

July 15, 2022



Western EIM Governance Review – Phase Three (EDAM)

*Governance Review Committee
Straw Proposal*

July 15, 2022

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Glossary of Abbreviations and Certain Defined References

Abbreviation	Description
Arizona Utilities	Salt River Project Agricultural Improvement and Power District, Arizona Public Service and Tucson Electric Power
Board	Board of Governors of the California ISO
BOSR	Body of State Regulators
BPA	Bonneville Power Administration
CAISO	California Independent System Operator
CRR	Congestion Revenue Right
EDAM	Extended Day-Ahead Market
EIM	[Western] Energy Imbalance Market
FERC	Federal Energy Regulatory Commission
Governing Body	WEIM Governing Body
GRC	Governance Review Committee
MSC	Market Surveillance Committee
Nominating Committee	The Nominating Committee established in the Selection Policy to choose members of the Governing Body
PIO	Public Interest Organization
RIF	Regional Issues Forum
RTO	Regional Transmission Organization
SPP	Southwest Power Pool
WAPA	Western Area Power Administration
WEIM	Western Energy Imbalance Market

Documents Cited

This Straw Proposal uses capitalized terms to cite a range of CAISO documents about governance and related topics, as well as previous papers of the GRC. This table includes the full title of each document, a description and a link for each cited document.

Reference	Document
Board Selection Policy	California ISO Board Selection Policy, May 19, 2021 (version 5.0), available here
Bylaws	Amended & Restated Bylaws of the California Independent System Operator Corporation, effective November 3, 2021 (version 10.0), available here
Charter for EIM Governance	Charter for Energy Imbalance Market Governance, September 23, 2021 (version 1.5), available here
GRC Charter	Governance Review Committee Charter, June 28, 2019 (version 1.1) available here
Guidance Document	Guidance for Handling Policy Initiatives that may Come Before the EIM Governing Body, September 23, 2021 (version 1.2), available here
Open Meeting Policy	California ISO Open Meeting Policy, October 17, 2019 (version 3.8), available here
Part Two Draft Final Proposal	Governance Review Committee Part Two Draft Final Proposal, July 19, 2021, available here
Selection Policy	Selection Policy for the EIM Governing Body, July 15, 2021 (version 1.2, available here

I. Introduction

The Governance Review Committee (GRC) is an advisory committee of stakeholders brought together from throughout the West and charged by the Board of Governors and the Western Energy Imbalance Market (WEIM) Governing Body with developing proposed refinements to WEIM governance to support the growth of the WEIM and the proposed Extended Day-Ahead Market (EDAM). The Board and the Governing Body have asked the GRC to lead public stakeholder processes on WEIM and EDAM governance and to develop proposals for the Board and Governing Body to consider.¹

Governance is a key issue for stakeholders, particularly for the potential EDAM participants who are weighing whether to commit a significantly greater share of their energy transactions to the CAISO market. The GRC thus strives to find governance rules that strike the right balance for the EDAM. These rules must give EDAM participants sufficient assurance that the market will be governed with the objective of benefitting the market as a whole, appropriately reflecting their enhanced level of commitment. At the same time, the governance rules must also accommodate the needs of the full market participants located in the CAISO balancing authority who must rely on a full suite of market, grid operation, and transmission services.

In this paper, the GRC presents a Straw Proposal and includes potential governance enhancements specifically to accommodate the EDAM, based on the stakeholder input we have received to date and other factors. The recommendations in the Straw Proposal are fashioned to fit the design and functions of the EDAM and the WEIM, which include day-ahead and real-time markets co-optimized across the entire market footprint but exclude such elements as a common resource adequacy policy, transmission planning, financial congestion instruments, and other elements found in a full Regional Transmission Organization (RTO).

The Straw Proposal is not intended to be a model for RTO governance. It is universally recognized that in order for the West to have a multi-state RTO, an independent board free from the influence of any one state will be required. The elements of a full RTO (common transmission planning and cost allocation and a single set of resource adequacy rules, for example) demand it. The role of the states would also have to be addressed, as has occurred in other RTOs, due to the impacts of RTO policies on state jurisdictional responsibilities. It is therefore important to recognize that if regional market collaboration is to advance beyond the EDAM, the governance conversation must continue, and the proposals of the GRC are not the “end game.”

In the Straw Proposal, the GRC has attempted to balance the need to have concrete suggestions that solidify and narrow the discussion on EDAM governance elements, while reflecting

¹ The Board and EIM Governing Body approved the GRC Charter, which sets forth our role and scope of work. Members of the GRC are listed on the WEIM website at <https://www.westerneim.com/Pages/Governance/GovernanceReviewCommittee.aspx>.

stakeholder feedback and remaining open to further suggestions and refinements. The paper is not the GRC's final thinking on any of the issues, but rather a key step to reaching a final proposal to submit to the Board and the Governing Body later this year.

Our Straw Proposal, even once final, is also not meant to be the last word on what governance changes may be needed over time. As our work over the last several years has made clear, governance must be able to evolve in a nimble and responsive manner to meet the needs of its constituents as markets continue to develop. While we are seeking to put forward a complete and balanced proposal, our efforts are not meant to foreclose work by others to address governance-related matters, including potentially through legislative change.

This is the third phase of the GRC's ongoing work on governance. In the first two phases that took place in 2019-2021, we developed proposed revisions to the initial WEIM governance structure as part of a long-planned five-year review.

In those earlier phases, we developed – and the Board and Governing Body ultimately adopted – a wide-ranging set of governance reforms focused on enhancing WEIM governance in light of experience to date, and to reflect the growth and maturation of the WEIM. In adopting those proposals, the Board and Governing Body effectively increased the authority of the Governing Body over proposed amendments to market rules by

- expanding the scope of tariff amendments subject to the Governing Body's approval and enhancing the durability of this approval authority; and
- establishing a “joint authority” approval construct where any proposal to amend the tariff in an area covered by joint authority would go to both bodies for discussion and approval before CAISO staff could move forward with a filing at FERC for approval of the proposed tariff change.

In addition, they ensured that the Governing Body has access to additional market expertise so that the full impact of market issues is assessed by

- enhancing the Governing Body's role in market oversight and giving it shared authority with the Board over the appointment of the market surveillance committee; and
- Creating a Governing Body Market Expert role, retained by the Governing Body to advise it on key topics relating to WEIM or EDAM market design.

In addition, the Board and Governing Body approved structural changes to WEIM governance that include

- increasing the inclusiveness of the Selection Process by extending a voting role for the public interest and consumer advocates sector representative on the Nominating Committee;

- updating the sectors of the Regional Issues Forum (RIF) and enhancing the role the RIF may play in the CAISO stakeholder process; and
- asking the Body of State Regulators (BOSR) to consider adding non-voting representatives from publicly-owned utilities and the federal power marketing agencies, which the BOSR has since implemented.

In this new phase, we focus on the critical next step in the evolution of governance – identifying and implementing further enhancements to support a successful EDAM. The EDAM will not replace the WEIM, but will be available on an optional basis to participants who wish to extend their participation to the day-ahead market.

The next section of this paper (Section II) describes the process the GRC has followed to develop its proposed recommendations, certain principles we developed to guide our work, and factors we are using to evaluate the various alternatives. Sections III through VII set forth our proposals in each of the major topic areas we have identified and discuss the basis for each proposal. For ease of reference, we have also provided, in Section VIII, a chart summarizing those proposals, followed by an overview of next steps and a procedural schedule in Section IX.

As in prior papers, we also include an Appendix for reference purposes. The Appendix is a summary of certain legal topics developed by CAISO legal counsel at our request. This summary discusses certain provisions of the California Corporations Code and federal tax law that we have considered in developing the proposals outlined in this paper. It also addresses various legal questions stakeholders have raised in their comments or in discussions with GRC members.

II. The Governance Review Committee Initiative

A. Process Followed to Develop the GRC's Proposal

Since the inception of the GRC, we have used two main avenues to obtain formal stakeholder input for our governance proposals. We have prepared written papers that present proposals and solicit written stakeholder input. We also have held a series of public meetings, by videoconference, where GRC members present an overview of the committee's work and current proposals and where stakeholders have been invited to ask questions and provide further input. In addition, GRC members conducted significant direct outreach with a wide range of stakeholders on both specific and general governance interests.

In addition to this outreach and our general sessions, the GRC has used both smaller working groups and executive sessions of the full committee to develop our proposals further in response to the input we have received. Each of the working groups has considered specific topics identified in stakeholder comments. These working group sessions have allowed a smaller group of members to delve more deeply into all of the stakeholder input we have received on each main topic, discuss in depth potential alternatives, and develop preliminary recommendations for consideration by the broader GRC on each of the topics covered in this paper.

Through an iterative process with the working groups, the GRC as a whole has discussed and considered each of the topics covered in stakeholder comments and has developed the proposals set forth in this paper.

B. Principles Adopted to Guide the GRC

In our prior work the GRC developed, with stakeholder review and input, a set of general principles we have used to guide our efforts. We established those principles at the outset to ensure that the GRC members have a clear and common understanding of what we are attempting to accomplish and how to perform our work.

At the beginning of this new phase, the GRC decided to review the prior principles to determine whether any revisions may be warranted. We presented our preliminary thinking on this issue at our April 29, 2022 general session meeting.

As we noted at that meeting, we believe the original principles, with very minor revisions, continue to be appropriate, but also recommend adding three new principles that focus more directly on governance for the EDAM.

The original principles, which are set forth immediately below, begin with an overarching principle followed by six more specific principles that are meant to advance the overarching principle. The only changes we propose to these existing principles are to remove the word “potential” or “future” that appeared before the term “EDAM” and related grammatical edits, now that the EDAM is no longer an uncertain future concept. With these changes, the existing principles read as follows:

The overarching principle states that the GRC shall:

- Ensure that the governance of the WEIM and the EDAM provide stakeholders throughout the West with confidence that the governance structure represents the market(s) as a whole, broadly respects and considers the interests of all stakeholders, and is resilient under a wide range of market conditions.

The more specific principles state that the GRC shall:

- A. Focus exclusively on issues relating to governance of the WEIM and the EDAM.
- B. Seek, where possible, to build upon and refine the existing WEIM structure rather than recommending a completely new model.
- C. Ensure modifications to the governance structure are consistent with the requirements of the CAISO’s status as a nonprofit public benefit corporation and any applicable legal requirements.
- D. Ensure modifications to the governance structure are consistent with the CAISO’s Board’s corporate legal obligation to govern, oversee, and manage the affairs of the corporation.

- E. Ensure that any modifications or enhancements to the Governing Body's role in the current governance structure will promote confidence and support among stakeholders throughout the region in the successful operation of the WEIM and the EDAM.
- F. Ensure transparency in its process by conducting all meetings in conformance with the CAISO Bylaws and Open Meeting Policy.

The three new principles we propose adding state that the GRC will also:

- G. Seek, where possible, to modify or enhance the WEIM governance structure, as it relates to the establishment of the EDAM, in support of a more autonomous WEIM Governing Body.
- H. Ensure modifications or enhancements to the WEIM governance structure, as it relates to the EDAM, balance the interests of full CAISO market participants in the CAISO balancing authority area and prospective EDAM participants.
- I. Ensure modifications or enhancements to the WEIM governance as it relates to the establishment of the EDAM, support or advance a potential future governance structure appropriate for a multi-state RTO.

The GRC developed these new principles in response to stakeholder input received to date.

The first new principle reflects input mostly from stakeholders outside California about the importance of ensuring that both the WEIM and the EDAM reflect the interests of all stakeholders throughout the West. This goal, which will be critical for the success of the EDAM, requires that the Governing Body have as much autonomy as possible and not be controlled by any single entity or set of stakeholders.

The second new principle recognizes that full CAISO market participants within the CAISO balancing authority area face differing roles and responsibilities than do other prospective EDAM participants, particularly since they will not have the option to easily exit the EDAM or to decide not to join in the first instance. This principle calls upon the GRC to consider that difference when it deliberates over potential governance changes and to ensure that our proposals carefully balance the interests of these two groups.

The third new principle reflects input the GRC has received from many stakeholders suggesting that the EDAM may not be the final stopping point for regionalization and that any modifications we propose here should be made with that point in mind. The GRC is charged only with developing governance modifications for the EDAM and any further steps towards regionalization are clearly outside our purview. We are, however, mindful that such further efforts may happen in the future and have proposed this third principle as a reminder that our proposals should support such continued efforts to integrate and not foreclose, or otherwise be inconsistent with, that possibility.

The GRC welcomes any further input stakeholders may have on these additional guiding principles.

C. Factors to Consider in Assessing Alternatives

The GRC also has identified in prior papers several factors to consider in connection with evaluating the various alternatives before it. These factors are:

- Whether the alternative aligns with the GRC Principles set forth above;
- The level of resources an alternative may require or any complexity it may introduce;
- The level of stakeholder support for the proposal;
- Whether the alternative is needed for the WEIM only or the WEIM/EDAM; and
- Any additional legal or regulatory considerations.

The fourth factor is no longer applicable since we have completed the WEIM-only phase of our work and thus will be deleted in our future papers. Where applicable, this paper discusses how one or more of the remaining factors may influence the GRC's proposed recommendation.

III. Recommendations regarding the Delegation of Authority for Market Rules to the Governing Body and Related Topics

A. Background on Delegation of Authority and the GRC's Prior Work on this Topic

One key group of issues for EDAM governance involves the role that the Governing Body plays in approving policy initiatives to establish or change market rules embodied in the CAISO's FERC tariff and how that role is shared with the Board. This topic is commonly called delegation of authority because it involves the Board delegating certain aspects of its oversight role and sharing them with the Governing Body.

As we have previously observed, there are two main aspects of the current delegation of authority:

- The manner in which the Governing Body's approval authority is shared with the Board (i.e., the "type of shared authority" held by the Governing Body); and
- The scope of market rules that are within the Governing Body's authority to approve (i.e., its "scope of approval authority").

In the prior phases of the GRC's work, stakeholders provided extensive comment on both of these subjects, and the GRC devoted a great deal of time and space in our written proposals to discussing these topics. This work culminated in our Part Two Draft Final Proposal, which was published on June 19, 2021 and was ultimately adopted by the Board and Governing Body on September 23, 2021.

In our Part Two Draft Final Proposal, we proposed changes to both aspects of the then-applicable delegation of authority. We recommended moving from a "primary authority" model to a "joint

authority” model, while also expanding the scope of issues over which the Governing Body holds shared approval authority.

The move from a primary authority to a joint authority model changed the way each body considers proposed tariff changes within their shared approval authority and how the two bodies interact with one another. This paradigm is discussed further below.

On the scope of issues, we proposed and the Board and Governing Body approved moving to a “does it apply” test for identifying the proposals that are within the Governing Body’s shared approval authority. This test means that the Governing Body has shared approval authority over all proposals to establish or change any tariff rules that apply to WEIM balancing authority areas, WEIM Entities, or other market participants within the WEIM Entity balancing authority areas, in their capacity as participants in the WEIM. This new scope substantially expanded the Governing Body’s approval authority, which had previously been limited mostly to tariff rules that applied *solely* to the WEIM Entity balancing authority areas. The Governing Body also has an advisory input role for proposals to change any other real-time market rules that are not within the Governing Body’s shared approval authority.²

These two changes were also part of a broader package that included both a robust process for resolving any disagreements between the two bodies about whether to approve a proposed tariff change and a set of enhancements to increase the durability of the delegation of authority.³

B. The GRC’s Recommendation on Type and Scope of Delegated Authority and Related Topics

The GRC has received a great deal of diverse stakeholder input on the appropriate type and scope of delegated authority for an extended day-ahead market. Based on that input, we submit for stakeholder consideration the idea of building upon the structure we recently established.

Specifically, we are seeking feedback about the following. We propose to retain the current structure of the delegation to the Governing Body⁴ – meaning the joint authority model – as a way to ensure that the two bodies continue to collaborate and drive towards consensus-based decisions that fully consider and reflect the interests of all stakeholders across the market footprint. In addition, we propose to expand the scope of this shared authority to include, at a minimum, all market rules that apply to EDAM participants. The GRC seeks comment on options to further expand the scope of joint authority to potentially include other market design

² See Part Two Draft Final Proposal at 8-13.

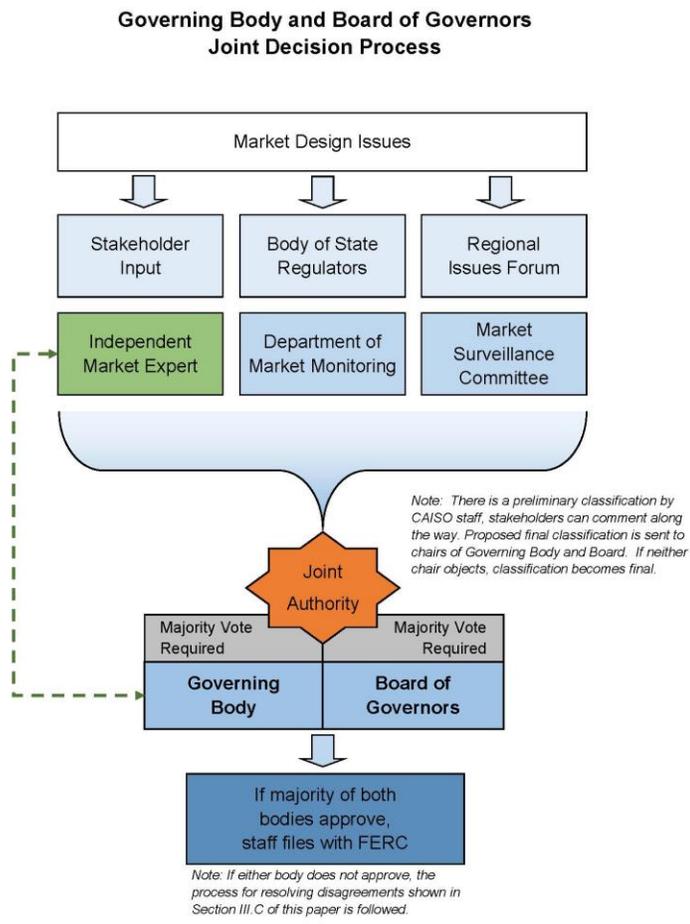
³ See *id.* at 13-19. We discuss the dispute resolution in more detail below.

⁴ Because the Governing Body would thus oversee both the WEIM and EDAM, its name would also likely change from the Western Energy Imbalance Market Governing Body to a name that encompasses both the WEIM and EDAM markets. The GRC has not developed a proposal for what its name should be as that topic involves considerations beyond the scope of governance.

elements that are intertwined with the EDAM to such an extent that sound decision-making may require they be considered by both bodies together.

1. The Type of Shared Authority

As noted, the current type of shared authority for the WEIM is the joint authority model. Under this model, topics within the shared approval authority of both bodies are typically presented to both bodies in a jointly held session that allows the members of both bodies to hear and participate in a full discussion of the topic, with each body then voting separately at the end of the discussion. As with the prior primary authority paradigm, approval by a majority of the members of each body is required for the proposed tariff amendment to be filed with FERC.⁵ As discussed in more detail below, a vote by either body to oppose the proposal results in a remand of the initiative to the CAISO’s open stakeholder process for further consideration consistent with the input received by the two bodies in their joint session. The overall joint authority decision process, is shown in the figure immediately below.



In the comments received to date, stakeholders have expressed diverging views on whether to continue with this model or switch back to the primary authority model that was previously used. Under that model, both bodies likewise needed to approve the proposal for it to be filed with FERC, but the Board's approval occurred at a separate meeting of the Board, typically on a consent agenda basis without discussion of the merits. The Board retained the right to vote to take the matter of the consent agenda, and if it did not agree with the Governing Body's proposal to approve the item, it could simply vote against approval without further recourse or discussion.

The stakeholders that support the primary authority model want to shift as much of the consideration as possible solely to the Governing Body. This goal is based on a perception that the Governing Body is more neutral in its decision-making than the Board, given that Board members are appointed by the California Governor with consent of the California State Senate. Placing the review of shared authority items primarily in the hands of the Governing Body, the proponents of primary authority argue, would thus enhance stakeholders' confidence that the resulting decisions are not tilted in favor California, which would in turn promote a successful EDAM that can serve as a foundation for potential broader regionalization in the future.

The stakeholders who support joint authority focus on the collaborative nature of that model. They view involving both the Governing Body and the Board in discussions of shared authority items as a natural outgrowth of the fact that the EDAM and the WEIM are markets that are co-optimized across the entire regional footprint, not separate markets for California and other participating states. Joint authority, in their view, provides an opportunity to ensure that both bodies fully understand the issues they are approving, along with the perspectives of all of the stakeholders who may be affected by the decision at hand. This collaboration, the proponents of joint authority argue, establishes a more stable foundation both for the EDAM and for broader regionalization because it has the potential to enhance the relationships between the two bodies and ensure that the views of all stakeholders are heard.

Although we acknowledge that there is merit to both views, the GRC on balance prefers the joint authority model due to the substantial collaborative benefits it promotes. Both the existing WEIM and the EDAM are designed to operate as unified markets that co-optimize the resources of multiple balancing authority areas across a broad regional footprint. The joint authority model recognizes the high degree of interconnectedness in these markets and requires the stakeholders and the two bodies to come together with a problem-solving orientation to address any challenging issues that may arise. It also ensures that the decisions made by both the Governing Body and Board transparently consider and then balance the impacts on all customers, rather than focusing only on a subset of stakeholders that may choose to appeal to a particular body.

This collaboration is particularly important given the broader scope of shared authority we are considering. The expanded authority option discussed below, for example, could vest the Governing Body with shared authority over various real-time and day-ahead market rules that do not apply directly to the WEIM or the EDAM market participants based on a concern that, due to the highly interconnected nature of the markets, regional stakeholders will have a significant interest in the outcome of such topics in the context of an EDAM market. This broader scope

would increase the need for the Board to be fully engaged in the discussions of the pros and cons of each proposal, in order to ensure that it has direct exposure to the issues, interests and needs of all stakeholders and market participants.

Additionally, recognizing the interconnectedness of the single market and exposing the Board to the issues, interests and needs of all stakeholders helps to accomplish the new Governance Principle I we adopted, to advance a future regional governance. While joint authority is clearly an insufficient approach for full RTO governance, it allows more issues to be framed primarily as regional issues that require full consideration of impacts to multiple balancing authorities.

By contrast, we are concerned that a primary authority model lacks an affirmative obligation to jointly deliberate on and discuss important issues. Indeed, the advocates of primary authority support it for that reason, because it largely separates certain market design choices from the deliberative processes of the Board. This may appear at first examination to expand the autonomy of the Governing Body, as contemplated by Governance Principle G. However, the right of the Board to remove proposals from the consent agenda and their lack of exposure to regional interests when contentious and complex issues come forward could create a dynamic that fundamentally limits the Governing Body's influence on decisions. This would be incongruent with the unified nature of the Day-Ahead and Real-Time Markets under the WEIM and the EDAM and would not advance or support expanded collaboration across the West.

2. The Scope of Governing Body's Decisional Authority and Advisory Input

For the EDAM, the GRC believes, at a minimum, that the scope of joint authority should be increased by using the "apply to" test to encompass both WEIM and EDAM rules. In addition, the GRC seeks comment on whether to further expand the scope of authority to other market rules, and if so, what additional rules should be covered.

Extending the Existing "Apply To" Test to the EDAM

Under the current decisional classification rules, the scope of the Governing Body's decisional authority is defined through an "apply to" test that looks at whether a proposed tariff amendment would apply to WEIM participants. When adopted in September 2021, this was a substantial increase in the scope of the Governing Body's delegated authority, which before then had generally been limited only to tariff rules that applied solely to the WEIM balancing authority areas outside the CAISO balancing area. Now, all rules that apply to WEIM participants in their capacity as such must be approved by the Governing Body.

Specifically, the Governing Body's joint authority and advisory input authority are *currently* defined in the Charter for EIM Governance⁶ as follows:

- "Joint authority": The EIM Governing Body will have joint authority with the Board of Governors to approve or reject a proposal to change or establish a tariff rule applicable to

⁶ See Charter for EIM Governance at Section 2.2.1.

the EIM Entity balancing authority areas, EIM Entities, or other market participants within the EIM Entity balancing authority areas, in their capacity as participants in EIM. The scope of this joint authority excludes, without limitation, any proposals to change or establish tariff rule(s) applicable only to the CAISO balancing authority area or to the CAISO-controlled grid.

- “Advisory authority”: The EIM Governing Body may provide advisory input over proposals to change or establish tariff rules that would apply to the real-time market but are not within the scope of joint authority.

Expansion of the current authority to the EDAM would require extending this same “apply to” test to EDAM tariff rules. Under this approach, the Governing Body’s role would be revised to add a reference to the EDAM in each place where the WEIM is mentioned and add a reference to the “day-ahead” market to the definition of advisory authority.

The definition in the Charter for EIM Governance thus would be revised to read as follows:

- “Joint authority”: The WEIM/EDAM Governing Body will have joint authority with the Board of Governors to approve or reject a proposal to change or establish a tariff rule applicable to the WEIM/EDAM Entity balancing authority areas, WEIM/EDAM Entities, or other market participants within the WEIM/EDAM Entity balancing authority areas, in their capacity as participants in the WEIM/EDAM. The scope of this joint authority excludes, without limitation, any proposals to change or establish tariff rule(s) applicable only to the CAISO balancing authority area or to the CAISO-controlled grid.
- “Advisory authority”: The WEIM/EDAM Governing Body may provide advisory input over proposals to change or establish tariff rules that would apply to the real-time and/or day-ahead market but are not within the scope of joint authority.

The “apply to” test is a relatively straightforward concept both to explain in general and to use in practice. If a proposed new tariff rule would apply to WEIM and EDAM market participants in their capacities as such, then the Governing Body must approve it. If not, then the Governing Body does not have an approval role, though it would give advisory input if the proposed tariff rule applies to any aspect of the real-time or day-ahead markets. This approach has already been successfully deployed in the context of the WEIM and could be extended to the EDAM.

This approach also would entail a substantial expansion of the Governing Body’s current decisional authority given that the EDAM will give rise to an extensive set of new tariff rules that will apply to those entities who choose to participate in that market. The apply to test would cover, for example, all or a substantial part of various existing sections of the current tariff, including without limitation the sections devoted to: Communications (Section 6), Metering (Section 10), CAISO Settlements and Billing (Section 11), Creditworthiness (Section 12), Dispute Resolution (Section 13), Uncontrollable Force, Indemnity, Liabilities, and Penalties (Section 14), Confidentiality (Section 20), CAISO Markets and Processes (Section 27), the Energy Imbalance Market (Section 29), Bid and Self-Schedule Submission for all CAISO

Markets (Section 30), the Day-Ahead Market (Section 31), the Real-Time Market (Section 34), Market Validation and Price Correction (Section 35), Rules of Conduct (Section 37), Market Power Mitigation Procedures (Section 39), and the Flexible Ramping Product (Section 44).⁷ These rules would become subject to the Governing Body's joint approval authority. The apply to test would also allow the Governing Body's scope of authority to grow over time to extent that new market rules or products within the WEIM or the EDAM are developed and made applicable to EIM or EDAM market participants.

One question, however, is whether this approach sufficiently accounts for the increased interdependency that arises in the context of an EDAM market. As some stakeholders have observed, a successful EDAM will encompass a much larger scope, both in terms of the share and value of transactions handled by the market and in terms of how the participating balancing authority areas must plan and execute their operations. As the scope of this regional market expands, it may be more likely that there are some tariff rules that do not actually apply to WEIM/EDAM market participants in their capacities as such but that nonetheless may substantially affect their operations.

The GRC seeks stakeholder comment on whether the apply to test is sufficiently broad or if joint authority should expand to certain areas beyond the rules that directly apply to EIM and EDAM market participants.

Expanded Authority Option: Identify and Include Additional Market Rules within Joint Authority Beyond the "Apply to" Test

As with the WEIM, the scale of the benefits the EDAM delivers will be directly related to the number of participants. Because having a broad scope of authority is a key issue for many potential participants, the GRC is evaluating whether there are any further topics that could be covered within joint authority beyond those covered by the apply to test.

The most obvious way to further expand the scope of authority would be to add an "impact" test that would supplement the apply to rule. Under that approach, any rules that either apply to or in some manner may impact WEIM/EDAM market participants also would be subject to joint authority. The GRC previously contemplated that approach with the WEIM and found that it did not provide an administrable line that can be used with clarity over time.⁸ Because this concern applies equally, if not more, in the context of the EDAM, we continue to oppose this concept.

For this reason, the GRC is evaluating whether there are any alternative approaches to expanded joint authority that would establish a clearer demarcation point between the rules that are within

⁷ The apply to test would also generally exclude from joint authority certain topics and various current sections of the tariff that do not apply to WEIM or EDAM participants, including, but not limited to, sections that address: the Comprehensive Transmission Planning Process (Section 24), Interconnection of Generating Units and Facilities (Section 25), Resource Adequacy (Section 40), Procurement of RMR Resources (Section 41), and the Capacity Procurement Mechanism (Section 43A).

⁸ See December 14, 2020 Revised Straw Proposal at 10.

joint authority and those that are not. This could involve adding further rules to joint authority beyond those already swept into joint authority by extending the apply to test to the EDAM.

Conceptually, we see two possible ways to accomplish this:

- a. Develop a set of specifically identified topics to be decided under joint authority that are in addition to those covered by the apply to test, or
- b. Extend joint authority to all real-time and day-ahead market rules but create a defined set of exceptions or exclusions for topics that would remain subject to the Board's sole approval.

The goal under either approach would be to establish a scope that includes within joint authority certain highly impactful topics that are closely intertwined with topics already covered by the apply to test, while preserving the CAISO Board's sole authority to address key matters that each participating balancing authority should have the autonomy to address for itself.

The GRC seeks stakeholder comment on both approaches, as well as specific proposals and rationale that stakeholders have for how to define either the additional topics to add to joint authority or the topics that should be excluded and kept under the sole authority of the Board. The GRC is particularly interested in rules or concepts for additions or exclusions that will support a straightforward decisional classification process and will be relevant over time as new market design issues emerge.

In developing comments, we encourage stakeholders to discuss and explore expanded authority options with one another, including in groups that cut across existing stakeholder interest groups and across regional boundaries. This collaboration should help to identify balanced options that hold broad appeal and provide a strong foundation for success.

C. Other Topics Related to the Delegation of Authority

In this section, we discuss two existing features of the current WEIM governance structure that are related to the delegation of authority – the decisional classification process and the dispute resolution process that would come into play if the Board and Governing Body do not agree on whether to approve an initiative within their shared approval authority. As discussed below, the GRC is not proposing changes to either of those existing processes for the EDAM.

1. The Decisional Classification Process

The “decisional classification process” is the public process the CAISO uses to determine which policy initiatives are subject to the Governing Body's approval or advisory input and, if necessary, to resolve any disputes regarding those decisional classification determinations. This process is documented in detail in an existing governance document known as the Guidance Document.

This public process begins early in each policy initiative. The first step involves CAISO staff making a preliminary decisional classification recommendation at the earliest possible stage in each stakeholder process and seeking stakeholder comments on the proposed classification. On an iterative basis throughout the course of each stakeholder process, staff may modify or refine this proposed classification in response to stakeholder comments or to changes to the substance of the proposed initiative. Staff also publicly reports quarterly to the Governing Body on the status of its ongoing stakeholder proceedings, including on the preliminary decisional classification for each proceeding.

At the conclusion of each stakeholder process, before any proposed tariff amendment is submitted for approval, staff reports the proposed final classification to the chairs of the Governing Body and the Board, along with any stakeholder objections to the classification that were made in comments on the draft final proposal. This notification appears in a public notice that is posted on the CAISO's website and includes the date by which any comments on the classification are due back from the two chairs. If neither chair objects to the proposed classification, then it becomes the final classification used to obtain approval for the initiative.

If either chair objects to the proposed final classification, the two chairs will confer together and if necessary with CAISO staff to attempt to resolve the matter. If the chairs are unable to reach agreement, then a dispute resolution process is triggered that involves the two bodies meeting together as a "committee of the whole" to decide the proper classification, after providing all stakeholders an opportunity to submit further comments on the proposed classification. The decision is then made by a vote of the combined members of both bodies, with the majority prevailing. In the event of a tie vote, the chair of the Board breaks the tie.

To date, the chairs have either both agreed with staff's proposed final classification or have used the consultative process to resolve any questions about the classification. As a result, there has never been a need to convene the two bodies to decide a decisional classification.

The decisional classification process has been in place, essentially unchanged, since the inception of the Governing Body in 2015. In the prior phases of the GRC's work, we took stakeholder comment on the process and concluded that it was working and did not require any substantive changes.⁹

In the current EDAM phase, the GRC has received only very limited stakeholder feedback about this process. At this point, it appears to the GRC that the decisional classification process is working as intended, and we have not identified any changes that would be necessary for the EDAM. We do, however, continue to solicit stakeholder feedback on whether there are any specific improvements we should consider.

⁹ See GRC Part Two Draft Final Proposal at 16-17. The only change we proposed, which was adopted, was to add a clarification to the Guidance Document that if either body has fewer than its full membership of five members at the time of a vote to resolve a decisional classification dispute, the votes of the body with fewer than five members should be weighted so that each body effectively has five votes. See Guidance Document at 4-5.

2. The Process for Resolving Disagreements between the Governing Body and Board on whether to approve a Proposal within their Joint Authority

The most recent prior phase of our work developed a process to be used when the Board and the Governing Body do not agree on whether to approve a proposal that is within their joint authority.

After considerable stakeholder comment and several straw proposals, the GRC settled on an iterative remand process that requires the two bodies to continue to collaborate together, and work with stakeholders, to develop a proposal that can address the concerns that caused the two bodies to reach differing conclusions. If an irreconcilable impasse ultimately occurs, the process includes a narrowly drawn option for the Board to authorize a FERC filing without approval by the Governing Body, but the process includes several safeguards to ensure that this happens only in the case of an extreme and urgent need and with a full opportunity for the Governing Body to express its position on the filing in the submission made to FERC.¹⁰

This process, which is documented in the Charter for EIM Governance,¹¹ includes the following steps:

- *Step 1 – Articulation of Concerns.* First, at the initial public meeting where the two bodies convene to consider the proposal, those Governing Body or Board members who do not support the proposal would articulate the concerns that gave rise to the remand of the issue. A discussion would then ensue during the public meeting among the members of both bodies to explore the extent of their differences and consider potential ways to address the areas of disagreement. Stakeholders also would be encouraged to share their views during this discussion on potential ways to address the areas of disagreement.
- *Step 2 – Remand for Further Stakeholder Process.* With the benefit of that discussion, the matter would then go back to CAISO staff, who would commence another round of the public stakeholder process with the goal of exploring ways to address the identified concerns and to establish a revised proposal for the two bodies to consider. Stakeholders would have an opportunity to review staff's revised proposal and submit written comments before the matter goes back to the two bodies for further review. The matter would then come back to the two bodies for their further consideration in a joint public meeting, at which time both bodies would discuss and then vote on the revised proposal once again. If both bodies approve the revised proposal, then staff would be able to move forward with filing the proposal at FERC.

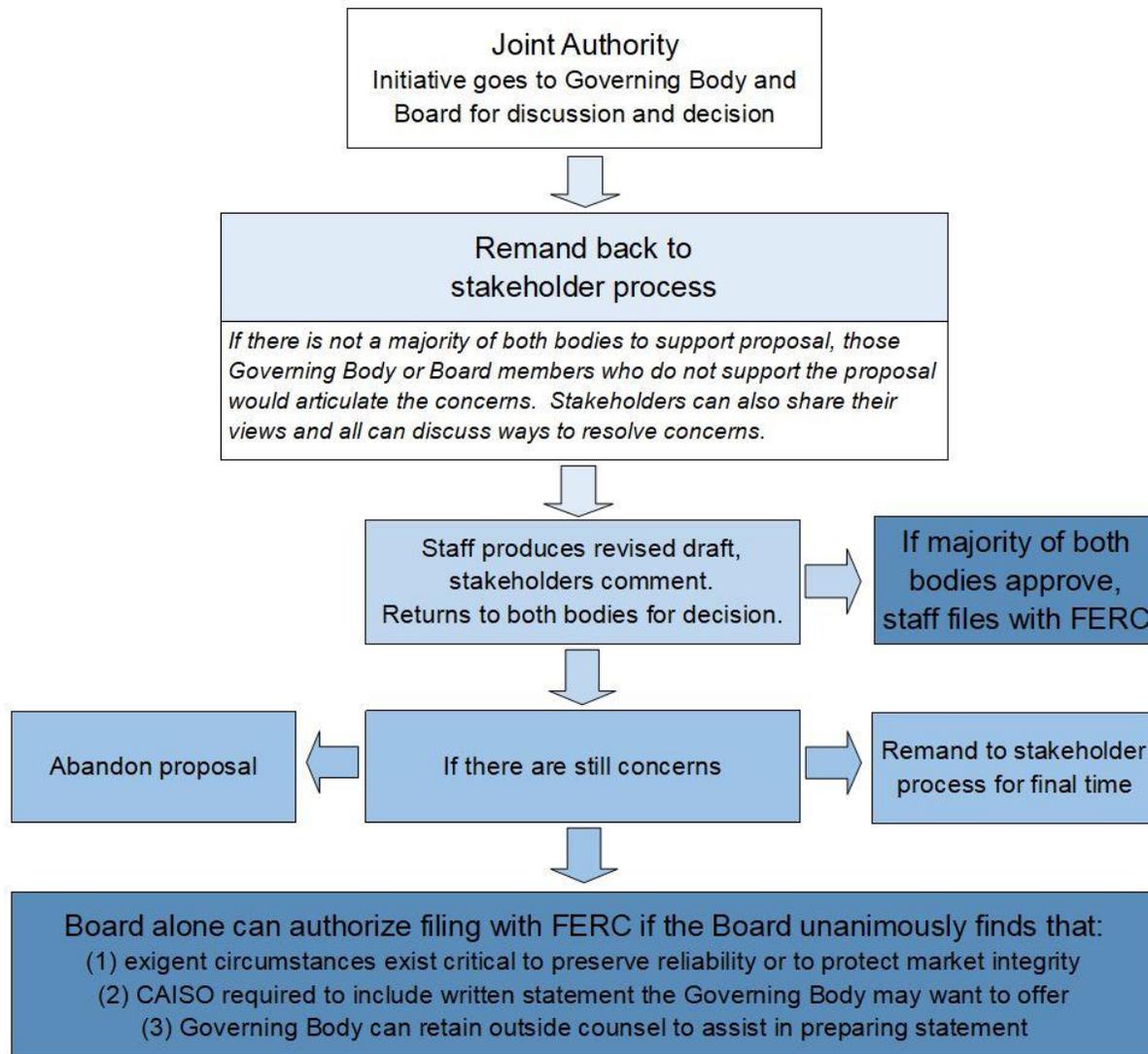
¹⁰ See GRC Part Two Draft Final Proposal at 12-15 for a discussion of this proposal and other alternatives we considered.

¹¹ See Charter at Section 2.2.2.

- *Step 3 – Further Remand, Abandon Proposal or Invoke Exigent Circumstances Exception.* If after going through the dispute resolution process the two bodies are unable to agree on approving a single proposal, they can jointly decide to abandon the proposal or jointly agree, with input from CAISO management, on another remand to the stakeholder process. Alternatively, the Board alone may authorize a FERC filing if, and only if, all of the following conditions are met:
 - (i) The Board, by unanimous vote, makes a finding that the two bodies have reached an impasse and that exigent circumstances exist such that a revision to the tariff is critical to preserve reliability or to protect market integrity. Unless the circumstance is so time critical as to require immediate action, this finding may be made only after at least one remand has occurred in an attempt to reach a proposal that both bodies approve. In such a time-critical circumstance where there is not sufficient time to complete at least one remand, the Board may by unanimous vote approve such a filing on an expedited basis without completing the remand process. The Board must set forth the basis for any and all of its findings justifying exigent or time critical circumstances in writing.
 - (ii) If the Board authorizes such a filing, the CAISO would be required to include in its FERC filing whatever written opinion or other statement the Governing Body may want to offer regarding the proposal.
 - (iii) The Governing Body would have a right, at its discretion, to retain outside counsel to assist in preparing any such written opinion or statement on the proposal.

This process is illustrated in the figure below:

WEIM Governing Body and Board of Governors Dispute Resolution Process



This process has not been needed during the approximately six months it has been effective. Absent experience suggesting otherwise, the GRC continues to believe it is the best approach to the difficult issue of potential deadlocks. It creates the strongest incentive for stakeholders, and ultimately the two bodies, to reach consensus around an acceptable proposal, with the remand to stakeholders in case of initial disagreement. At the same time, it allows the Board to bypass the process only when urgently necessary to preserve reliability or market integrity. And even if this high bar were satisfied and the Board directed a filing on its own, the Governing Body would have the ability to advocate its concerns to FERC.

The GRC believes the existing stakeholder process and the dispute resolution structure we have developed to date provides the best assurance that all stakeholder interests will be fully

considered and reconciled before any proposal comes before FERC for its ultimate determination.

IV. The Size and Composition of the Governing Body

Under the proposal described above, the GRC recommends retaining the Governing Body and expanding its scope of shared authority to account for the EDAM. EDAM will substantially increase the volume and value of transactions through the regional markets, which will in turn increase the responsibility of the Governing Body. Stakeholders need assurance that the Governing Body will have members who are qualified for this role.

While we do not suggest changes to the process through which stakeholder representatives select nominees to the Governing Body, as set forth in the Selection Policy, we do recommend a discrete change for sitting members who seek additional terms. The Selection Policy allows the Nominating Committee to re-nominate these members without interviewing other candidates.¹² Because the current members of the Governing Body were selected to be responsible over the WEIM only, we recommend that, as part of deciding whether to re-nominate a currently sitting member under this provision, the Nominating Committee should evaluate whether that member has the qualifications to serve given the additional responsibilities associated with the EDAM. The criteria for this evaluation will depend on that particular member's role on the Governing Body, and how their expertise fits in with the rest of the Governing Body. Accordingly, we would leave this decision about appropriate qualifications to the sound judgment of the Nominating Committee without specifying a more specific standard to apply.

A related question – whether the compensation for Governing Body members is sufficient to attract members qualified for the EDAM – was raised in one stakeholder's comments.¹³ This is a complex issue that involves consideration of factors that are beyond the GRC's knowledge, such as the amount and payment structures used for comparable positions on similar boards of non-profit corporations. The compensation of the Governing Body is determined by the Board, and is linked to the Board's own compensation. A memorandum that was provided to both the public and the Board when it last set compensation levels for each body, describes the process that was used to determine the compensation, including the use of a third-party market survey that evaluates compensation for similar boards and bodies.¹⁴

¹² Section 3.4 of the Selection Policy states: "If a Governing Body 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 departing member without interviewing other candidates."

¹³ PIO Comments.

¹⁴ The Board established the current compensation levels for both bodies in 2018. The memorandum describing the compensation studies is available [here](#). The resolution regarding compensation for the Board is available [here](#) and for the Governing Body is available [here](#).

We do not believe we have an adequate basis to offer an opinion on whether the current compensation for the Governing Body is sufficient or should be changed in some manner. With that said, stakeholder feedback could be another factor for the Board to consider when it reviews compensation in the future. Accordingly, we seek further comment about whether to recommend that the Board consider increasing the compensation for Governing Body members to ensure that it can attract members qualified to oversee the EDAM.

We also seek comment on whether the size of the Governing Body should be increased from five members to seven. Additional members could enhance the collective expertise of the Governing Body, and enable additional work or greater engagement in detail by forming committees. But is the value worth the additional expense and administrative burden, including the work required by the Nominating Committee to find and select those members? This issue may be connected to compensation; if stakeholders believe it may be difficult to find enough qualified members at current compensation, increasing the size of the body could be counterproductive.

V. Stakeholder Engagement

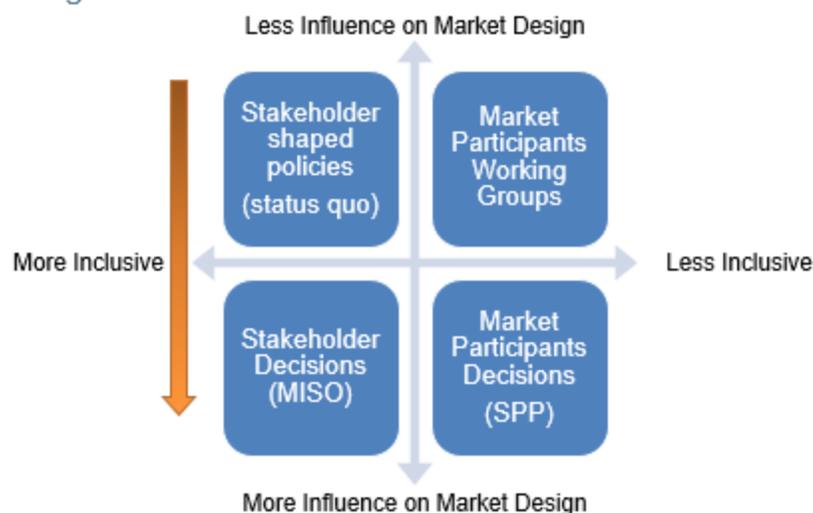
For some of the commenters, a persistent theme throughout the GRC's work has been a request for greater stakeholder control over the policy development process. Advocates of this position say that it would give regional stakeholders greater confidence that the market will develop in a way that benefits the entire market geographically and all sectors.¹⁵ This section explains the GRC's thinking on this issue, and proposes increased use of stakeholder working groups, a stakeholder roundtable discussion to kick off the annual process of prioritizing discretionary initiatives, and adjustments to the RIF sector for public interest and consumer advocate groups.

A. Options for Enhancing Stakeholder Engagement in Policy Development

The GRC assigned a working group to look at options for increasing stakeholder involvement in the policy development process. This group carefully considered the stakeholder-led initiatives at SPP and SPP's governance generally, as well the stakeholder committees at Eastern RTOs such as MISO and the working groups the CAISO employed in its EDAM initiative. We prepared the following slide, shown during our April 29 meeting, to reflect the options for enhancing the role of stakeholders in market design.

¹⁵ Among the comments we received in March, see in particular those of Powerex and the Arizona Utilities. In addition, BPA also addressed the issue.

Option for EDAM: Include stakeholders more in market design



WEIM | California ISO

Slide 16

The graphic attempts to capture the general participation models that exist in the organized markets in the country. The boxes on the left reflect models where all stakeholders have common access to the process, whereas the boxes on the right reflect models that give market participants, but not other stakeholders, specific avenues for engagement and, in some cases, greater influence over decisions. The boxes on the top reflect models that seek input but decisions are retained by the boards of the organized markets. The bottom two boxes represent methods that provide decision-making authority or at least greater influence to stakeholders or market participants. The box in the upper left hand side reflects the status quo of the CAISO stakeholder process. Specifically, the engagement process is open to all stakeholders and decisions are made by the Board and the Governing Body.

The GRC deliberated directly and engaged stakeholders on the issue of more stakeholder-driven decision making. After evaluating the pros and cons of the different models, which we discussed during a presentation on April 29, 2022,¹⁶ the GRC supports the CAISO's current engagement model, because it is inclusive and provides for equal access for all stakeholders. Accordingly, the GRC does not, at this time, recommend changes to the overall decision-making process.

Within the current framework, however, we believe CAISO can provide for more meaningful input by stakeholders in the decision-making process, consistent with the direction of the orange arrow on the graphic by increasing use of stakeholder working groups at the early stage of policy development, as has been done in the EDAM initiative. We believe that expanded use of working groups is worth the extra effort that would be required from stakeholders. Currently, most initiatives are developed by CAISO staff. Even when initiatives begin with an issue paper rather than a specific proposal, it is CAISO staff that, after receiving written comments,

¹⁶ See our slide deck from April 29, available [here](#), slides 18 and 19.

formulates the proposed solution. The role of stakeholders throughout the process is typically limited to reacting to these proposals.

In some recent cases, though, most notably with the EDAM initiative, the process begins with working groups of stakeholders who collaborate to develop high-level policy approaches on key aspects of the initiative. The goal has been to use these groups to develop a widely acceptable or consensus policy solution on certain fundamental aspects of the market design before CAISO staff proceeded to develop details. We recommend that CAISO expand the use of this working group approach with the goal of enhancing the role of stakeholders in both the development of and consideration of policy options. We believe this would be the case for any initiative that is complex enough to have a wide range of possible solutions, and is significant enough in terms of impact to market participants or other stakeholders to be worth the extra work.

Beyond increasing use of stakeholder working groups, we do not believe further changes to the stakeholder process are warranted at this time. The Regional Issues Forum is already empowered to collect stakeholder input and provide written opinions on issues being considered within an ongoing CAISO stakeholder proceeding. Stakeholders thus have an avenue for developing and sharing such opinions. We understand, moreover, that stakeholders involved in the RIF have been discussing how best to facilitate the collection and sharing of such opinions. Rather than having the GRC dictate changes in this area, we believe the RIF is the proper forum for these discussions.

B. Prioritizing Initiatives - The Process for Developing the Policy Roadmap

In terms of selecting or prioritizing new initiatives, we propose a new step to enhance stakeholder engagement in selecting initiatives. By way of background, Phase 1 of our work examined “the process through which CAISO management creates its annual plan and the three-year roadmap that prioritizes stakeholder initiatives,” which we summarized as follows:

It begins with identifying and collecting possible initiatives, including through suggestions from stakeholders. The CAISO then classifies each potential initiative according to whether or not it is discretionary. A potential initiative is discretionary unless it is in progress already, required by a FERC order, or is considered a previous commitment of CAISO to stakeholders. The process begins with CAISO publishing drafts of the catalog and proposed classifications twice a year for stakeholder comment. Starting from the catalog, management prepares drafts of an annual plan and three-year roadmap that are informed by the CAISO’s strategic plan as well as an extensive internal review and a public stakeholder process. This draft receives multiple rounds of comments from stakeholders, feedback from meetings with customers, and input from the RIF, the Governing Body and the Board.¹⁷

¹⁷ GRC Phase 1 Final Proposal, May 6, 2021, available [here](#), at 15-16.

At that time, our work was focused on the conclusion of this process – specifically whether the Governing Body should formally approve the roadmap, rather than simply providing input. We decided against this,¹⁸ but recommended that management provide detailed explanations of the practical factors behind its selection:

[a]fter management obtains feedback from stakeholders about drafts of the roadmap, we ask that they make a deliberate effort to enhance its explanation of the reasoning behind its decisions regarding the relative priority of possible discretionary initiatives, so that this reasoning is more transparent to stakeholders.¹⁹

We are now focused on the beginning of this process, where we believe there is an opportunity to enhance the role of stakeholders by giving them the opportunity to take a more active role in prioritizing the discretionary initiatives. Specifically, we propose that after the CAISO compiles the catalog of possible issues, identifies which initiatives are FERC-mandated or otherwise mandatory and provides very general guidance on the capacity available in coming years for additional discretionary initiatives, the RIF should host a roundtable discussion about priorities within the set of possible discretionary initiatives. This discussion would take place before management publishes its own proposed priorities or proceeds with the remainder of the currently effective process, which we do not propose to change.

We are envisioning a roundtable discussion in which each stakeholder sector designates a representative to articulate their sector's priorities during a RIF meeting, with members of the Board and Governing Body in attendance, who would want to hear this discussion as background for their own input later in the process of developing the roadmap. If there were a consensus among the sectors that a certain initiative or set of initiatives should be a priority, that would be essential information for the remainder of the roadmap process. At the same time, the discussion would need to recognize that a consensus or near-consensus among sectors should not necessarily be a determining factor. For example, CAISO may need to proceed with initiatives that are important to its balancing authority area. For example, CAISO could appropriately prioritize certain changes to congestion revenue rights, transmission planning, RMR designations or its interconnection queue, even if these initiatives are of little interest to WEIM/EDAM participants. Other types of initiatives could benefit overall market efficiency even if the financial results – and thus the interest – are focused narrowly within a few sectors. Put another way, the fact that an initiative appears or does not appear on most sectors' lists would not automatically indicate its priority.

¹⁸ Id. at 16. We explained:

requir[ing] formal approval would mean that any subsequent changes during the course of the year – and these changes happen invariably – could be delayed due to the time it takes to notice and hold meetings of the Board and Governing Body.... [M]anagement, with the benefit of robust input it obtains from stakeholders and the Governing Body and Board, is best suited to perform this balancing and ensure that important issues are appropriately prioritized relative to the total set of issues CAISO must address.

¹⁹ Id.

Our hope is that the panelists from each sector would enter the discussion with the preparation to discuss merits on this level, with general awareness of what the other sectors are likely to prefer and reasons for their preference. This would allow a give-and-take discussion about relative priority in terms of the value of each initiative to the market overall. Ideally, the panelists would be able to propose win-win solutions.

Regardless whether the discussion results in a consensus about the relative priority of any of the discretionary initiatives, it should produce valuable input for CAISO staff, which would then proceed with its current process of posting proposed one- and three-year plans for further stakeholder review and comment. We recognize that management's proposal will reflect additional relevant information related to the development and implementation of the prioritized discretionary initiatives, such as the availability of resources or coding efficiencies. These practical factors, in addition to the judgment about overall impact mentioned above, may cause staff's roadmap proposal to depart from a consensus recommendation. In these instances, however, it will be essential for staff to explain in detail the reasons for its recommendations.

C. RIF Liaisons: Adjusting the Sector for Public Interest and Consumer Advocate Groups

We have a separate proposal about sector liaisons who organize the RIF. These eleven liaisons are selected, two each, by five stakeholder sectors, plus one more by federal power marketing agencies. One of the five stakeholder sectors includes two groups that are combined into a single sector: consumer advocates and public interest organizations. In certain areas, these entities can have significantly diverging goals and views. Although diversity of viewpoint is common within stakeholder sectors and simply must be worked out, in this particular case there is an easy solution because the combined sector has two liaisons. Specifically, we propose that this sector be composed of one liaison chosen by representatives of state-sanctioned utility consumer advocates and large consumer representatives and the other liaison chosen by the public interest groups within the sector. We seek stakeholder input on this proposal and any other organizational aspects of the Regional Issues Forum.

VI. Clarifying CAISO's Responsibility to Consider the Interests of Regional Stakeholders

A few stakeholders have expressed concern about the California law governing the CAISO, suggesting that it requires CAISO to act exclusively in the interests of California electric consumers, at the expense of the interests of other market participants, or could be construed that way.²⁰ A related theme is that an incentive for the CAISO to favor California participants with

²⁰ See WAPA comments ("It is emphasized that the California Public Utilities Code requires CAISO to *conduct its operations consistent with applicable state and federal laws and consistent with the interests of the people of the state*" (Section 345.5)); Powerex comments at 6.

significant unintended consequences for other participants could arise from the CAISO's status as a "public benefit" corporation domiciled or incorporated in California.²¹

CAISO counsel has addressed these issues in detail in Appendix A, which explains that the Board is not required by law to favor California ratepayers over other market participants. In addition to this legal discussion, we believe CAISO could easily provide regional stakeholders with stronger assurance. Instead of simply saying that California law does not require favoritism, we recommend that CAISO positively state in its governance documents that its public benefit purpose extends to all stakeholders and connect that to its corporate purpose. CAISO already says related things; its new strategic plan affirms that "long-term and mutually beneficial relationships with neighboring utilities and states is critically important to a cost-effective and reliable clean-energy network."²² We recommend CAISO add similar statements to its Bylaws, the document that the Board would consult to determine its own obligations, to formalize on some level their obligation to look after the public interest of the entire footprint.

The Bylaws state that CAISO's corporate purpose is "to ensure efficient use and reliable operation of the" CAISO-controlled grid.²³ We recommend that CAISO clarify the role of the regional market and fair treatment of regional stakeholders in pursuing this purpose. The Bylaws could state that, as a means to fulfill the corporate purpose, the company shall consider the interests of all stakeholders in the balancing authority area of either CAISO or a WEIM/EDAM entity. This would expressly contradict any concern that the company will pursue the benefit of California load exclusively.

To address concerns about CAISO's status as a nonprofit public benefit corporation, the proposed new clause could also clarify that considering the interests of all stakeholders is consistent with CAISO's obligations as a nonprofit public benefit corporation. Together, these changes would result in a clause along the following lines:

Consistent with its status as a nonprofit public benefit corporation, and to enhance the efficient use and reliable operation of ISO Controlled Grid, the Corporation will consider the interests of all stakeholders within the footprint of the markets that it administers, including the Corporation's balancing authority area, EDAM balancing authority areas and EIM balancing authority areas.

The Bylaws should also clarify individual Governors share the same obligation.

²¹ E.g., Powerex comments at 8.

²² See the CAISO Strategic Plan 2022-26, at 9, available [here](#).

²³ Bylaws, Article II, Section 1. We understand that this corporate purpose is outside the GRC's scope. Moreover, it is linked to both the California statutes and the corporation's federal tax-exempt status, and thus would be difficult to change.

VII. Timing for Approval and Implementation of GRC Proposals

As previously noted, the GRC intends to finalize its governance proposals on a timeline that will allow the Board and Governing Body to consider them for approval at the same time as the EDAM market design is approved for filing at FERC. This will allow potential participants to consider both the EDAM market design and governance in connection with deciding whether to join. Because the governance proposals focus specifically on enhancements for the EDAM, they would not be implemented until EDAM operations commence, which will not occur until after FERC approves the market design and potential participants commit to join.

This approach means that the existing scope of joint authority will be in effect when the EDAM market design is approved for filing at FERC. Because the existing scope of authority does not cover the EDAM, the Governing Body would not have shared authority over the EDAM market design decision. At the Board and Governing Body’s May 11, 2022 joint general session, the Board Chair announced a proposal to address that issue. The Chair observed that the two bodies had discussed this issue in joint executive session and the Board had tentatively agreed to have the EDAM market design come to both bodies for joint approval. He noted that this approach would be proposed in the next draft proposal for EDAM market design, so that stakeholders can comment on that option, consistent with the established decisional classification process. This approach, if ultimately adopted, should address any concerns arising from not having the expanded scope of authority formally in effect when the EDAM market design is approved.

VIII. Summary of Recommendations

For ease of reference, the following is a chart that summarizes the recommendations the GRC has made throughout this paper:

Issue	Recommendation
Delegation of Authority	<ul style="list-style-type: none"> • Maintain joint authority construct
	<ul style="list-style-type: none"> • Expand authority to include rules that “apply to” the EDAM market participants and seeking feedback on concepts to further expand scope of the WEIM Governing Body’s decisional authority. Expanded authority is discussed in Section III.B.1.
	<ul style="list-style-type: none"> • No change to process for decisional classification of initiatives
	<ul style="list-style-type: none"> • No change to process for resolving disagreements about whether to approve proposed tariff changes within joint authority of two bodies
Size and Composition of the Governing Body	<ul style="list-style-type: none"> • Seeking feedback about whether to increase the size of the Governing Body from five to seven in response to the increased responsibilities associated with the EDAM

	<ul style="list-style-type: none"> • When considering whether to reappoint a sitting member of the Governing Body, the Nominating Committee should consider whether doing so fits with the enhanced responsibilities associated with the EDAM
	<ul style="list-style-type: none"> • Seeking feedback about advisability of increasing compensation of Governing Body members to help attract members best qualified for increased responsibilities associated with the EDAM
<p>Stakeholder Engagement and Policy Development</p>	<ul style="list-style-type: none"> • At the beginning of the CAISO’s process for prioritizing discretionary initiatives for the policy roadmap, RIF to host a roundtable discussion of sector representatives about priorities • For the Public Interest Organizations and Consumer Advocates sector of the RIF, have one liaison should be chosen by representatives of state-sanctioned utility consumer advocates and large consumer representatives and the other liaison chosen by the public interest groups.
<p>CAISO’s Responsibility to Consider Regional Stakeholders</p>	<ul style="list-style-type: none"> • Amend the Bylaws to clarify that, consistent with its corporate purpose and status as a nonprofit public benefit corporation, CAISO will consider the interests of all stakeholders in the footprint • Amend the Bylaws to add same obligation for individual members of the Board of Governors

IX. Next Steps

On July 20, the GRC will hold a virtual stakeholder meeting to discuss this proposal and solicit further input from stakeholders. Stakeholders are asked to submit written comments by August 15. A comment template will be posted on the CAISO initiative webpage [here](#). Stakeholder input is critical for developing a governance proposal that will support the success of the EDAM. We also plan to host a public meeting after we receive comments, to discuss those in more detail and summarize our thinking for potential revisions.

Based on stakeholder feedback and these discussions, the GRC will develop a revised proposal. We plan to publish this proposal around the end of October.

The GRC is comprised of a diverse set of stakeholders and we are always open to listening to stakeholders’ thoughts and questions. The list of GRC members is available on the WEIM website [here](#); please feel free to reach out to any one of us throughout this process.

Appendix A: Overview of Legal Issues Relevant to Governance

(Prepared by CAISO staff)

Limitations on Section 205 Delegation Arising from Corporate Law and the CAISO's Tax-Exempt Status

A key component of WEIM governance is the Governing Body's role in approving CAISO filings under Section 205 of the Federal Power Act. This Appendix reviews certain legal requirements that restrict CAISO's ability to delegate authority. These include limitations arising from both general corporate law, as well as from restrictions that apply uniquely to the CAISO by virtue of its tax-exempt status and the California statutes that govern it.

General Corporate Law Considerations

As the board of directors for the corporation, the CAISO Board of Governors is legally responsible for all corporate activities, which must be under its "ultimate supervision." For CAISO, the primary source of this obligation is Section 5210 of the California Corporations Code, which applies to nonprofit public benefit corporations such as CAISO. It states, in part, that "the activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board." This language, and in particular the phrase "or under the direction," recognizes that corporate boards ordinarily cannot directly exercise every aspect of their corporate powers and thus may delegate responsibility to employees and others in order to operate. But when a board delegates, it remains accountable for corporate activities, and therefore must have ultimate control over them. Section 5210 makes this point expressly, further stating that: "The board may delegate the management of activities of the corporation to any person or persons, management company, or committee however composed, *provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.*"²⁴

²⁴ Italics added. The full text of Corporations Code § 5210 reads:

Each corporation shall have a board of directors. Subject to the provisions of this part and any limitations in the articles or bylaws relating to action required to be approved by the members (Section 5034), or by a majority of all members (Section 5033), the activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board. The board may delegate the management of the activities of the corporation to any person or persons, Management Company, or committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

The requirement that “all corporate powers shall be exercised under the ultimate direction of the board” is an accountability provision, highlighting the board’s fiduciary obligations to the company. This accountability is an explicit condition of a board’s authority to delegate, meaning that a board may delegate performance of corporate actions, but not the *responsibility* for those actions. A board discharges its fiduciary obligations to the company through its oversight and supervision for the actions, and these duties may not be handed over to others.

To illustrate, a board may hire a CEO and other officers to manage a business. But the board remains responsible and accountable for what these officers do, including, for example, for the strategy undertaken to meet the corporation’s fundamental objectives and for how corporate resources are allocated and deployed. Failure to provide guidance to the officers, monitor what they are doing, and oversee them can result in board members being liable for breach of their fiduciary duties to the corporation, and violation of other legal requirements.²⁵ Under Section 5210, completely delegating the Board’s oversight responsibility would be the same as not fulfilling it.

The import of the statute, then, before considering other legal or practical limitations, is that the CAISO Board may delegate direct oversight of defined functions to the Governing Body, much like it does in delegating management to executive officers and staff. It cannot, however, make an irrevocable and complete delegation of fundamental aspects of the corporation’s ongoing operations. In other words, it must maintain ultimate authority over those delegated functions.

CAISO’s Tax-Exempt Status

As ultimate authority over all corporate actions, a board is responsible for ensuring the corporation complies with applicable laws.²⁶ An important set of restrictions arises from the CAISO’s tax-exempt status. This exemption benefits market participants through lower costs, by reducing the CAISO’s tax obligations and allowing it to use tax-exempt financing. To continue these benefits and avoid substantial penalties and liability, the CAISO must remain in compliance with the requirements of its 501(c)(3) exemption.

The CAISO’s particular exempt status depends upon an ongoing ability to show that the CAISO’s activities meet its corporate purpose, consistent with California law, and that the Board is supervising these activities. Within the general category of 501(c)(3) organizations – there are different types – the CAISO is a public charity as opposed to a private foundation, and specifically a “supporting organization.” The CAISO qualifies as a supporting organization

²⁵ See *Stern v. Lucy Webb Hayes National Training School for Deaconesses*, 381 F. Supp. 1003 (D.D.C. 1974):

Total abdication of the supervisory role . . . is improper A director whose failure to supervise permits negligent mismanagement by others to go unchecked has committed an independent wrong against the corporation.

²⁶ See, e.g., Cal. Corp. Code § 5140 (a corporation is granted power to act “[s]ubject to . . . compliance with . . . applicable laws”).

because its operations and market promote the reliability and the efficiency of the grid in California as required by AB 1890, the 1996 state legislation that led to the incorporation of the CAISO. The WEIM supports these goals too, as would the EDAM. While the WEIM (and if it is adopted, the EDAM) obviously benefit other balancing authority areas as well, the CAISO is able to undertake these activities within the parameters of its tax exemption because these markets support the CAISO corporate purpose of enhancing the reliability and efficiency of the grid in California.

The CAISO Board's authority over the corporation is also essential to demonstrating it is a supporting organization. IRS regulations require that the "supported organization" – in this case, the State of California – must supervise or control the supporting organization. In the case of CAISO, this relationship is established by the fact that its Board is selected by California officials, as required by California law.²⁷ An attempt to remove the Board entirely from certain decisions, for example by allowing the Governing Body to direct changes to market rules without some form of review by the Board or by irrevocably preventing the Board from changing any delegation or sharing of authority, could jeopardize the CAISO's ability to maintain its exempt status.

Conclusion Regarding Corporate Authority

To ensure that CAISO complies with these requirements, the Board must retain two levels of control in the context of delegating authority to or sharing authority with the Governing Body. First, the Board must have the ability to modify its delegation or sharing of authority over time if the delegation or sharing threatens to prevent it performing its ultimate oversight authority as required by Corporations Code 5210, or otherwise impairs its ability to successfully ensure compliance with applicable law and other requirements. Second, the Board needs to have some form of a concurring role in decisions about changes to market rules in order to preserve the showing of control needed to maintain its tax-exempt status and to discharge its ultimate responsibility to manage the company and exercise its fiduciary duty to the corporation.

RESPONSES TO QUESTIONS THAT STAKEHOLDERS RAISED ABOUT RELATED LEGAL TOPICS

In comments on prior GRC papers and in discussions with GRC members, stakeholders raised questions about various related legal issues. This section addresses such issues and explains how they may impact the governance issues the GRC is considering.

The Meaning of California Public Utilities Code Section 345.5

Some stakeholders have expressed concern that language in section 345.5 of the California Public Utilities Code could be read to require the CAISO Board to favor California load over

²⁷ See Cal. Pub. Utils. Code § 337, which provides that Board members will be selected by the Governor of California, and also that members may not be "affiliated with any actual or potential" market participant.

other market participants. For two related reasons, this provision does not impose such a requirement.

First, the plain language of section 345.5 does not support this reading. The statute describes the general duties of the CAISO in a way that does not dictate any particular corporate action, let alone require the Board to impose rules that favor California consumers over other market participants.

There are two relevant clauses, neither of which are reasonably interpreted to give preferential treatment to California load. One clause states that CAISO will operate “consistent with applicable state and federal laws and consistent with the interests of the people of the state.” This is a very general provision that does not dictate any particular course of action. All companies must comply with applicable state and federal law, and the language about operating “consistent with the interests of the people of the state” does not require the CAISO Board to tilt market rules so they favor Californians over other market participants. Indeed, discriminating in this way would be against the interests of Californians as it would likely make it more difficult to attract out-of-state entities to join CAISO’s markets, or even cause WEIM/EDAM entities to leave, ultimately increasing costs and threatening reliability. It is instead fully consistent with the state interests to establish even-handed rules that promote broad regional participation.

The other clause states that CAISO will manage the grid and related energy markets “in a manner that is consistent with” several competing criteria, including efficient use of resources, public health and lower costs. These criteria include “[r]educing, to the extent possible, overall economic costs to the state’s consumers” and “conducting internal operations in a manner that minimizes cost impact on ratepayers to the extent practicable and consistent with the provisions of this chapter.” Once again, these are very general criteria that do not compel any particular course of action. In addition, the criteria are qualified with the terms “to the extent possible” or “practicable” which means they are not absolute requirements, but rather general goals that must be balanced against other objectives. And as discussed above, it is not reasonable to assume that tilting the market rules to favor California customers would lower costs for California. Rather, it would likely reduce regional participation and the economic benefits it provides, and as noted threaten reliability, which would likely increase costs.

Second, applicable federal law prevents an interpretation of the California statute that would require the CAISO to grant preferential treatment to certain market participants. Any interpretation of the cited provisions of Section 345.5 as encouraging or requiring adoption of specific market rules that favor California would be legally precluded by federal law. This interpretation would be preempted by the Federal Power Act, which gives FERC “exclusive” authority in this area and explicitly prohibits “discriminatory” market rules, including market rules that favor participants because they are residents of one state rather than another. Such an interpretation would also violate the “dormant Commerce Clause” of the U.S. Constitution, which likewise prohibits states from discriminating in favor of their residents when regulating matters involving interstate commerce. Section 345.5, moreover, acknowledges these federal limits by expressly requiring that the CAISO “conduct its operations consistent with applicable ... federal laws.” This language provides further support for the conclusion that the statute is not to be interpreted to require discrimination that the federal law would not permit.

CAISO’s Status as a Nonprofit Public Benefit Corporation

Some stakeholders have asked what CAISO’s status as a nonprofit public benefit corporation means and whether that status constrains either the decisions of the CAISO Board or what the GRC can propose with respect to governance. CAISO’s status as a nonprofit public benefit corporation does not appear to impose a relevant constraint on the arrangements that the GRC could be expected to propose or decisions of the Board.

Corporate governance is a matter of state law, rather than federal law, in the state where the corporation was created. CAISO is organized in California as a nonprofit public benefit corporation, which is one of the options offered by California corporate law. This particular corporate form is also required expressly by the Public Utilities Code provisions governing the CAISO, and thus cannot be changed without legislation. The significance of being a nonprofit public benefit corporation is twofold. First, CAISO may not ultimately operate at a profit. Second, the corporation is to benefit the public as opposed to specific members or market participants. The alternative type of nonprofit corporation for a utility business – a nonprofit mutual benefit corporation – operates for the benefit of its specific members rather than the public as a whole. SPP is an example of a member benefit corporation. The relevant legal distinction is between nonprofit companies that are meant to benefit the public generally as opposed to their specific members. The CAISO is the former type.

The fact that CAISO is organized in California, as opposed to another state, does not affect CAISO’s legal authority to provide services or benefits to other states. See, e.g., Corp. Code § 5140(c)(which authorizes California nonprofit public benefit corporations to do business in other states and thus to benefit the other states). In other words, the “public” to be benefitted – though otherwise undefined by the statute – is not statutorily limited to California. Nor have we identified any way in which CAISO’s status as a nonprofit public benefit corporation would place limits on either what the GRC may propose with respect to governance or on otherwise valid decisions of the CAISO Board.

Limitations Imposed by Corporate Law

Some stakeholders have asked if the GRC can propose giving the Governing Body “sole authority” over market rules that apply or impact the WEIM/EDAM. For the reasons set forth in the discussion of California Corporations Code Section 5210 at the beginning this Appendix A, this would not be permissible under California corporate law, which requires the CAISO Board to retain ultimate authority over its market rules.

CAISO’s Tax Exempt Status as a “Supporting Organization” Under IRC 501(c)(3)

Some stakeholders have asked for additional information about the ISO’s tax status as a “supporting organization” under section 501(c)(3) of the Internal Revenue Code and whether it imposes any constraints on governance. As discussed in the narrative section above about the CAISO’s tax-exempt status, this tax status does impose some constraints on governance. Those constraints, however, are fundamentally the same as those imposed by the Corporations Code

that are also described above. Changing CAISO's federal tax-exempt status thus would not enable a greater delegation of authority or afford any flexibility on other governance topics the GRC is considering.

Potential Changes to the Board Selection Policy

Stakeholders have asked about whether the Board Selection Policy can be revised without changes to state law or the CAISO tariff. The Policy, which is available [here](#), establishes a process through which stakeholder sectors select representatives to evaluate candidates for the Governor's consideration. California does not dictate how the Governor will select candidates for the CAISO Board, and the Governor ultimately may do so however he or she prefers.

The CAISO tariff does not include any provisions relating to Board selection and thus poses no obstacle to changing the Board Selection Policy.

There are certain topics embodied in the Board Selection Policy that cannot be altered without changes to state law. A California statute specifies that members of the ISO's Board of Governors will be selected by the Governor, subject to confirmation by the state Senate. See Cal. Pub. Utils. Code § 337(a). This statute also prescribes the number of Board members (five) and the length of their terms (3-year staggered terms). Another subsection requires Board members to be independent from market participants. See Cal. Pub. Utils. Code § 337(b). Any changes in these areas would require legislation. The other provisions in the Board Selection Policy generally are not dictated by either the tariff or state law.

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For additional information on these topics, please see the earlier version of this Appendix A from the GRC's Phase Two Final Proposal, available [here](#), pp. 22-26. The earlier version includes alternative formulations of the questions and responses that may also be helpful.

Summary

The following table summarizes the effect of the legal concepts discussed above.

	General Effect	Impact on GRC
Corporations Code	The CAISO Board, like all other corporate boards, may not irrevocably and completely delegate control over a corporate activity. All activity must remain under its ultimate direction.	Cannot pursue options that would give the Governing Body or some other entity outside the corporation, sole authority over a matter without Board oversight.
CAISO's Tax-Exempt Status	CAISO activity must be directed toward its corporate purpose and the Board must oversee or control corporate activities. The WEIM and the EDAM are consistent with the CAISO's approved tax-exempt corporate purpose.	Cannot pursue options that would give the Governing Body or some other entity outside the corporation, sole authority over a matter without Board oversight.
Public Utilities Code 345.5 (regarding CAISO actions)	Provides general guidance to the CAISO to operate in the interests of California, and in compliance with state and federal law. Does not require CAISO or Board to favor California consumers at the expense of other stakeholders. Federal law would prohibit market rules that provide for unduly discriminatory treatment, including discrimination due to the fact that market participants are from another state.	No effect.
Public Utilities Code 337 (regarding Board selection)	The CAISO Board will have five members, who are selected by the Governor and subject to confirmation by the Senate. These members will serve three-year terms.	May recommend changes to the CAISO's Board Selection Policy that are consistent with the statute.