicative votes • Prepare final initiatives for Board approval • Provide support for necessary analysis in support of proposals • Manage/coordinate feasibility assessments with technology and developers
Work with and support RO Board	<ul style="list-style-type: none"> • Schedule, organize and manage RO Board meetings (at home and in other locations) • Provide or organize presentations, including expert analysis • Provide and organize meeting materials • Manage Board votes/approval process, e.g., annual Roadmap, final initiative proposals, Board member nominations, all self-defined sector requirements, staff remand overrides and elective remand recommendations • Provide onboarding to new Board members • Manage Board travel, general administrative support, etc.
Work with and support RO Board Public Policy Committee	Administrative assistance to the PPC with their outreach, reporting and screening responsibilities.
Establish voting system, conduct registered stakeholder votes, tabulate results as required, and publish	Mandatory indicative Votes: 1) Vote to recommend approval of the Final Roadmap 2) Work Group/Initiative Process: 1. Problem statement/scope definition: vote to recommend moving forward from Stage 1 to Stage 2 2. Straw proposal/revised straw proposal: vote to recommend moving forward to draft final proposal 3. Final proposal: vote to recommend taking to the RO Board for approval
Establish and manage voting registration system	<ul style="list-style-type: none"> • Provide online registration, code of conduct, process for reviewing registration requests, etc. • Maintain list of registered members
Establish and conduct less formal votes and assist sectors with sector votes as requested	<ul style="list-style-type: none"> • Votes can be called on an ad hoc basis during the policy development process • Individual sectors may request admin support for sector votes on Board nominations or SRC rep appointments



Participate in Budget Process	<ul style="list-style-type: none"> • Provide guidance to stakeholders the budgetary, technology, ability to implement, and workplan of the market policy roadmap under consideration • Provide input into the annual budgetary and resource prioritization of stakeholder needs and priorities by the roadmap under consideration
Create and maintain website	Repository for initiative suggestions, repository for comments, meeting notices and associated meeting materials, voting results, registration information, initiative specific documents, educational and training materials, organizational documents (charters, bylaws, etc.), webpages for RO entities like SRC, Board, etc., archive market notices, etc.
Public relations and outreach	<ul style="list-style-type: none"> • Including but not limited to creating educational materials • Developing and maintaining relationships with states, FERC, market participants and other stakeholders • Responding to informational and other requests from stakeholders • Supporting or coordinating with CAO and OPP Developing and managing process to gather feedback and evaluate stakeholder process.
FERC related responsibilities	<ul style="list-style-type: none"> • Monitor FERC for orders and other developments • Participate in FERC workshops etc. as appropriate • Maintain relationships with FERC staff • Turn approved policy initiatives into FERC filings • File Tariff provisions with FERC and follow through to approval which may include additional stakeholder process • Provide expertise on FERC orders, precedent and processes to stakeholders
Drive and support board member nomination process	<ul style="list-style-type: none"> • Monitor and meet timelines of process • Drive and support creation of Nomination Committee and filling open seats on NC (including administering voting on sector NC rep when requested by a sector) • Hire, manage and work with executive search firm • Collect and organize materials about candidates recommended by various sources (search firm, self or third-party recommendations) • Provide support to sectors in selecting nominations including administering vote on candidates when requested by a sector



	<ul style="list-style-type: none"> • Schedule, plan and administratively manage NC meetings including for example, organizing meeting materials, setting up candidate interviews, developing summaries, etc. • Administer NC vote on candidates if necessary • Manage presentation to Board and conduct Board vote on nominations • Manage additional process if any nomination is not approved by Board
Support individual sectors administratively as requested	<ul style="list-style-type: none"> • Maintain sector lists and contact information • Schedule and plan meetings • Other general admin support, etc.
Provide/coordinate subject matter expertise	<ul style="list-style-type: none"> • For initiative prioritization and development process To SRC and other RO stakeholder groups, e.g. working groups as requested • To Board • To BOSR, OPP and CA Office as requested • Externally as requested, e.g., states, stakeholder groups, regional groups like WECC and WRAP, etc.
Coordinate with market entities that are jointly guided by RO Board and CAISO Board	DMM and MSC
Monitor and maintain relationships with related regional organizations	E.g., WECC, WRAP, other regional energy markets if applicable, and other ISOs and RTOs in the NERC area



CHAPTER 6: PATHWAYS TO ADDITIONAL SERVICES – STEP 3

SUMMARY OF PROPOSAL

Option 2.0 represents a significant step in establishing an independent board governing market rules. It is the primary next step which can allow the RO to offer additional services to interested market participants in the future on a voluntary basis. Under Option 2.0, the RO is not a public utility under the requirements utilized by the FERC. Consequently, the options for evolution to offer new products and services will be more limited in design following the approach used for energy markets: the RO will hold authority over only the *governance* and therefore policy direction and market design, but not the day-to-day operation of the services. If the RO becomes a FERC-regulated public utility, it would have greater flexibility to offer additional services with control over both governance and operations; operational functions could continue to be contracted with the CAISO as the market operator and regional service provider, as contemplated for energy markets under future services.

Markets are voluntary. The Launch Committee anticipates that state regulatory authorization will be needed for most regulated utilities to participate in markets or services that extend functionality beyond what is currently contemplated. However, the Launch Committee has reviewed these possible functions with an eye toward whether or not the institutional structure we are recommending could host these more ambitious roles that may bring more extensive consumer benefits, particularly when inclusive of California.

One of the Launch Committee’s adopted core principles included ensuring the RO would be sufficiently “flexible to accommodate the future voluntary provisions of full regional transmission organization (RTO) services for those entities that desire to do so, but not mandate that any entity must join such a future potential RTO.” Creating the RO can offer a pathway to a broader range of yet-undefined services beyond the day-ahead and real-time markets. These types of services could take many forms. Again, we are not proposing them here; rather, we are assessing whether the RO as contemplated could be a vehicle for further evolution of regional services, which was one goal of the regulator letter.

GREATER OPPORTUNITIES FOR TRANSMISSION OPTIMIZATION

A primary design concept of the WEIM and EDAM is to minimize disrupting existing transmission rights. Separate from WEIM and EDAM are potentially significant regional transmission reforms that, if implemented, could bring greater consumer benefit through greater utilization of transmission connectivity. Taken as a whole, these reforms relate to a centralization of operational control of transmission service and a shift from physical contract-path transmission reservation and scheduling to flow-based, financial rights-based transmission management, including in timeframes longer than the scheduling runs of WEIM and EDAM. While we do not believe that markets generally should extinguish pre-existing rights, there are mechanisms that have been used to honor rights, while maximizing the benefits of market optimization. Such reforms could take several forms, including a footprint that includes California, or any subset of the overall market footprint that finds them beneficial. This



additional transmission-related functionality, which is characteristic of all RTO/ISOs, could include greater optimization of systems and potentially reciprocity of access to systems.

California’s participation in future RO service offerings would have to be carefully considered by the CAISO Board under the proposed CAISO BA structure and governance (i.e., the retention of the CAISO’s corporate responsibility over its BA services) because the offering would be beyond governance of market services. If this ultimately represents a barrier to future evolution of the RO and subsequent transmission services, the Launch Committee has concluded that it is possible that two regimes can be put in place that honor California or other state policies, but enable transmission owners outside of California to move forward with more ambitious transmission-related concepts.¹⁰⁴

The RO may choose to offer, on a voluntary basis, whatever services the market participants would like (we spell this out more specifically for a potential Transmission Control Agreement below, but the same point holds true for more than one form of transmission-related service). Such an approach becomes possible through our Final Proposal because it would provide the West with a platform for fully independent governance for a voluntary structure similar to an RTO. Our Final Proposal also effectively positions the CAISO in its BA and transmission operator roles (along with California Participating Transmission Owners whose transmission is operated by the CAISO) like BAs and transmission owners outside of California: able to decide which additional services to participate in and pursue any necessary approvals on a timeline that best suits their individual circumstances. We view this as a form of parity that our Final Proposal accommodates.

We also emphasize, as we have in prior documents, the general value proposition of creating an RO that can offer incremental services that can be inclusive of California. By leveraging CAISO experience and infrastructure through a contract for services with the RO as the public utility and the CAISO as the vendor-style service provider, the RO participants’ transmission systems could be operationally co-optimized through a common full network model and the transmission access reciprocity provided today within the timeframes of the WEIM and EDAM markets. This framework may enable the RO participants to benefit from a more expeditious, efficient, and lower cost implementation of these additional services without creating a “seam” in energy market operations.

INCREMENTAL EVOLUTION FOR VOLUNTARY PARTICIPATION

The foundation of the West-Wide Governance Pathways Initiative is to enable the Western electricity market to continue on an evolutionary path that captures the incremental benefits of organized market participation while recognizing and preserving some of the unique attributes of Western energy markets that stakeholders want to maintain. Enabling individual market

¹⁰⁴ We note that nothing in this Final Proposal prevents or recommends foreclosing the option for transmission owners to simply become a Participating Transmission Owner within the CAISO, albeit subject still to the ultimate oversight of the CAISO Board, not the RO Board. That option is available today.



participants (including balancing authorities) to voluntarily progress down this path (inclusive of attributes similar to those in other organized markets) at a pace that is supported by their customers and their regulators/boards is a core value of the Pathways Initiative. The Launch Committee’s proposal provides a path that *enables* incremental participation without *requiring* participation.

The path towards market integration and optimization for the West can incorporate lessons learned from other markets to improve upon and enhance the unique attributes of Western participants. The path to a market in the West with services and products similar to other organized markets will likely result in an end state different from RTOs in other parts of the country because of the incremental approach the West has taken.

The Launch Committee’s proposal creates the foundation for continued evolution to an organization that is capable of RTO-like services for interested parties by enabling the RO to contract with CAISO to operate transmission and other services if the RO evolves into a FERC-regulated public utility.

SIMPLIFYING RULES FOR TRANSMISSION ACCESS AND OPERATIONS

As the RO evolves and considers potential additional services it could provide to complement the existing WEIM and EDAM services, transmission owners and market participants outside the CAISO BAA may wish to launch an initiative to develop the RO’s own Transmission Control Agreement (TCA), analogous to the agreement between the CAISO and Participating Transmission Owners. A TCA would govern the provision of transmission operations to interested parties. In the same vein, the RO, at the behest of interested parties, could offer a consolidated transmission tariff or, similarly, consolidated balancing authority services. While nothing in theory prevents such a service offering today, the West has no institution like the RO (with independent governance authority over energy markets) to host such services and act as the public utility before FERC. The RO would fill this gap. The specific interests of stakeholders, however, will drive the RO’s evolution through the Roadmap and prioritization process.

For the entities who may choose to opt into such a transmission-related or balancing authority-related service, the RO could consider development of a transmission paradigm that relieves rate pancaking and removes barriers to trade. This combined transmission rate could offer transmission service across the voluntary footprint. The RO could assume legal responsibility for the operations of the non-CAISO transmission system on either a contract path/transmission rights holder basis or move to a flow-based, financial transmission rights framework. Nothing about this proposal changes California’s operation and management of its own transmission system.

The Launch Committee acknowledges that the transmission-related approach outlined here may not be the optimal solution because it contemplates the creation of a new TCA outside of the CAISO. Successful implementation of what may be dubbed a “two worlds” transmission system operation may encounter more “points of friction” between the rules and governance of the two systems than a unified approach; however, bringing the West together for transmission



consolidation will be challenging regardless of the approach, and the approach outlined here could offer significant customer benefits over the status quo.

PATHWAYS TO OTHER SERVICES

The Launch Committee envisions a future where some market participants take a full suite of services from the RO while others participate in just the WEIM or EDAM. Each of these potential stakeholder initiative proposals below (unless otherwise noted), as with the transmission consolidation example discussed above, assumes that the RO develops its own tariff for each service and executes a contract for that service with the CAISO to leverage existing infrastructure, technology, and capabilities to mitigate incremental costs.

We recognize that there may be alternative paths to this evolution. We offer this recommendation as a visioning exercise to encourage stakeholders and the RO to proactively take up the mantle of market and transmission-related evolution to maximize benefits to Western energy customers.

1. Ancillary Services Market Co-optimization:

This stakeholder initiative could develop the tools to enable ancillary services in the EDAM BAAs to be co-optimized with energy. Ancillary services could include:

- Regulation
- Frequency Response
- Contingency Reserves (spinning and non-spinning reserves)

The RO could create a tariff (or amend the existing WEIM/EDAM tariff) to enable all resources that are able to meet the technical requirements of the specific ancillary service to participate in a bid-based market for each service that co-optimizes energy and ancillary service awards, as is done in CAISO's market within the CAISO BAA today. The benefits to consumers to access and share reserves and ancillary services over a broad area cannot be underestimated and should be contemplated. The RO would develop the technical requirements for each service based on NERC and WECC standards. Tariff changes would enable the co-optimization and deployment of these services across the market footprint. We note that this service could be an incremental addition to the EDAM tariff as is proposed today and does not necessarily require the establishment of the RO to capture this benefit; however, if this service was provided under a future RO, then the RO could have oversight of this service.

2. Balancing Authority Consolidation

This stakeholder initiative would enable balancing authorities outside of the CAISO to consolidate operations under a new RO tariff. Balancing Authority consolidation would reduce the need for 24-7 staffing and shift the compliance obligation for certain WECC and NERC reliability standards from utilities to the RO. Under this initiative, balancing authorities could choose to consolidate under the RO. This would create a "western" balancing authority and a California balancing authority as the Launch Committee's proposal preserves the CAISO



balancing authority under the CAISO Board.¹⁰⁵ However, we note that evolution towards a fully integrated ISO/RTO is possible with multiple balancing authorities, similar to the evolution in the MISO. The two balancing authority model, supported by transmission reciprocity is one of the key compromises that has enabled collaboration and consensus for the Launch Committee’s work.

3. Single Generator Interconnection Queue

As part of a consolidated transmission tariff (mentioned above as a potential high-value service offering), the RO could develop and manage a single queue for generator interconnection for the non-CAISO grid. While this queue would be operated separately from the CAISO interconnection queue and under the RO’s sole authority, the timing of the interconnection study process could be coordinated with the CAISO’s queue, with an enhanced “interregional” queue to enable delivery from one Balancing Authority to another without having to participate in two interconnection queues. Such a coordination could also result in the creation of transmission rights.

4. Congestion Revenue Rights (CRR)

Subsumed within options for greater transmission optimization, future service offerings could include replacement of contract-path methodology with a flow-based methodology and financial transmission rights. This methodology could include an approach that enabled CRRs to be auctioned/allocated on tie points between BAs under joint authority. While CRRs may be possible under the current EDAM structure for market participants who seek that optionality, any evolution that involves BA consolidation would likely simplify CRRs from one location and sink in another in a more efficient manner. A more generalized approach to CRRs, beyond WEIM/EDAM, may require some of the transmission-related reforms described above as a first step.

STAKEHOLDER PROCESS INITIATION

The Launch Committee recommends that the Formation Committee create a list of stakeholder initiatives to be included in the RO’s Catalog as a potential roadmap to enable continued incremental evolution to the RO providing a full range of RTO services. Some of these initiatives would be predicated on the RO’s evolution into a public utility.

The Launch Committee recognizes that the evolution of this vision will come through stakeholder-driven initiatives to capture incremental benefits, and that market participants and other stakeholders will need to prioritize, develop, and implement these steps. We note that one of the core features of the success of the market design is that each market participant (including participants with balancing authority responsibilities) has the opportunity to voluntarily opt into incremental services offered by the RO.

¹⁰⁵ We note that a BA could also choose to consolidate under the CAISO Board, as Valley Electric Cooperative did in 2013.



NEXT STEPS

Assuming the Launch Committee adopts the Proposal at its November 22, 2024 public meeting, this sets the stage for a multi-year process to further develop and implement Step 2 in coordination with the CAISO, WEM Governing Body, and stakeholders. Outlined below is a preliminary set of anticipated next steps that the Launch Committee will be taking to create the RO along with initial timing estimates.

FORMATION COMMITTEE

In early 2025, the Launch Committee will delegate to the Formation Committee and oversee the activities required to advance this process. The work of the Formation Committee will be coordinated with the effort to amend the statutes at the California Legislature. The Formation Committee's initial scope of work will likely include the following activities:

Preparation Activities (Prior to California Legislation Enactment)

- Finalize selection of Formation Committee participants and stand-up committee
- Develop detailed plan (including scope, schedule, and cost) for transition from Step 1 oversight to Step 2 oversight
 - Coordinate with CAISO on cost-of-service study for initial RO
- Commence RO pre-launch implementation efforts
 - Development of Bylaws, Articles of Incorporation, Charter, etc.
 - Develop initial budget estimate for RO, to include:
 - Staffing estimates
 - Evaluate what, if any, contingency reserve would be appropriate for the RO in Option 2.0
 - Conduct additional market research and obtain specific insurance quotes for the RO; the need for specific forms of insurance depends on the terms of the contract between the RO and the CAISO, including any indemnification provisions.
- Finalize Nominating Committee process and procedure for RO Board selection
- Coordinate with CAISO on development of initial tariff language for the RO
- Coordinate with CAISO on development of initial language for service level agreement between CAISO and RO
- Develop position descriptions for RO Board members and initial RO staff
- Select executive search firm for RO Board and staff selection process
- Coordinate with consumer advocates and scope the Consumer Advocate Organization (CAO)
- Identify the appropriate scope of work and organizational structure for the Office of Public Participation (OPP) including budget and staff
- Finalize RO stakeholder process including remand process for “significant opposition”



- Create an initial list of stakeholder initiatives for RO Board consideration to be included in the RO’s Catalog as a potential roadmap to enable continued incremental evolution to the RO

Implementation Activities (After California Legislation Enactment/Before Seating RO Board)

- File RO incorporation documents with the state of incorporation (Delaware) and to request certification as a non-profit 501(c)(3) organization from the Internal Revenue Service
- Initiate the Nominating Committee process
 - Seat the Nominating Committee
 - Execute contract with executive search firm
 - Create proposed slate of initial RO Board
 - Nominating Committee approval of the slate

Implementation Activities (After California Legislation Enactment and After Seating RO Board)

- Onboard RO Board
- Initiate RO staffing selection
 - Initiate selection process
 - Coordinate with RO Board on finalizing selection
 - Onboard executive staff
- Seat Consumer Advocate Organization and Office of Public Participation
- Finalize tariff language and service level agreement language between RO and CAISO and seek approval
- Engage with CAISO to migrate authority over energy market services to the RO
- Disband Launch Committee/Formation Committee

The Launch Committee anticipates that the scope of work will evolve as the work progresses and will be guided by the timing and framing of any legislation enacted by the California legislature to support Step 2 implementation.

LEGISLATION

The California legislative process likewise will commence in early 2025, with February 21 scheduled as the last day for bills to be introduced.¹⁰⁶ While the Launch Committee’s charter does not permit its engagement in legislative advocacy, several California stakeholders – including past opponents of regionalization efforts – will be engaged. Successful legislation would be designed to authorize the CAISO and California IOUs to participate in energy markets managed by the new RO, rather than the CAISO, but will not control RO formation or

¹⁰⁶ 2025 Tentative Legislative Calendar



participation by other entities (including California POUs) in those markets. The Legislature could enact a bill at any time during the legislative session but not later than September 12, 2025.

CONTINUED STAKEHOLDER ENGAGEMENT OPPORTUNITIES

The Formation Committee will actively seek public comment on its activities as part of its periodic updates facilitated through the Launch Committee processes through public meetings. The Formation Committee will also seek additional opportunities for stakeholder feedback, input, and engagement where appropriate, and may utilize work groups on topics that would benefit from broader engagement similar to the Phase 2 work groups. Public meetings will continue to be recorded and materials will continue to be housed on the WIEB landing page. The Launch Committee can continue to be reached via pathways@westwidepathwaysinitiative.org and all comments can be directed to comments@westwidepathwaysinitiative.org.



APPENDICES

Appendix A: Perkins Coie Public Utility Status for Regional Organization (“RO”) Memo

Appendix B: Creditworthiness Impacts Memo – AGVP Advisory

Appendix C: Formation Committee Charter

Appendix D: Selection Procedure for Regional Organization Board of Directors

Appendix E: Example Voting Cross-tabulation from PJM

Appendix F: Stakeholder Registration and Participation Agreement

Appendix G: Feasibility Analysis Topics

**APPENDIX A: PERKINS COIE PUBLIC UTILITY STATUS FOR REGIONAL ORGANIZATION (“RO”)
MEMO**



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DRAFT OF August 9, 2024

TO: Evelyn Kahl, Spencer Gray
FROM: Jane E. Rueger
RE: **Public Utility Status for Regional Organization (“RO”)**

You asked us to analyze (1) whether the RO would be considered a “public utility” as defined in the FPA under Option 2.0¹⁰⁷ or Option 2.5¹⁰⁸ (or both) of the range of options for structural alternatives to the governance of wholesale electricity markets operated by the CAISO identified in our memo dated April 4, 2024 (“April 4 Memo”); and (2) whether, under Option 2.5, FERC would tolerate an integrated tariff assuming the RO is a “public utility” under that option. Capitalized terms not defined herein have the definitions provided in the April 4 Memo.

I. Executive Summary

There is a good argument that the RO is not a “public utility” under either Option 2.0 or Option 2.5, because under both options the RO neither “owns” nor “operates” the CAISO tariff that contains the Market Rules. The FPA defines a public utility as “any person who owns or operates facilities subject to the jurisdiction of” FERC.¹⁰⁹ Under both Option 2.0 and Option 2.5, CAISO

¹⁰⁷ Option 2 is: The EIM GB becomes an RO, a separate legal entity, and CAISO retains market activities within its corporate scope and operates the market. The CAISO tariff continues to house, and CAISO Administers, the Markets Rules. CAISO delegates or transfers to the RO the sole authority to direct CAISO to file changes related to Markets Rules, with no remaining CAISO Board involvement.

¹⁰⁸ Option 2.5 is: The EIM GB becomes an RO, a separate legal entity, and CAISO transfers responsibility for market activities from its corporate scope to the RO. The CAISO tariff continues to house, and the CAISO administers, the Markets Rules pursuant to a Market Operating Agreement. The RO has independent section 205 filing rights and sole authority to propose and file changes related to Markets Rules with no remaining CAISO Board involvement.

¹⁰⁹ 16 U.S.C. § 824(e).

continues to “own” the tariff (in that the tariff remains on file with FERC as a CAISO-filed rate) and the other facilities used to conduct market operations pursuant to the Market Rules. While FERC precedent expansively defines “operates” to include control over a jurisdictional facility (and a tariff is itself a jurisdictional facility), the CAISO still arguably controls the tariff under FERC precedent in the sense that it alone controls the decisions directly affecting day-to-day operation of the markets through its administration of the Market Rules, while the RO does not have any decision-making control over those day-to-day operations of the markets.

Though there is little precedent directly on point, this argument is supported by FERC’s decision finding that NEPOOL is not a public utility because it neither owns nor operates jurisdictional facilities.¹¹⁰ Under the ISO-NE Participants Agreement, if NEPOOL supports an alternate proposal made at the ISO-NE Participants Committee, ISO-NE must include that alternate proposal in its section 205 filing of its preferred proposal, explain its reasons for not agreeing with the alternate proposal, and explain why its preferred proposal is superior. Thus, NEPOOL has a modicum of control over ISO-NE’s exercise of section 205 filing rights and, by extension, the ISO-NE tariff. Nonetheless, FERC concluded in *RTO Insider* that NEPOOL is not a public utility. However, FERC did not provide a detailed analysis for its conclusion in *RTO Insider*, and our research has not found cases directly assessing whether an entity having *sole* decision-making authority over aspects of another entity’s tariff (i.e., more extensive rights than the ability to trigger a “jump ball” filing) would result in that entity being a public utility.

Moreover, as *RTO Insider* made clear, even if the RO is *not* a public utility, FERC would still have jurisdiction over the RO’s operations, rules and practices—including with respect to practices that impact filings with FERC under section 205 to amend the Market Rules—to the extent they directly affect jurisdictional rates in the CAISO tariff. These would include operations, rules and practices directly related to the RO making filings under section 205.

In addition, there are certain potential advantages to accepting public utility status that should be considered.¹¹¹ While public utility status may subject the RO to additional regulatory oversight than if it was found not to be a public utility,¹¹² accepting public utility status immediately would provide the RO with certainty as to its regulatory status; conversely, not doing so would require continued evaluation of (1) whether changes to the RO’s relationship with CAISO over time impact the analysis of whether the RO is a public utility and (2) which of the RO’s operations, rules and practices are subject to FERC’s oversight because they sufficiently affect jurisdictional rates in the CAISO tariff. In addition, accepting public utility status would take off the table a potential avenue of attack that parties opposed to Option 2 or Option 2.5 might otherwise bring regarding the extent of FERC’s ability to regulate the RO. Finally, accepting public utility status may provide CAISO comfort that any potential liability under the FPA for RO decisions over changes to Market Rules will be appropriately shared between CAISO and the RO.

¹¹⁰ *RTO Insider v NEPOOL*, 167 FERC ¶ 61,021 (2019) (“*RTO Insider*”).

¹¹¹ Even if the RO could argue that it should *not* be deemed a public utility, we would not expect FERC to take any issue with the RO voluntarily submitting to its jurisdiction as a public utility.

¹¹² For example, unless a blanket authorization or exemption applies, public utilities must apply for prior authorization from FERC to issue securities under Section 204 of the FPA, and certain transactions involving public utilities may also require prior authorization from FERC under Section 203 of the FPA.

II. Analysis

A. Would the RO be considered a “public utility” under either Option 2.0, Option 2.5, or both?

Section 201(e) of the FPA defines a “public utility” as “any person who owns or operates facilities subject to the jurisdiction of” FERC.¹¹³ Under section 201(b)(1) of the FPA, jurisdictional facilities are facilities used in the transmission or sale for resale of electric energy in interstate commerce.¹¹⁴ In addition, jurisdictional “facilities” may include tariffs, contracts, accounts, memoranda, papers, and other records, insofar as they are utilized in connection with wholesale sales of electric energy.¹¹⁵ The jurisdictional facilities in this case are comprised of the CAISO tariff and associated books and records.

Under both Option 2 and Option 2.5, the CAISO arguably continues to own the CAISO tariff, because the CAISO tariff will be on file with FERC in CAISO’s eTariff database. However, it is a closer question whether the RO would be deemed to “operate” the jurisdictional facilities here. Under FERC precedent, FERC includes as “public utilities” entities that have control and decision-making authority concerning the operation of jurisdictional facilities or activities.¹¹⁶ Moreover, “control” has been found even where that control is not absolute or unfettered.¹¹⁷

In an order addressing a complaint by a news organization against NEPOOL, FERC had the occasion to address whether NEPOOL is a “public utility” and determined that it is not. In that case, RTO Insider filed a complaint against NEPOOL asking FERC to require NEPOOL to grant

¹¹³ 16 U.S.C. § 824(e). The definition excludes owners of facilities subject to FERC’s jurisdiction solely due to certain provisions of the FPA such as FERC’s authority to direct interconnection and transmission service or oversight over electric reliability. In addition, the FPA excludes from regulation under the FPA various governmental entities and electric cooperatives. 16 U.S.C. § 824(f). These exclusions are not applicable to this analysis.

¹¹⁴ 16 U.S.C. § 824(b)(1).

¹¹⁵ See *Hartford Elec. Light Co.*, 131 F.2d 953, 961 (2nd Cir. 1942) (“*Hartford*”); *Golden Spread Elec. Coop.*, 39 FERC ¶61,322, at 62,022 (1987), *reh’g denied*, 40 FERC ¶61,348 (1987) (“*Golden Spread*”).

¹¹⁶ Compare *Bechtel Power Corp.*, 60 FERC ¶61,156 (1992) (finding Bechtel was not a “public utility” in its role as O&M services provider to a generating facility because it operated the facility as an agent of the owner, and did not have independent authority to make decisions or control when the facility operated) with *D.E. Shaw Plasma Power, L.L.C.*, 102 FERC ¶61,265 (2003) (finding that an investment advisor affiliate of a D.E. Shaw power marketing public utility was itself a public utility because the investment advisor had control over the wholesale contracts to be executed under the power marketer’s market-based rate schedule as a result of (1) the investment advisor having sole discretion to enter into contracts, (2) the investment advisor having exclusive ownership of the intellectual property on which contracts would be based, and (3) the intention that the investment advisor would recommend the contracts into which the power marketer would enter).

¹¹⁷ See, e.g., *R.W. Beck Plant Management, Ltd.*, 109 FERC 61,315 (2004) (finding that an energy management company was a public utility due to its governance over the physical operation of a generating facility and effectively served as the decision-maker in the sales of power at wholesale, even though various other affiliates and a trustee had some input into operations as well).

press access to private meetings at which members decided on votes related to filings in connection with the ISO-NE tariff, among other things. NEPOOL asked FERC to dismiss the complaint, arguing that NEPOOL is not a public utility because it does not have a tariff on file with FERC and does not operate facilities used for transmission service or wholesale sales of energy. NEPOOL further argued that press rules did not “directly affect” jurisdictional rates and so were beyond FERC’s jurisdiction. Comments supporting the complaint argued that NEPOOL should be deemed a public utility in part because of its “jump ball” filing rights with regard to the ISO-NE tariff. FERC denied the complaint and in relevant part concluded that NEPOOL is not a public utility.¹¹⁸ FERC did not elaborate or engage expressly with arguments that NEPOOL’s “jump ball” filing rights gave it control over ISO-NE’s tariff and therefore caused NEPOOL to be a public utility. FERC noted that in a prior decision, it had found that rules governing NEPOOL membership “directly affect what filings the Commission receives pursuant to FPA section 205” because they dictate who may vote on proposed ISO-NE filings and NEPOOL-originated “jump ball” proposals; however, FERC concluded that NEPOOL rules prohibiting press and public attendance at NEPOOL meetings do not directly affect such filings because they do not affect who may vote on NEPOOL proposals.¹¹⁹

The *RTO Insider* precedent provides a good argument that the RO would not be deemed a public utility under either Option 2.0 or Option 2.5. FERC there found that NEPOOL neither owned nor operated jurisdictional facilities, despite NEPOOL’s filing rights with regard to the ISO-NE tariff. Similarly, the RO does not “own” any jurisdictional facilities under either Option 2.0 or Option 2.5—CAISO “owns” the tariff under which Market Rules are housed because the tariff is on-file as a CAISO tariff under both options. Likewise, the RO arguably does not “operate” the CAISO tariff where the Market Rules are housed because the RO is not engaged in the day-to-day operations of the markets; that function remains with CAISO. The RO can argue that, as FERC found in *RTO Insider* with regard to NEPOOL, it is not a public utility despite its section 205 filing rights; CAISO is the public utility in this scenario. Moreover, the RO can argue that, from a policy perspective, FERC does not have to find the RO to be a public utility to have jurisdiction over the activities of the RO that directly impact jurisdictional rates.

However, we did not find any precedent directly on point with an entity that has the sole filing rights (or sole authority to direct use of CAISO’s filing rights) with respect to a portion of a tariff. A counter-argument could be constructed based on the *R.W. Beck* and *D.E. Shaw* precedents that the RO should be deemed a public utility, because it maintains sole control and decision-making authority over the Market Rules and how they change over time, which directly shapes wholesale energy transactions in the market. From a policy perspective, FERC may not have felt it necessary to extend jurisdiction over NEPOOL as a public utility in *RTO Insider*, because ISO-NE retained section 205 filing rights over its tariff also, and FERC concluded that it had jurisdiction over

¹¹⁸ *RTO Insider v NEPOOL*, 167 FERC ¶ 61,021, at P 46 (2019) (“NEPOOL is not a public utility as defined by the FPA. As an organization, NEPOOL does not “own[] or operate[] facilities” engaging in “the transmission of electric energy in interstate commerce” or “the sale of electric energy at wholesale in interstate commerce.” As such, the Commission can exert jurisdiction over NEPOOL’s operations only insofar as they directly affect jurisdictional rates.”).

¹¹⁹ *RTO Insider* at P 48 (citing *New England Power Pool Participants Committee*, 166 FERC ¶ 61,062 at P 48 (2019)).

operations of NEPOOL that directly impacted jurisdictional rates even if NEPOOL is not a public utility.

Even if FERC agrees that the RO is not a public utility, it will still extend jurisdiction over rules, operations and practices of the RO that directly affect jurisdictional rates. The *RTO Insider* case makes clear that at least those rules, practices and operations directly related to how the RO decides to use its or the CAISO's 205 filing rights to modify the Market Rules over time will be subject to FERC's jurisdiction, even if the RO is not a public utility. Whether particular practices directly affect jurisdictional rates is a fact-specific determination.

III. Assuming the RO is a “public utility” under Option 2.5, would FERC tolerate an integrated tariff?

Our research has not uncovered any cases that suggest FERC has a concern about an “integrated” tariff, so long as the substantive questions about RTO/ISO independence and governance are otherwise addressed (these issues were discussed in the April 4 Memo). In fact, FERC has been flexible with regard to what it calls “shared tariffs” as reflected in Order 714, which adopted FERC's current eTariff system for filing tariffs with FERC. There, FERC structured the administrative requirements to ensure that the eTariff filing software was flexible enough to work for all the various kinds of tariffs and rate schedules on file, noting in particular:

All utilities, but principally the electric industry, may make joint and shared tariff filings. Joint filings refer to tariffs applicable to more than one company. Shared tariffs refer to a tariff that can be revised by one or more parties. Shared tariffs principally refer to ISO or RTO tariffs, sections of which can be revised by the ISO and RTO as well as by individual transmission owners.

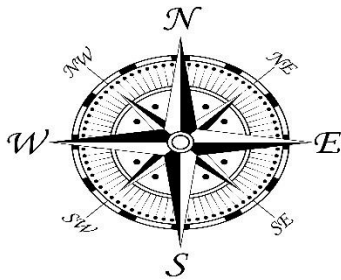
* * *

Shared tariffs refer principally to ISO and RTO tariffs, portions of which may be revised by FPA Section 205 filings by the ISO/RTO or other transmission owners. Depending on the tariff section involved, one party may have exclusive rights to modify the section or multiple parties may have rights to modify the section. The structure of all the ISO and RTO tariffs as well as their filings rights are different.¹²⁰

FERC thus has been flexible in tolerating a variety of shared tariff structures, including where more than one party has filing rights over a single shared tariff.

¹²⁰ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 at PP 60, 65 (2008).

APPENDIX B: CREDITWORTHINESS IMPACTS MEMO – AGVP ADVISORY



Memorandum #5

To: Spencer Gray, NIPPC

Lisa Tormoen Hickey, Interwest Energy Alliance

From: Dan Aschenbach, AGVP Advisory

Subject: West wide Governance Pathways Initiative Step 2.0 to 2.5 RO assessment and credit estimate

Date: November 4, 2024

This memo is a refinement of the #4 memo previously sent on future arrangements such as a 2.5 RO and the establishment of a western Regional Organization (RO) that would be the sole authority for the western electricity market governance and operation. The primary conclusion is that the initial 2.0 and then movement to 2.5 RO would be a positive credit event for Cal ISO and for the RO itself.

While structural and legal features of future arrangements such as 2.0 or 2.5 RO are not in place as of the date of this memo, assumptions are needed to define the strengths and challenges of the RO and to develop an estimate of the credit quality of the new entity. For this evaluation the assumption is the new western 2.0 to 2.5 RO would be formed as a non-profit 501 C (3) corporation having tax-exempt status separate from Cal ISO and be a contract for services entity in which the Cal ISO pays for the 2.0 and 2.5 RO market services from the Cal ISO budgeted Grid Management Charge (GMC) assessed on all the 2.0 and the 2.5 RO western region market participants. The RO would not remove the jurisdiction of California (or any other state) over retail rates, resource planning, resource siting, transmission siting, renewable energy policies, and emissions reductions policies.

An arrangement such as 2.0 and then the 2.5 RO would govern the WEIM and EDAM. The 2.5 RO would have sole authority over market governance and operation. The Cal ISO bylaws and tariff would be modified to make clear and memorialize the Cal ISO and 2.5 RO relationship in which 2.5 RO would provide a contract to Cal ISO, vendor, to operate the EDAM and WEIM. Cal

ISO and its contract payment for 2.5 RO services would initially be under the existing Cal ISO GMC tariff.

RECOMMENDATIONS TO SUPPORT FINANCIAL OUTCOMES:

- 1- Establish a foundational RO governance and transition to RO plan that can provide long-term certainty and maximize the value of the energy market in the western region. Also institute a foundational compact that establishes Cal ISO's role and the sole authority by RO on policy and operations with a process for equitable treatment of disputes.
- 2- Maintain a focus on the benefits of the RO detailing the credit worthiness factors such as diversification of risk including lessening financial impact of a worst-case market failure; broader credit quality of the participating western utilities in RO 2.5 rather than Baa-average of the dominant California IOUs; the market efficiency and reliability drawn from the larger market footprint; and strong financial forecasts with reasonable assumptions.
- 3- Establish a 2.5 RO contingency reserve that recognizes the newness of the RO but also the significant protection of the footprint of the first claim on the broader western market settlements should there be a market participant default.
- 4- A broader western market governance and operation would benefit from the ability to manage its vast renewable resources, including the potential of offshore wind, and represent a safeguard to mitigate financial issues and weather impacts while maintaining reliability with a deeper and broader footprint. This point was affirmed by an October 2024 study by Brattle on the proposed day-ahead market in WECC. <https://www.brattle.com/insights-events/publications/brattle-experts-assess-the-proposed-day-ahead-markets-in-the-wecc-in-a-new-white-paper/>)
- 5- A well-thought-out analysis will be required **should there be a decision to consider moving further to an arrangement such as 3.0 RO which may be** under a separate tariff and staffing and a plan to ensure Cal ISO bonds are well protected. For example, would the Cal ISO bonds still benefit from the priority claim on market settlement revenue if the 3.0 RO has a separate tariff and the responsibility for wholesale markets and the related risks and liabilities? Bond counsel will need to review this issue thoroughly as well as other restrictive bond resolution provisions, to be detailed later.

CREDIT STRENGTHS OF CAL ISO IMPROVES AND THE NEW 2.5 RO CREDIT ESTIMATE COULD BE STRONG AS WELL

Movement to the 2.0 RO then to the 2.5 RO improves Cal ISO creditworthiness on existing bonds. AGVP Advisory opines ratings will improve to Aa from A1 (Moody's) and AA from A+

(S&P) and possibly a positive outlook from (Fitch). This assumes that Cal ISO bonds remain secured by GMC revenues and Cal ISO has a first priority claim on the broader western market settlement revenues.

A possible first step by the rating agencies may be a positive outlook, holding back on a higher rating to reflect implementation risk of 2.5 RO. See Moody's comment in appendix C. The main factors in the improved credit outlook are the limited new debt leverage expected to fund 2.0 to 2.5 RO, stable cash flows and continued sound operating reserves including for 2.5 RO, diversification of default risk from the material expansion of Cal ISO's existing wholesale market, the strong pledge of first priority claim to market settlement revenues in case of a market participant default, the continued FERC supportiveness of cost recovery and the improved credit profile of market participants because of the material expansion of western market beyond California.

Fitch commented in its last credit review (see APPENDIX F) it did not see an upgrade potential at the time of its review then, and that the creation of a western market would have only temporary disruption, and it expected revenue stability. Fitch also noted the expansion of the market would provide robust coverage of the GMC charge. AGVP believes better definition of robust coverage for Fitch could help in them seeing further credit improvement.

Regardless of whether the new 2.5 RO would oversee the market functions through a contract for service with the Cal ISO or be funded by a second lien bond to be issued to finance the start-up of the 2.5 RO, either way it would be credit positive for Cal ISO due to the diversification and broadening of market participants.

The 2.5 RO bond financing may receive a rating a notch below the Cal ISO rating as it would be a contract service and not a direct obligation of Cal ISO. Also, since it is a new entity without a record, more credit pressure might be reflected. However, the expected close financial relationship between Cal ISO and the 2.0 to 2.5 RO and the sound operating reserves, along with access to the first priority claim on market settlements could argue for a credit estimate for 2.0 RO to 2.5 RO at the same rating level as Cal ISO.

CREDIT POSITIVES FACTORING INTO THIS ASSESSMENT

1-The broader diversification and larger footprint: The diversification and footprint of utility credit risk and lessened financial impact of any single utility default is a major strength and value of arrangements such as 2.0 and 2.5 RO. This assumption includes that the 2.5 RO is a contract liability. Under Step 2.5, the default risk on Cal ISO and the 2.5 RO shifts to all utilities and balancing authorities that join the 2.0 then 2.5 RO throughout the western states, versus with the current status with the risk sharing being limited between Cal ISO's 2024 existing market participants.

The extent of the broader market will depend on how many of the balancing authorities participate in the 2.0 and then 2.5 RO.

The broader market in the WECC’s 14 states increases the benefits of resource diversity over the larger geographic area. For example, the impacts of the stresses of extreme weather, such as wildfire risk, and of intermittency of renewable generation would be somewhat mitigated by the broader and more diverse resources and utility providers. The diversity in the number of power generation facilities increases from California’s 1616 facilities to over 3,000 facilities should all of the WECC be included. From Grid Info data, the net generation would be greater as California’s net generation is 18,642,000 GWh and would be 65,666,000 GWh if all of the total balancing areas in WECC are included.¹²¹

According to WECC data, there are 32 balancing authorities in WECC with 9 participating in the EDAM market in 2023. While it is unlikely that all balancing authorities will participate in the 2.0 to 2.5 RO the broadening of the energy market risks will be diversified so that any participant default has significantly less impact and the efficiency and reliability benefits of the broader market outweigh any individual utility’s concerns about spreading of default risk to all utilities.

According to the Cal ISO’s 2023 Continuing Disclosure report, 29% of Cal ISO’s energy market revenues in 2024 were from the top two investor-owned utilities based in California, with average credit ratings of Baa/BAA. Continued diversification of revenues and market settlements brought by the western region and lowering the dominance of any one or two utilities would be a major positive consideration. Below is a table on California IOUs credit quality.

California IOU Ratings by Rating Agencies:		
Moody’s	S&P	Fitch
PG&E-Baa3 (stable)	BB(stable)	BB+(positive)
SCE- Baa1(stable)	BBB(stable)	BBB(stable)
SDEG-A2 (stable)	BBB+(stable)	BBB+(stable)

In contrast to the dominance of the IOUs in California, assuming the utilities that now participate in WEIM (including the California utilities) will participate in the western energy market operated and governed by the 2.5 RO, participant utilities with 43% of the non-California market annual load are rated Aa or Aaa and about 15% are rated A and the balance Baa, with only one Ba1 rated utility. Even if all the utilities in WEIM do not participate in the 2.5 RO, the dominance of the California IOUs will still be materially lower.

Besides the California investor-owned utilities, the majority of market participants in WECC individually make up less than 5% of the total load. There were a few larger participants with the largest, Alberta Electric System Operator at 11.1%; BC Hydro at 8.4% and BPA at 7.5%. This compares to the 29% from the top two IOUs in California.

¹²¹ <https://www.gridinfo.com/>

2-Diversification, a credit strength: Diversification also benefits the financial management of the impact of any worst-case event, and its impact on the ability to meet Cal ISO and 2.0 or 2.5 RO budget obligations.

For example, during the historic market failure brought about by the deregulation of the California electricity market in 2000-2001, Cal ISO experienced significant defaulted obligations. There were over \$6.4 billion of defaulted payments by market participants to the Cal ISO market clearing account in 2001. Cal ISO then was able to meet debt service and operating obligations because of its exercise of the strong protection from the first priority claim on market settlement revenues.

The assumption is that the same first priority claim on the broader western area market settlement revenue is expanded by the 2.0 then 2.5 RO market which would represent a material improvement in Cal ISO credit position due to the more robust coverage of the GMC and Cal ISO debt service.

This assumes that the priority first lien claim on western market participants would also cover recovery of Cal ISO costs that were defaulted upon and include the 2.5 RO contract costs that are paid by Cal ISO.

There is a question whether the 2.5 RO could have a second lien on priority claim on market settlement revenues. This subject needs further research. As previously noted, bond counsel will need to review whether such a second lien would affect Cal ISO's current bond security. See appendix D on rating agency evaluations of lien positions.

Assuming initially, the 2.5 RO budget requirements are funded by the Cal ISO GMC since the 2.5 RO expenses are incorporated into the contract payment to the 2.5 RO by Cal ISO, then a separate lien position may not be needed since the Cal ISO would have priority claim on market settlement revenues in case of a default by a market participant. Should arrangement such as the 2.5 RO have its own tariff, its lien position versus Cal ISO first priority lien on market settlement revenues becomes more complicated. Unless Cal ISO's bonds are paid off, the Cal ISO's first priority lien on market settlements remains part of the bond security on the \$139.1 million of California Statewide Communities Development Authority bonds outstanding. If the GMC is charged on a smaller universe of market participants (only those that will benefit from Cal ISO services), the coverage of the GMC would be substantially lower on Cal ISO GMC. However, it would be expected that Cal ISO operating budget would be lower to avoid duplication with the 2.5 RO market operation.

Also, a 2021 Cal ISO bond covenant that may be problematic should a 2.5 RO become the joint or sole authority, there is a covenant that requires Cal ISO to remain in existence and not merge or consolidate with another corporation. Bond counsel would have to assess this.

3-Well tested security provision: First priority claim on market settlements as a security provision is well tested as reflected in the California electricity deregulation 2001 default event. It is apparent that such a mechanism approved by FERC could be exercised in a worst-case situation of payment defaults and benefit Cal ISO and arrangements such as the 2.0 to 2.5 RO.

4-Strong Financial coverage: Financial coverage assessment reflects the very strong coverage of the existing Cal ISO grid management charge and also the peak estimated debt service using a forecast that includes the broader 2.0 to 2.5 RO market settlements. For the purpose of the coverage model, all the WECC participants are included. Actual results will differ should any of the utilities decide not be part of 2.0 to 2.5 RO and instead participate in a different market, such as the SPP Markets+.

According to the Cal ISO Continuing Disclosure Annual Report for 2023, (see APPENDIX E) the priority first claim on market settlements through Cal ISO, covered the total grid management charge by 42.9x times. In a payment default by a market participant, Cal ISO can socialize the defaulted payment to all utilities.

In the AGVP Advisory's 2026 forecast shown in the below table, the existing and broadened market settlement revenue would provide stronger coverage of the GMC of 46.9 x if all balancing authorities participated in the 2.0 to 2.5 RO. This is despite inclusion of the significant increase in the GMC due to Cal ISO's staff increase due to the market broadening and due to the new contract for the 2.5 RO budget paid by Cal ISO. (The GMC may be overstated since Cal ISO may be able to lower its costs and reserves budgeted for the GMC since the new 2.5 RO would have related market staffing and reserves). There are estimates which reflect a larger market settlement total, but this forecast of market settlements is a conservative assessment to emphasize the point that coverage of the GMC is very strong even should the total market settlements be smaller.

Forecasted Hypothetical 2026 Coverage of GMC by Total Market Settlements

	A	B
	2026 (2)(42%)	2026(2)(21%)(3)
GMC Collections (1)	\$273 million	\$273 million
Total Market Settlements (MSC) (2)	\$12.8 billion	\$10.8 billion
Coverage (MSC/GMC)	46.9x	39.6x

- (1) The \$25 million increase in 2026 in the GMC would have to be approved by FERC. The increase relates to the contract for the newly created 2.5 RO budget including a 15% operating reserve. The Cal ISO 2026 GMC amount of \$250 million has already been approved by FERC and reflects added staffing for regional market administration.
- (2) Using WECC data adding WEIM participants not in EDAM to the Cal ISO market participants column A reflects an estimated increase of 42% in new market settlement revenue.

(3) The 21% increase shown in column B is to show a more conservative estimate to reflect not all WEIM utilities participating in 2.5 RO. Add a conservative 6% nominal growth of market settlements reflecting demand growth 2024-2026 minus the new market efficiency gains due to 2.0 RO between 2024-2026. The annual coverage ratios are indicative based on financially cleared trades that are settled weekly.

In addition, the estimated 2026 market settlement revenue of \$12.8 billion (should all WECC utilities participate) would cover the current peak Cal ISO debt service of \$11,753,000 by over 1,000x. A smaller participation in the 2.5 RO would still generate significant coverage of the Cal ISO peak debt service from market settlement revenue. For bondholders, this is important to emphasize as a worst case due to revenue shortfalls from defaults.

Cal ISO currently budgets for 1.25 X debt service coverage budgeted in the GMC and Cal ISO has operating reserves as protection should expenses rise. With formation of a 2.5 RO, it is assumed this practice would continue and the GMC would include the coverage of debt service from budgeted revenues. But the access to market settlement revenue in the case of a payment default that impacts revenues needed provides significant certainty debt service is paid. While the 2.5 RO may have tax-exempt bond authority, no significant amount of new debt service is expected should the 2.5 RO issue second lien tax exempt bonds for start-up costs. Under RO 2.5 RO any debt service would be part of the 2.5 RO budget and incorporated in the contract payable by Cal ISO.

5.Reserves. Another key positive of the 2.5 RO is the expected reserves to be created and available to mitigate operating risks. Reserves would cover market-related litigation; general litigation, regulatory fines; and corporate insurance.

Cal ISO's existing reserves include an operating reserve of 15% of the next year's operating budget, primarily used for regulatory fines, litigation and unexpected contingencies; \$8 million cash capital reserve; and a debt service reserve of 125% of annual debt service coverage. Any

overcollections above the 15% reserve are used to offset future grid management charge requirements. Rates can also be adjusted quarterly if there is budget deviation of 2% or above \$1 million without FERC or board approval. Cal ISO's one weakness is the absence of external credit lines, but its conservative budgeting and unrestricted cash balance management has been sound and the reduced need for additional liquidity.

Again, while not the intended use, the first priority claim on market settlement revenues is a robust pledge to protect in a worst case the payment of operating and debt service requirements, like what was accomplished during 2001.

The 2.5 RO should have an operating reserve to manage its own budget variances. An operating reserve of 15% for the 2.5 RO appears reasonable given the startup and uncertain issues it may face.

But the most important financial protection is the priority first lien on all market revenues. The assumption is that since the 2.5 RO will be a contract service of the Cal ISO, the priority first claim on market revenues would also benefit from the larger western market settlements generated by the expanded market and 2.5 RO.

The 2.5 RO should consider building a further liquidity cushion to be available against any Cal ISO slowness to pay the RO contract liability due to any market settlement defaults. This could be accomplished by the 15% operating reserve, but the reserve should be sized at the estimated amount Cal ISO owed the 2.5 RO for the period between a defaulted party's announcement and the length of time to access first claim on market settlement revenues. Possibly 3 to 6 months of cash flow. While there are strong financial and security requirements in the existing tariff on participating utilities, credit erosion could still take place quickly.

In the case of the California DWR, the rating agencies required DWR to establish a reserve that would provide liquidity during the period of time it took to get their rate case heard by the state CPUC, which was determined to be 9 months. Here the 2.5 RO reserve would protect against any delay due to a market participant default and revenue needed to pay the 2.5 RO expenses.

While Cal ISO now requires market participants to settle weekly and to post collateral (or equivalent line of credit) that is equal to their estimated liability, Cal ISO doesn't bear risk of loss of a market participant defaults, the size and extent of a future worst-case situation is unknown, and a reserve would be a positive factor.

Comments on Some Credit Challenges:

1.RO governance is the most significant challenge and risk

The sound pathway to establishment of a western 2.5 RO provides evidence that with the benefits to be gained and the open process to evaluate thus far, suggests a strong outcome. Probably one of the more significant challenges is how the 2.5 RO contract is executed with regard to its budget and share of GMC.

2.Challenge of Competing Markets +

A competing western energy market is under development that excludes for now California in the SPP’s Markets+. The extent utilities in the western region join the Southwest Power Pool (SPP) Markets +, could impact the success of the Cal ISO- RO 2.5. In the Brattle October 2024 *Proposed Day-Ahead Markets in WECC: Comparative Assessment of EDAM and Markets+*, there were several advantages in EDAM versus Markets+. Link here:

<https://www.brattle.com/insights-events/publications/brattle-experts-assess-the-proposed-day-ahead-markets-in-the-wecc-in-a-new-white-paper/>

APPENDIX A (From West-wide Governance Pathway Stakeholder meeting, August 5, 2024) Introduction You-Tube 8-5-2024)

Options Orientation (Straw Proposal – Appendix A)

	Status Quo	Option 0	Option 0.5	Option 1	Option 2	Option 2.5	Option 3	Option 4
New Corporate Entity	No	No	No	Yes (RO)	Yes (RO)	Yes (RO)	Yes (RO)	Yes (RO)
Market Rules Governance	Joint	EIM Primary	EIM Sole	RO Primary	RO Sole	RO Sole	RO Sole	RO Sole
CAISO Veto Rights (Market Rules)	Yes (sole filer; Exigent Circumstances)	Time-Critical Exigent Circumstances	Time-Critical Exigent Circumstances	Time-Critical Exigent Circumstances	No	No	No	No
205 Filing Legal Rights	CAISO	CAISO	CAISO	CAISO	RO Sole	RO Sole	RO Sole	RO Sole
Vesting of Authority	Delegation	Delegation	Delegation	Delegation	Delegation or Transfer	Transfer	Transfer	Transfer
Dispute Resolution Outcome	Single CAISO filing	CAISO files both WEIM GB and Board proposals	CAISO files WEIM GB proposal	CAISO files both WEIM GB and Board proposals	N/A	N/A	N/A	N/A
Market Tariff Administration	CAISO	CAISO	CAISO	CAISO	CAISO	CAISO	RO Sole	RO Sole
Market Operation	CAISO	CAISO	CAISO	CAISO	CAISO	CAISO	CAISO	RO Sole
CAISO/RO Relationship	Tariffed	Tariffed	Tariffed	Tariff / Market Services Agreement	Tariff / Market Services Agreement	Tariff / Market Operating Agreement	Market Operating Agreement	None

APPENDIX B on Liens

AGVP Advisory caveat is that the existing municipal taxable revenue bonds issued by the California Statewide Communities Development Authority for the California ISO in 2021 has a bond resolution that states no new liens are permitted on Cal ISO revenues. The bond resolution states: “So long as any 2021 Bonds are Outstanding, the Authority will not create any pledge, lien or charge of any type whatsoever upon all or part of the 2021 Revenues or the funds and accounts pledged under the 2021 Indenture, other than the lien of the 2021 Indenture.” <https://www.caiso.com/documents/2021-official-statement.pdf>

The resolution states “a lien or charge of any type whatsoever” is not permitted. Bond counsel would have to determine that a contractual service like under the RO 2.5 would constitute a lien.

Should a second lien be placed on the Cal ISO revenues to fund the RO operations, I believe an amendment to the bond resolution would have to have the consent of bondholders. Another approach is to refinance the 2021 bonds in favor of a new indenture that permits a second lien and includes other changes that incorporate the RO services.

A 2nd lien would, however, result in credit pressure due to structural subordination for the RO function, but given the stronger credit quality due to the broader western market diversification of the market settlements and GMC and no longer dominance by the three California Baa investor-owned utilities, it might have no effect nor impact the upgrade consideration on Cal ISO. (see rating agency opinion excerpt below).

To use the proposed example of the RO budget being \$20 million (including contingencies) assuming this would create a 40% increase in the broader western market settlements, Cal ISO’s first lien debt service coverage from GMC revenues could be substantially stronger. And the coverage for the first lien claim on market settlements would be even more significant as it is now prior to the RO.

One could worst case the situation, e.g. assuming an extended drought, wildfires, commodity price failure et al, and in such case, Cal ISO would still have substantial protection from the broader pledge of first claim on market settlements.

Another 2021 Cal ISO bond covenant that may be problematic should a RO become the joint or sole authority, is a covenant that requires Cal ISO to remain in existence and not merge or consolidate with another corporation. Bond counsel would have to assess this.

APPENDIX C

What Moody’s said about Cal ISO rating

From published credit reports, the diversification and lack of dominance bodes well for improved credit of Cal ISO and the 2.5 RO.

Moody's Rating Outlook-(from 2021 credit report on Cal ISO)

The stable outlook reflects our view that CAISO will continue to play an integral, essential and effective role in California's energy markets, and that its established rate-setting policies and first priority claim on market revenues will remain in place and sustain its credit quality.

Factors that Could Lead to an Upgrade

- Increased diversification, for example as a result of material expansion to regions outside of California's service territory.

- A material improvement in the credit quality of the state's investor owned utilities

<https://www.bing.com/ck/a?!&&p=41e7e79eb86c6abefe012fbb260b1d544298d8145180ace1bd146a5e5f8ed92fJmltdHM9MTcyODk1MDQwMA&ptn=3&ver=2&hsh=4&fclid=34397073-ffac-6f30-36ca-656afece6e11&psq=Moody%27s+Cal+ISO+credit+rating&u=a1aHR0cHM6Ly9maW5hbmNILnlhaG9vLmNvbS9uZXdzL2NhbGlmb3JuaWEtaW5kZXBlbmRlbnQtc3lzdGVtLW9wZXJhdG9yLWNvcnAtMTcxNzEzMDYwLmh0bWw&ntb=1>

APPENDIX D : Moody's on liens and ratings:

METHODOLOGY U.S. PUBLIC FINANCE 18 APRIL 13, 2022 RATING

METHODOLOGY: US MUNICIPAL UTILITY REVENUE DEBT

Treatment of Different Liens on a US Municipal Utility's Net Revenues It is common for utilities to issue debt secured by different liens on their net revenues. Senior bonds are secured by a first lien on net revenues, and subordinate bonds or loans secured by a subordinate, or junior, lien. Sometimes, utilities will issue debt secured by a third lien or lower. Our practice is to evaluate the likelihood of default and the expected recovery in the event of default for each

lien independently. This will most commonly result in a rating distinction of one notch for each lien of subordination. In other words, if a municipal utility's senior lien is rated Aa3, its subordinate lien will most likely be rated A1 and the third lien will most likely be rated A2. The reason for the typical one-notch-per-lien distinction is that subordinate liens are marginally more likely to default than senior liens, and subordinate liens' expected recovery in the event of default would be lower. Senior liens are typically afforded stronger legal protections under utilities' indentures, senior-lien debt service is usually paid earlier in the flow of funds, and the first lien would likely enjoy a better claim in bankruptcy. For most investment grade municipal utilities, the probability of default for any lien is small, and so the notching distinction is driven primarily by a greater expected loss severity in the unlikely event of a default. This is comparable to our approach for ratings distinctions for different debt classes of investment grade corporations, where ratings distinctions are driven by differences in expected loss severities.¹² In contrast to corporates, however, there often is not an explicit cross-default of senior municipal debt in the event of a subordinate payment default. In some instances, we may conclude that an investment grade municipal utility's subordinate lien has a default probability and expected loss severity that is nearly as low or just as low as the senior lien (in which case we may not make a ratings distinction), or a default probability and expected loss severity that is materially higher than the senior lien (in which case we may make a ratings distinction of more than one notch). Such a conclusion would be based on the municipal utility's management of its system with respect to its liens, and the characteristics of the legal framework governing the liens: rate covenants, additional debt provisions, and cross-default and acceleration provisions in a senior lien's variable rate debt resulting from a default on the subordinate lien, for example. If a utility has only a very small amount of senior lien debt, we may choose not to distinguish between liens. The distinctions among a municipal utility's liens become starker when it faces a material likelihood of default or bankruptcy. For these situations, the different characteristics of the liens are likely to drive greater disparities in default probabilities and expected recoveries for disparate liens. Thus, we are more likely to employ ratings distinctions other than one notch for speculative grade municipal utilities' different liens as the Loss Given Default approach drives more of the analysis. In nearly all instances, the ratings on the different liens of the same utility will remain closely related. The reason for this is that municipal utilities are actively managed enterprises that continually need to generate net revenues sufficient not only to cover debt service but also to fund capital needs. Even if senior lien coverage is strong, a utility that is unable to pay its junior lien debt service is not generating excess funds for capital investment and does not have capacity for capital borrowing. Thus, while subordinate liens face greater default probability and higher loss expectations based on their first-loss positions, an increased likelihood of default on a subordinate lien implies an increased likelihood of insolvency for the utility as a whole. For this reason, we enter the debt-oriented inputs into the scorecard on a consolidated basis. For the debt to revenues factor, we enter total debt (senior and junior). For the debt service coverage factor, we enter total debt service coverage. It is the municipal utility's ability to cover all of its debt service with net revenues that determines its viability as a going concern. Even for a senior lien with a large coverage factor by net revenues, a narrow coverage of all debt service implies pressure to maintain healthy operations and generate funds sufficient for capital reinvestment.

Source:

<https://ratings.moody.com/api/rmc-documents/386721>

APPENDIX E: Cal Iso Market Settlement Coverage of GMC Historical trend

<https://www.caiso.com/documents/2023-continuing-disclosures-annual-report.pdf>

APPENDIX F- Fitch Ratings credit report on Cal ISO 2024.

<https://www.fitchratings.com/research/corporate-finance/fitch-affirms-california-iso-idr-at-a-outlook-stable-18-06-2024>

Mission and Charter of the West-Wide Governance Pathways Initiative (WWGPI) Formation Committee

I. Mission and Purpose

The Mission of the WWGPI Formation Committee (FC) is to collaborate with the CAISO as a subcommittee of the WWGPI Launch Committee (LC), to facilitate the activities required to implement the final Step 2 Governance Proposal approved by the LC to accomplish the transition of the oversight of the current California ISO (CAISO) Western Energy Imbalance Market (WEIM) and the proposed Extended Day Ahead Market (EDAM) from the Step 1 primary authority under the WEM Governing Body to the proposed Step 2 sole authority under an independent Regional Organization (RO)¹²². Membership on the FC will consist of a subset of the LC and be assisted by a less than quorum of the WEM Governing Body and CAISO Board of Governors serving as liaisons. Its activities will be governed by the Step 2 Governance Proposal as those details may be considered by the LC from time to time.

The FC will provide periodic updates to the full LC on progress on the transition effort. Deviations from the approved Step 2 Governance Proposal will be brought back to the full LC for discussion and approval before implementing the activity.

Goals and Objectives

The FC, in collaboration with the CAISO, will develop a detailed plan to implement the transition from Step 1 to Step 2. The activities associated with this plan will be in three general categories:

- Category 1: Preparation activities that will consider and plan for support of the transition but that will not actually form the new organization (prior to California legislation enactment).
- Category 2: Implementation activities that will form the new organization (post California legislation enactment but before seating of the new RO Board).
- Category 3: Implementation activities that will form the new organization (post California legislation enactment and after seating of the new RO Board).

Appendix A provides an initial draft list of activities by category for the FC to consider, amend, and supplement from time to time to fulfill the mission and purpose. The

¹²² The FC has no role in the current oversight of the CAISO markets and will respect the duties and responsibilities of both the CAISO Board of Governors and the WEM Governing Body during this transition.

implementation plan will be reviewed with and approved by the LC, with significant changes to be brought back to the LC for concurrence from time to time.

II. General Guidelines for Operation of the Formation Committee

A. Committee Roles

The FC will implement the Step 2 Governance Proposal in coordination with the CAISO staff. The FC will provide periodic updates to the LC on the status of its progress in meeting the developed transition plan. The FC will also provide periodic stakeholder updates using the LC stakeholder engagement process.

Deviations from the approved Step 2 Governance Proposal will be brought back to the full LC for discussion and approval before implementing the activity. Major milestone activities¹²³ will be reviewed with the LC for input and feedback.

B. Chair/Co-chairs

- The members of the FC will select a Chair or Co-Chairs, who will have the following duties:
 - Preside over meetings;
 - Manage and facilitate the FC's workload and schedule;
 - Ensure the quality and timely completion of any deliverables of the FC, including but not limited to any majority and minority opinions;
 - Serve as the primary FC contact for any project management or other outside consultants, should the FC select one or more to assist with the responsibilities above: and
 - Serve as the primary public contact for the FC.

A Member of the FC may move to change Chair/Co-chairs at any time.

C. Workgroups of the Committee

- The FC may form Workgroups (or Subcommittees) as necessary.
- These Workgroups may identify a Chair/Co-Chairs.
- Workgroups may include membership from outside of the FC or hired contractors, but any such membership shall be approved by the FC.
- Workgroups may invite outside participants to meetings or projects, but such participation should be noticed to the Workgroup.

¹²³ Major milestones will be identified as part of the implementation plan. These might include such items as the final nominating committee process, preparation of corporate organizational documents, proposed RO Board slate, and etc.

D. Facilitation

The FC may seek to obtain formal facilitation services, either via a contract or through a FC member, to ensure the process is well managed and documented.

III. Membership and Formation

A. Selection, Number, and Term

The FC will consist of up to ten (10) members of the LC and be assisted by a less than quorum of the WEM Governing Body and CAISO Board of Governors serving as liaisons. The LC members on the FC will be chosen to reflect a cross-section of the LC participants that also have an interest and ability to participate in the details of the Regional Organization formation. The FC shall have the discretion to make modifications to the composition and number of the FC. The work for the FC is expected to last approximately 12-15 months and no terms are envisioned. Vacancies created by a member departure will be filled by either the LC or WEM Governing Body as appropriate.

B. Compensation and Reimbursement

Members of the FC from the LC will serve in their committee role without compensation or reimbursement. All costs associated with travel to and attendance at FC meetings, or otherwise related to FC membership is the responsibility of the members or their affiliated entities, unless and until funding is secured, and a budget approved for, assistance for FC member entities with limited funding, as defined by the LC. Liaisons from the WEM Governing Body and CAISO Board of Governors will be compensated in accordance with CAISO policies and procedures.

C. Alternate Committee Members

FC members are encouraged to maximize attendance at FC meetings. Alternates are not considered to be appropriate for the work of the FC. An FC member may designate another FC member as a proxy if needed for discussions or voting.

D. Removal of Members Prior to Completion of the Committee's Work

The FC may by three quarters (75%) vote of the full FC, remove a member of the FC for failure to perform his or her duties or comply with the applicable provisions of this Charter.

IV. Meetings of the Committee

A. Time and Place

The FC will fix its own time and place of meetings and may prescribe its own meeting processes. The FC also may meet by phone or web conference, or at any other location geographically located in the Western Interconnection.

B. Decision-making

The FC is formed as a body to implement the recommendations of the LC and as such is not a decision-making entity. The FC will strive to implement its activities through consensus. The Chair/Co-chairs will seek to move forward activities in the absence of objection. Where a FC member objects to a proposed activity, the committee will seek to resolve the objection. Options to resolve the objection include tabling an issue or pursuing specific additional research or outreach. If, in the opinion of the Chair/Co-chairs, a workable consensus is unlikely to be reached even with these options, the issue may be taken back to the LC for further direction and/or a vote.

C. Public Processes and Comments

The FC will actively seek public comment on its activities as part of its periodic updates facilitated through the LC processes. The FC shall cause to be maintained an electronic repository with electronic access that will include public work products of the FC and all written public comments.

D. Administrative and Other Support

The LC expects that the FC will arrange for its own administrative support for the FC so that it may conduct its business and fulfill its responsibilities, which will include general office and communications support, with funding provided by the LC or direct volunteer contributions. Along with facilitation support, administrative support may be assumed by a contracted or partner organization.

Appendix A

Initial List of Proposed FC Activities

Category 1: Preparation Activities (Prior to California Legislation Enactment)

The FC will prepare initial recommendations and organization of tasks which would be necessary to prepare to undertake actions, consistent with the LC approved Step 2 proposal, to form the RO as a functioning body, contingent upon authority being provided under legislative changes in California and by appropriate federal regulators. This will include such tasks as:

- Finalize selection of Formation Committee participants and stand-up committee
- Develop detailed plan (including scope, schedule, and cost) for transition from Step 1 oversight to Step 2 oversight
 - Coordinate with CAISO on cost-of-service study for initial RO
- Commence RO pre-launch implementation efforts
 - Development of Bylaws, Articles of Incorporation, Charter, etc.
 - Develop initial budget estimate for RO, to include:
 - Staffing estimates
 - Evaluate what, if any, contingency reserve would be appropriate for the RO in Option 2.0
 - Conduct additional market research and obtain specific insurance quotes for the RO; the need for specific forms of insurance depends on the terms of the contract between the RO and the CAISO, including any indemnification provisions.
- Finalize Nominating Committee process and procedure for RO Board selection
- Coordinate with CAISO on development of initial tariff language for the RO
- Coordinate with CAISO on development of initial language for service level agreement between CAISO and RO
- Develop position descriptions for RO Board members and initial RO staff
- Select executive search firm for RO Board and staff selection process
- Coordinate with consumer advocates and scope the Consumer Advocate Organization (CAO)
- Identify the appropriate scope of work and organizational structure for the Office of Public Participation (OPP) including budget and staff
- Finalize RO stakeholder process including remand process for “significant opposition”
- Create an initial list of stakeholder initiatives for RO Board consideration to be included in the RO’s Catalog as a potential roadmap to enable continued incremental evolution to the RO

Category 2: Implementation Activities (After CA Legislation Enacted/Before Seating RO Board)

Assuming authority is provided under legislative changes in California and by the appropriate federal regulators, the FC will finalize detailed recommendations and undertake actions, consistent with the LC approved Step 2 Proposal, to form the RO as a functioning body. These actions will include such tasks as:

- File RO incorporation documents with the state of incorporation (Delaware) and to request certification as a non-profit 501(c)(3) organization from the Internal Revenue Service
- Initiate the Nominating Committee process
 - Seat the Nominating Committee
 - Execute contract with executive search firm
 - Create proposed slate of initial RO Board

Category 3: Implementation Activities (After California Legislation Enactment and After Seating RO Board)

Once the RO Board is seated, it is anticipated that the following actions will be undertaken to establish the RO functionality:

- Onboard RO Board
- Initiate RO staffing selection
 - Initiate selection process
 - Coordinate with RO Board on finalizing selection
 - Onboard executive staff
- Seat Consumer Advocate Organization and Office of Public Participation
- Finalize tariff language and service level agreement language between RO and CAISO and seek approval
- Engage with CAISO to migrate authority over energy market services to the RO
- Disband Launch Committee/Formation Committee

APPENDIX D: SELECTION PROCEDURE FOR REGIONAL ORGANIZATION BOARD OF DIRECTORS

1.0 Introduction and Scope

The Regional Organization (RO) Board of Directors is a seven-member body that exercises sole authority over the Western Energy Imbalance Market (WEIM) and the Extended Day-Ahead Market (EDAM). The RO Board is intended to meet the definition of an independent board of directors. The procedure defined in this document, which governs selection of Members of the RO Board, is drawn from other similar procedures and defines the process to be used once the RO is established as an ongoing organization. Since the RO will be a new entity when it is first launched, this document also includes a procedure to select the initial RO Board of Directors. The Members of the RO Board will be selected by a Nominating Committee comprised of stakeholder representatives. Board nominees will be subject to approval by the RO Board of Directors in an open meeting or, in the case of establishing the initial membership of the RO Board, by the RO Formation Committee.

This procedure explains the selection and composition of the Nominating Committee, how the Nominating Committee will select a slate of nominees for each open position, and how those nominees will be subject to a vote of approval by the RO Board.

2.0 Definitions

“Body of State Regulators (BOSR)” means the group of state regulators to be established pursuant to the charter of the RO Board of Directors, consisting of representatives from each state in which load-serving utilities participate in the ISO’s Energy Imbalance Market and its Real-time Market as those terms are defined in the tariff. The RO BOSR will transition from the current WEM BOSR with the same governance structure.

“Regional Organization Board of Directors” or “RO Board” means the independent body established by the tariff to have sole authority over the rules of the WEIM and EDAM.

“Executive Search Firm” means the firm retained by the RO to assist the Nominating Committee with identifying qualified candidates for the RO Board.

“Member” means a member of the RO Board.

“Nominating Committee” means the committee established by this procedure to identify a slate of nominees for positions on the RO Board, as detailed below in Section 3.0.

“RO Formation Committee” means the temporary group, acting as a subcommittee of the WWGPI Launch Committee, that has been established to develop, in collaboration with the CAISO, the details for establishing the RO. It is intended that the RO Formation Committee be established with up to ten (10) members from the Launch Committee and be assisted by a less than quorum of the WEM Governing Body and CAISO Board of Governors serving as liaisons.

3.0 Roles and Responsibilities

3.1 Nominating Committee

There will be a Nominating Committee of nine members, consisting of one representative each from the following sectors or groups:

- EDAM Entities
- WEIM Entities (including PMAs)
- ISO PTOs
- Non-IOU load serving entities serving load from WEIM or EDAM
- PIOs
- Consumer advocates
- Large C&I customers
- IPPs, independent transmission developers, and marketers
- Distributed Energy Resources (including distributed generation, storage, and demand response resources, aggregators, and enabling hardware and software providers)

3.2 Selection of Sector Representatives to the Nominating Committee

Not less than 150 days prior to the scheduled expiration of any Member's term, and at other times as may be necessary to fill a vacancy on the RO Board, the Corporate Secretary of the RO will ensure that each of the sectors identified in Section 3.1 above has a representative to the Nominating Committee and ensure that the makeup of the Nominating Committee reflects regional diversity and is not dominated by any one region.

Each sector will determine its own method of selecting a representative to serve on the Nominating Committee, and the term of service. A sector may designate a term of service for multiple years if it wishes to avoid the need to meet in the following year(s) to select a representative. The minimum term of service shall be one year.

The Nominating Committee members will work directly with their sectors to provide input on the selection of directors, similar to the process used in other Nominating Committees across the West. This process is highly sensitive and confidential; Nominating Committee members should work with their sectors to solicit candid feedback on candidates, but this is not meant to be an open process and feedback may need to be held in confidence.

If one or more of these sectors does not have a currently serving representative to the Nominating Committee, the Corporate Secretary will designate a person from one of the entities in the sector to serve as a sector organizer to facilitate selection of a representative. Each sector organizer must make reasonable efforts to notify all entities that are qualified for participation in its sector about the initial organizational meeting or teleconference for the sector. These efforts shall include issuing, with assistance from RO staff, a market notice no less than seven calendar days in advance of the meeting or teleconference.

The entities in each sector should make their best efforts to amicably resolve any disagreements about which entities belong within the sector and thus are entitled to participate

in the sector's selection of a representative to the Nominating Committee. Any disagreements that cannot be resolved by the entities in a sector may be referred to the management of the RO for resolution. The Chief Executive Officer (or his or her designee) and the General Counsel will hear from the interested parties and make a decision. Their decision shall be binding on the member entities of the sector.

Within 40 days after the Corporate Secretary designates a sector organizer to facilitate selection of a representative, the sector organizer shall certify the choice of the sector representative and the representative's terms of service to the Corporate Secretary. If a sector organizer is unable to make such a certification because the sector has been unable to reach agreement on its representative, the RO Board will select a representative for the sector. The RO will post the name and contact information of each sector representative on its website.

3.3 Selection of Other Representatives to the Nominating Committee

No less than 150 days prior to the expiration of any Member's term, and at other times as may be necessary to fill vacancies on the RO Board, the RO Corporate Secretary shall ask the following bodies to select one representative each to the Nominating Committee:

- The RO Board, and;
- The BOSR

The representative from the RO Board will serve two functions: they will help the Nominating Committee select nominees and serve as a liaison between the Nominating Committee and the RO Board, which will approve or reject the ultimate panel of nominees.

Each of these bodies may determine its own method of selecting a representative to serve on the Nominating Committee, provided that the representative of the RO Board shall not be a Member whose current term will be expiring.

The term of service for the representatives selected by these groups shall be one year.

3.4 Operation of the Nominating Committee

The Nominating Committee shall nominate a slate with one nominee for each seat on the RO Board for which the term is scheduled to expire.

The Nominating Committee shall act on the consensus of its voting members. The voting members will be the representatives of the sectors and the BOSR, excluding the member from the RO Board. If the Nominating Committee cannot reach a consensus on a slate of candidates, the Nominating Committee may bring forward a slate for consideration based upon a super-majority vote. A super-majority shall be defined as 70% or more of the voting representatives.

The member of the Nominating Committee from the RO Board shall not have a vote; however, they are expected to share their views about the candidates and to participate fully in

deliberations.

The Nominating Committee should convene no less than 100 days prior to the scheduled expiration of any Member's term to begin the process of identifying potential candidates for each open seat, or as soon as practicable when other vacancies arise.

If an RO Board Member whose term is scheduled to expire has expressed a desire to be nominated for a new term, the Nominating Committee should determine whether it wants to re-nominate the sitting Member without interviewing other candidates. In making this decision, the Nominating Committee should consider whether the sitting Member has the qualifications to serve in light of the responsibilities associated with overseeing both a day-ahead and real-time market. If the Nominating Committee does not decide to proceed in this manner, then it should first determine which set of diverse qualities would best complement the remaining Members and ask the Executive Search Firm to identify at least two qualified candidates to interview, in addition to the sitting Member. Any current RO Board Member who applies will be interviewed, but they will be expected to go through the Nominating Committee process like other applicants.

With assistance from the Executive Search Firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. This can include allowing for self-nomination by potential candidates and recommendations brought forward from sector representatives by their respective sector participants if the Nominating Committee desires. Optimally, the Nominating Committee's selections should ensure that the overall composition of the RO Board reflects a diversity of perspectives that may result from different areas of expertise, geographic background, ethnicity, gender and professional backgrounds, and life experience. Similarly, no one state or sub-region in the West should have excessive representation - meaning Members whose place of residence or work history tends to associate them with a particular Western state. The Committee should strive to ensure that the RO Board includes at least one Member with expertise in Western electric systems and markets. If the Nominating Committee can identify a qualified candidate with a Western background who has as strong overall experience and knowledge as the other candidates, and all other factors being equal, the Committee should prefer the candidate with a Western background.

The deliberations of the Nominating Committee shall be confidential. Nominating Committee members may share the names of candidates with others outside the Committee as part of the process of evaluating candidates. The Nominating Committee should have a common understanding about the extent to which they will share the names of candidates in connection with a particular search and that those being contacted understand they need to maintain confidentiality.

The Nominating Committee should use its best efforts to reach consensus on a slate of nominees no later than 30 days before the expiration of the current Member's terms. If the Nominating Committee concludes that it will be unable to reach consensus on the proposed nominee(s) with sufficient time to allow the RO Board to approve the nominee(s) before the term of the sitting Member(s) expires, the Nominating Committee may ask the RO Board to consider requesting that the sitting Member(s) to continue service for up to sixty additional

days after their term(s) would otherwise expire. If the Nominating Committee is having difficulty reaching consensus, it should consider interviewing additional candidates as one possible step.

Except as otherwise provided in this Procedure, the Nominating Committee may establish its own procedures.

3.5 Executive Search Criteria

Not less than 90 days prior to the scheduled expiration of any Member's term and as necessary to fill other vacancies, the RO will engage an independent Executive Search Firm to identify qualified candidates for consideration by the Nominating Committee.

Based on direction from the Nominating Committee, the Executive Search Firm will seek out candidates having one or more of the qualifications listed below and will propose to the Nominating Committee candidates that complement, to the extent possible, the qualifications of the Members whose terms are not expiring, with the goal that the Governing Body should have broad expertise in the following areas.

- Electric Industry - such as former electric utility senior executives currently unaffiliated with any market participant or stakeholder, as described below; present or former executives of electric power reliability councils or power pools; retired military officers with relevant experience; or present or former executives of firms that perform professional services for utilities; or academics or consultants with expertise in electric utility issues.
- Markets - such as present or former financial exchange executives; present or former executives of commodity trading companies or commodities markets; executives or attorneys with extensive background in anti-trust law; present or former executives in other regulated industries; former state or federal regulators with deregulation experience; or academics or consultants with relevant market expertise.
- General Corporate/Legal/Financial - such as present or former management consultants or service industry executives; present or former chief executives; chief financial officers; chief legal officers or chief information officers of profitmaking companies or nonprofit organizations; present or former law firm partners; present or former law professors; present or former senior executives of financial institutions, investment banking or financial accounting/auditing organizations.
- Public Interest – such as former state or federal regulators; executives of environmental, consumer or labor organizations; former attorneys general or consumer affairs officials; former legislators, academics or economics experts with relevant public interest background; individuals with a demonstrated reputation and record of commitment to consumer issues, including representing consumer interests in legislative, lobbying, and litigation efforts; former energy officials; or public policy experts.

The Executive Search Firm should also consider candidates with senior executive experience in public interest organizations provided they otherwise have the relevant background described above.

All potential candidates must possess a proven reputation for excellence in their areas of expertise, and optimally should reflect a diverse background (e.g., ethnicity, gender) and viewpoint. The candidates should also have a proven track record in stakeholder engagement and responsiveness as the RO Board will be setting the cultural tone for the new organization.

Candidates must meet the standard of independence defined by FERC in Order 2000 and cannot have a prohibited relationship or prohibited financial interest. A candidate is in a prohibited relationship or holds a prohibited financial interest if they:

- are employed by or provide consulting services to any entity (or person) that would disqualify them from service as a Member of the RO Board, including any entity that is engaged in the generation, transmission, marketing, trading or distribution of electricity within the geographic area of the Western Electric Coordinating Council;
- holds a financial interest that would be prohibited by 18 C.F.R section 35.340)(1)(i);
- or
- has another actual or perceived conflict of interest that would be prohibited by the Code of Conduct & Ethical Principles and that could not be resolved before the candidate becomes a Member of the RO Board.

The Executive Search Firm may not consider a candidate who has a prohibited relationship or financial interest, unless the candidate commits to promptly end any prohibited relationship after being appointed and before exercising the duties of the office, and to dispose of any prohibited financial interests within six months after appointment.

3.6 Approval of Nominees

The individuals submitted by the Nominating Committee shall be subject to approval by the RO Board in open session. If the decision occurs before the end of the expiring terms, the RO Board member(s) whose terms are expiring will be recused from the approval decision.

If the individuals are accepted, the nominees will become Members of the RO Board upon execution of a services agreement with the RO.

If any individual is rejected by the RO Board, the Nominating Committee must re-convene and establish a new alternate nominee(s). After the Nominating Committee submits its alternate nominee(s), the RO Board shall decide, in public session, to approve that alternate nominee(s).

Individual stakeholders may submit letters of recommendation to the RO Board supporting either the entire slate or individual candidates.

Selection Procedure for Initial Seating of the RO Board

Introduction

For the initial selection of the RO Board Members, the RO Board will not exist and will not be able to perform the functions noted in the selection procedure. In addition, there are some other issues that should be considered in the initial RO Board Member selection process. This appendix provides a recommended approach for the initial selection process.

Proposed Approach for Initial RO Board Selection

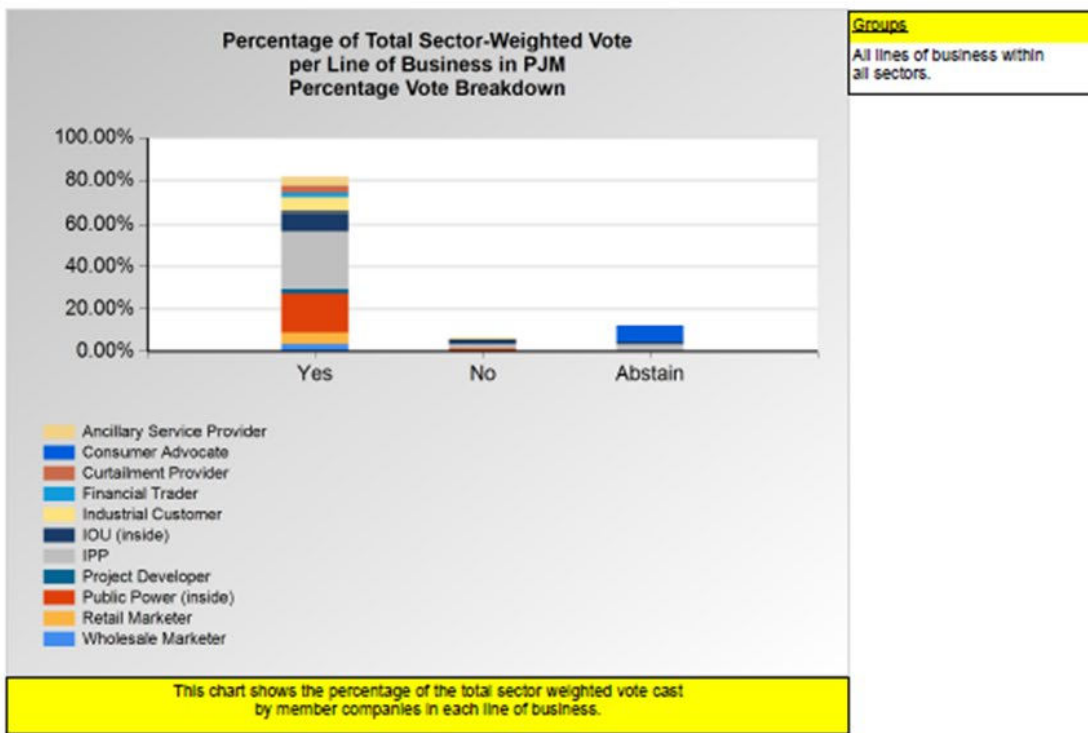
The following items are recommended for the initial selection process:

- a. An RO Formation Committee will be created to coordinate with the CAISO in the detailed creation of the RO. The Formation Committee will consist of up to ten members from the Pathways Launch Committee and be assisted by a less than quorum of the existing WEM Governing Body and CAISO Board of Governors serving as liaisons, selected by the WEM Governing Body and CAISO Board of Governors respectively.
- b. For purposes of the initial RO Board selection, the Formation Committee will provide the functions of the RO Board in the selection process procedure. In addition, the Formation Committee will select one Committee member to serve in the RO Board seat on the Nominating Committee.
- c. Preparation for the RO Board selection process may be initiated beforehand, but the actual commencement of seating the Nominating Committee, selecting an Executive Search Firm, and initiating the selection process should not commence until California legislation has been approved.
- d. In selecting the initial RO Board Members, the Nominating Committee should give due consideration to members of the existing WEM Governing Body who are willing to serve on the new RO Board to the extent that they meet the expertise criteria. This would allow for ease of transition since the existing WEM Governing Body members would provide continuity and history to the new RO Board. There should be no restriction on the number of current WEM Governing Body members that can serve on the new RO Board. In evaluating candidates for the initial RO Board, the Nominating Committee should give due consideration to including sufficient members of the current WEM Governing Body to ensure an adequate level of knowledge transfer to the new RO Board. In addition, the Formation Committee in conjunction with the CAISO should consider how best to ensure that the WEM Governing Body continues to be able to perform its current oversight function throughout the transition period.
- e. In order to ensure a proper rotation of terms on the RO Board, the terms of the initial seats will be randomly assigned by lot as follows:
 - 2-seats: 1-year terms
 - 2-seats: 2-year terms
 - 3-seats: 3-year term

APPENDIX E: EXAMPLE VOTING CROSS-TABULATION FROM PJM

PJM Members Committee
MC Meeting Date: April 27, 2022

Item 01a: Do you support the motion to call the question and end debate?
 (Vote Result: PASSED)

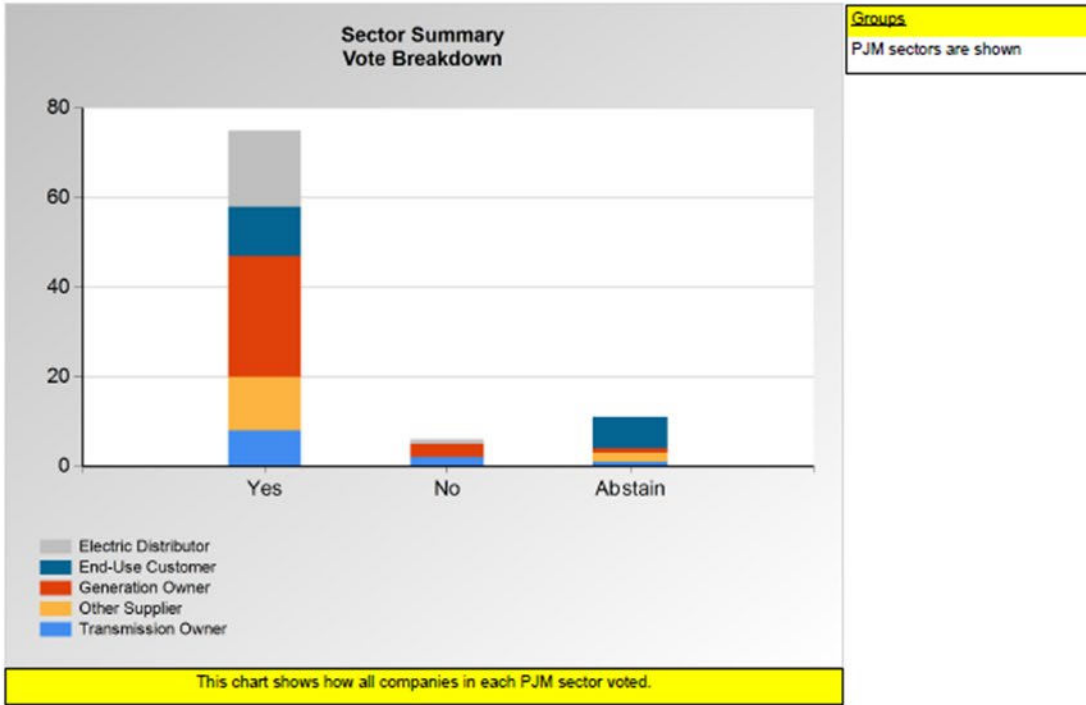


	Yes	No	Abstain
Ancillary Service Provider	0.96%	0.93%	0.00%
Consumer Advocate	0.00%	0.00%	21.88%
Curtailment Provider	0.98%	0.00%	0.00%
Financial Trader	0.59%	0.00%	0.00%
Industrial Customer	18.75%	0.00%	0.00%
IOU (inside)	57.14%	14.29%	7.14%
IPP	5.10%	1.85%	0.72%
Project Developer	0.65%	0.00%	0.00%
Public Power (inside)	4.86%	2.33%	0.00%
Retail Marketer	1.12%	0.00%	0.00%
Wholesale Marketer	0.72%	0.00%	0.00%

*Refer to the Company Designations table "Line of Business Designation" column to see each company's group designation found on this chart.

**PJM Members Committee
MC Meeting Date: April 27, 2022**

Item 01a: Do you support the motion to call the question and end debate?
(Vote Result: PASSED)



Additional Detail:

	Eligible	Attended	Did Not Vote	Yes	No	Abstain	Sector Vote In Favor	Sector Weight in Favor
End-Use Customer	32	18	0	11	0	7	100.0%	1.000
Transmission Owner	14	12	1	8	2	1	80.0%	0.800
Generation Owner	108	32	1	27	3	1	90.0%	0.900
Electric Distributor	43	25	7	17	1	0	94.4%	0.944
Other Supplier	307	19	5	12	0	2	100.0%	1.000
Total	504	106	14	75	6	11		4.644

*Refer to the Company Designations table "Company Sector" column to see each company's group designation found on this chart.

APPENDIX F: STAKEHOLDER REGISTRATION AND PARTICIPATION AGREEMENT

REGIONAL ORGANIZATION (RO) STAKEHOLDER REGISTRATION AND PARTICIPATION AGREEMENT

Please complete this form and email it to {insert contact info}.

I. Organizational Information:

- A. Organization Name:
- B. Main Office Address:
- C. Main Office Telephone Number:
- D. Website:
- E. Description of Organization (Corporation, Nonprofit, Utility, etc):
- F. Geographic Area of Operation:
- G. Generation owning (yes/no):
- H. Load-serving (yes/no):
- I. Profit-maximizing (yes/no):
- J. Non-rent seeking (yes/no):
- K. Public entity (yes/no):
- L. Part of which balancing area:
- M. Net supplier or net buyer of energy over previous calendar year:
- N. List dues-paying membership in any organizations (e.g. industry associations, advocacy groups, PIOs) that participate at the RO:
- O. List all entities that participate at the RO that have a financial interest in or fiduciary relationship with your organization (including common ownership, corporate affiliates, equity, donations, membership dues):

II. Authorized Representative:

- A. Primary Contact:
 - 1. Name:
 - 2. Title:
 - 3. Telephone Number:
 - 4. Email Address:
- B. Secondary Contact:
 - 1. Name:
 - 2. Title:
 - 3. Telephone Number:
 - 4. Email Address:

III. Sector Participation:

- EDAM Entities
- WEIM Entities
- ISO PTOs
- Non-IOU load serving entities serving load from WEIM or EDAM

- PIOs
- Consumer Advocates
- Large C&I Customers
- IPPs, independent transmission developers, and marketers
- Distributed Energy Resources (including distributed generation, storage and demand response resources, aggregators, and enabling hardware and software providers)Status:

Please indicate if this is a new stakeholder registration, a request to update contact information/authorized representative, or a cancellation of an existing registration.

Individual stakeholder organizations are responsible for keeping their registration and contact information up to date.

What It Means to Be a Recognized Stakeholder

The Regional Organization (RO) is a 501(c)(3) which offers all interested stakeholders the ability to engage in governance and stakeholder initiatives to identify and resolve issues related to market design and operation. Anyone interested in the RO is considered a stakeholder and may participate in open meetings and submit comments. Recognized members who have completed the Stakeholder Registration and agree to the Participation Agreement are eligible to formally participate in their relevant sector, cast indicative votes, and act as a representative in the Stakeholder Representatives Committee (SRC) or other working groups or standing committees. Full details on the operation of the stakeholder process and governance structure can be found in the RO bylaws.

Participation Expectations for Recognized Stakeholders

Bylaws

Recognized stakeholders who share interest in and support the purposes of RO may participate in the stakeholder process as long as they abide by RO bylaws and other policies, rules, and regulations as adopted through the stakeholder process.

Public Meetings and Anti-Trust

Meetings may not be recorded or transcribed, including the use of any artificial intelligence tools, software, or applications to perform such tasks, without notice to all parties attending and consent from those parties. Members of the media are required to announce their attendance at the beginning of meetings but are not permitted to take part in discussions and should direct questions to RO Media Relations. Participants must identify themselves and the organization(s) that they are employed by, representing, or participating on behalf of, so all participants are aware of their presence and on whose behalf they are participating.

NERC Anti-Trust Policy: It is policy and practice to obey the antitrust laws and to avoid all conduct that unreasonably restrains competition. This policy requires the avoidance of any conduct that violates, or that might appear to violate, the antitrust laws. Among other things, the antitrust laws forbid any agreement between or among competitors regarding prices,

availability of service, product design, and terms of sale, division of markets, allocation of customers or any other activity that unreasonably restrains competition.

FERC Standards of Conduct: Participation in meetings are mixed and includes marketing function employees; please refrain from divulging non-public generation or transmission information.

Termination and Suspension

A recognized stakeholder may be terminated or suspended for failure to meet the Participation Expectations outlined. The stakeholder will receive written notice from the Stakeholder Regional Committee and will have the opportunity to be heard orally or in writing by the RO Board, not less than five days before the effective date of the suspension or termination.

APPENDIX G: FEASIBILITY ANALYSIS TOPICS

As explained in Chapter 1, the Proposal contemplates the RO's initiation of the feasibility analysis, with a scope framed through stakeholder input, within nine months of its formation. The overall corporate objective of the analysis should be twofold, ensuring: (1) the RO takes a form under which it assumes responsibility and accountability commensurate with its supervisory authority over energy markets, and (2) that the RO has a structure that will strengthen its ability to host or oversee additional regional services beyond energy markets for as many market participants as desire that expansion. Taking this step is a critical element of Step 2 implementation.

The feasibility analysis shall assess the costs, benefits, possible expanded market functions, and implementation details of how to achieve additional corporate independence and responsibility including but not limited to the following identified areas:

- A review of RO governance in light of accumulated experience and changed circumstances such as the evaluation of expanding RO functions beyond 2.0.
- Continued RO full governance authority over market rules and associated business practice manual provisions and responsibility for the operation of the market with sole Section 205 rights.
- Potential separation of the integrated CAISO/RO tariff; evaluate the cost, effort, and potential benefits of filing a separate tariff.
- Ways to improve classification and organization of the tariff to gain further clarity within the integrated tariff.
- RO assumption of the CAISO's ultimate financial responsibility, liability, and compliance responsibilities to FERC.
- Vendor contract with the CAISO and the vendor management role
- RO assumption of full public utility status as defined by the Federal Power Act
- Shifting of counterparty to existing market contracts, such as Participating Generator Agreements and Scheduling Coordinator Agreements, from the CAISO to the RO. Evaluate the process for reworking or re-assigning these contracts to ensure the responsible party (the RO) overseeing WEIM and EDAM becomes a direct party.
- Staffing:
 - More extensive RO executive staffing (include extent to which these RO cost increases would be offset by decreases in the administrative payments to CAISO).
 - Further evaluation about which business units are most suited to staying integrated within the CAISO's structure versus being established within the RO directly.
- Evaluate RO input on CAISO management hires.
- Perform an analysis of the appropriate size of a contingency or operating reserve for the RO.
- Review communication rules with the RO Board- explore the need for ex parte rules (suggestion from stakeholder feedback).
- Review creation of a funding mechanism through the OPP to support engagement by stakeholders with limited resources, specifically travel and technical expertise. (suggestion from stakeholder feedback).

- Review overall approach to market monitoring: the role of the market monitoring unit as an internal unit, external unit, or hybrid and best practices. (suggestion from stakeholder feedback).
- Review Market Monitoring Oversight Committee membership- review stakeholder recommendation to add a BOSR member and a consumer advocate representative.