

Attachment 1:

West-Wide Governance Pathways Initiative

Step 1 Recommendation: Final Draft

May 2024



West-Wide Governance Pathways Initiative

June 5, 2024

Mrs. Jan Schori
Chair of the CAISO Board of Governors

Mr. Andrew Campbell
Chair of the Western Energy Imbalance Market Governing Body

Dear Chairs Schori and Campbell,

We are pleased to submit the West Wide Governance Pathways Initiative Phase 1 Straw Proposal for your consideration. This proposal represents a significant step toward achieving a more independent governance structure for the Extended Day Ahead Market (EDAM) and the Western Energy Imbalance Market (WEIM) so that we can improve reliability and minimize costs throughout the Western grid.

The development of this proposal has involved extensive collaboration among various stakeholders, including market participants, regulators, consumer representatives and public interest organizations. Our goal has been to create a governance framework that enhances independence over governance of the markets and is centered on the public interest while preserving California's Governing Board oversight of the CAISO balancing authority. Overall, the proposal serves the interests of consumers by optimizing the reliability and economic efficiency of the Western power grid.

We believe that the proposed governance framework will facilitate the expansion of the EDAM and the continued success of the WEIM, ensuring it remains a vital component of the Western electricity market. The proposal also aims to support CAISO's mission of providing reliable, cost-effective energy services while fostering a competitive and sustainable market environment. While this proposal is the first step in a multi-step process, we are committed to continuing the work on Step 2 to advance the goal of longer-term and more significant independence.

We look forward to engaging with you and other stakeholders in the review and comment of this proposal. We stand ready to provide our support and participation in your public processes, and we seek your guidance on bringing this proposal to fruition. Our collective hope is for the Board of Governors and the WEIM Governing Body to consider this proposal in the near future, to support the evolution of a governance framework that best serves the interests of consumers relying on the Western electricity markets.

Thank you for your consideration.

Sincerely,

Pam Spborg
Co-Chair, Pathways Initiative
Director, Transmission & Markets,
Portland General Electric Company

Kathleen Staks
Co-Chair, Pathways Initiative
Executive Director, Western Freedom

WEST-WIDE GOVERNANCE PATHWAYS INITIATIVE

Step 1 Recommendation: Final Draft

May 24, 2024

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I. INTRODUCTION

The July 14, 2023, letter from several Western state regulators to the Western Interstate Energy Board and the Committee on Regional Electric Power Cooperation, advanced a proposal “for ensuring that the benefits of wholesale electricity markets are maximized for customers across the entire Western U.S.” The regulators contemplated that the creation of a new non-profit regional entity could “serve as a means of delivering a market that includes all states in the Western Interconnection, including California, with independent governance.” Their vision included the eventual assumption by the new entity of the California Independent System Operator’s (CAISO) Extended Day-Ahead Market (EDAM) and Western Energy Imbalance Market (WEIM),¹ “avoiding a duplication of the investments and expenses of the market infrastructure that has already been created, and avoiding a deterioration of the benefits of those programs [...]”²

With this guidance, in late 2023 the West-Wide Governance Pathways Initiative Launch Committee was formed, comprising a diverse set of utilities, consumer advocates, public power, generators and power marketers, public interest organizations, and others. The Launch Committee developed a range of potential market design options along with evaluation criteria and associated legal and technical questions.³ At the time, the Launch Committee contemplated the selection of one option or a combination of options along the spectrum of identified possibilities to achieve the regulators’ vision. The Launch Committee presented this framework to stakeholders on December 15, 2023, requesting stakeholder comments on this approach. One guiding principle for the Launch Committee was to ensure that a governance structure could evolve to allow market participants to voluntarily participate in a regional transmission organization (RTO), but not to mandate that any entity join an RTO.

¹ WEIM and EDAM represent the extension of the CAISO’s real-time and day-ahead market functionality to all participating Western BAs.

² The July 14, 2023, letter is available here: <https://www.westernenergyboard.org/wp-content/uploads/Letter-to-CREPC-WIEB-Regulators-Call-for-West-Wide-Market-Solution-7-14-23-1.pdf>.

³ The Mission and Charter of the Pathways Launch Committee explains the Launch Committee members’ respective decision-making authorities. It is available here: https://www.westernenergyboard.org/wp-content/uploads/Mission-and-Charter_Dec-21-Ex-B-FINAL.pdf.

Many of the stakeholder comments on the Evaluation Framework Paper recommended a staged or stepwise approach to increase the independence of Western market governance.⁴ In support of this stepwise recommendation, stakeholders pointed to the complexity of achieving the regulators' ultimate vision, the time the overall effort would likely take, and the value of demonstrating an early commitment to more independent governance of Western markets. Consistent with these observations, the Launch Committee is proposing a stepwise approach with three incremental steps in market evolution:

Step 1: Early success. This step demonstrates early commitment to the regulators' vision through substantive changes within the scope of existing law, while continuing to develop more ambitious pathways to independent governance.

Step 2: Durable, independent governance of markets and other potential services. This step aims to implement the regulators' vision of a regional energy market with a large and inclusive footprint, maximizing independence while leveraging the existing market infrastructure to minimize costs. Step 2 is designed to be able to evolve and accommodate the addition of new, voluntary services as the framework matures.

Step 3: Toward an RTO. As Step 2 matures, the Launch Committee contemplates further evolution toward services of an RTO for balancing authorities (BA) and other market participants to join voluntarily. Proposing a particular design for these subsequent incremental stages goes beyond the scope of the Launch Committee's work, but Steps 1 and 2 have been developed with a clear line of sight to those potential voluntary future services beyond the energy markets. The Launch Committee refers to this later evolution of additional services, inclusive of a full suite of RTO services, as Step 3.

Since January 2024, the Launch Committee has researched and analyzed the complex elements required to effectuate both Steps 1 and 2 and offers in this straw proposal an initial vision of market governance evolution.⁵ The Step 1 proposal in this paper includes several design elements and a summarized approach to implement the proposed changes. The Step 2

⁴ Balancing Authority of Northern California (BANC), California Community Choice Association, Joint Commenters (Western Resource Advocates (WRA), Northwest Energy Coalition (NVEC), Renewable Northwest (RNW), Environmental Defense Fund (EDF), Union of Concerned Scientists (UCS), Western Grid Group (WGG) and Sustainable FERC Project (S-FERC), Northwest & Intermountain Power Producers Coalition, NV Energy, PacifiCorp, Portland General Electric, Public Generating Pool, Seattle City Light, Southern California Edison Company, and Western Freedom. Comments are posted here: <https://www.westernenergyboard.org/commentsonevaluationcriteria/>.

⁵ The Launch Committee anticipates that Phase 1 of the Pathways Initiative will conclude with our release of a final revised proposal after receiving stakeholder feedback on this straw proposal. An accompanying stakeholder guidance document describes the anticipated Pathways phases and the Launch Committee's specific requested feedback on this straw proposal.

proposal, which necessarily is more complex, advances a higher-level vision and seeks stakeholder comments for further refinement. Legal analysis received from Perkins Coie⁶ and technical support from the CAISO have helped inform the Launch Committee’s efforts and direction.

The purpose of this paper is to present the Launch Committee’s final recommendation for Step 1 and a commitment to further work on Step 2. Throughout the document, the Launch Committee added language to address comments, questions, and feedback from stakeholders received on the May 10, 2024 on Step 1. Based on the stakeholder input, the Launch Committee determined that no substantial changes were necessary to the structure of Step 1.

Section II, addressing Step 1:

- (1) Describes changes to the status quo required to take an early incremental step toward regional independent governance (Option 0),⁷ having considered those changes in the context of the evaluation criteria developed by the Launch Committee and informed by stakeholder feedback; and
- (2) Discusses the related legal analysis.

The Launch Committee underscores that this final recommendation presents specific input from state regulators and consumer advocate representatives on the Launch Committee. The regulators and consumer advocates have informed our efforts through the development of recommendations to incorporate an important new evaluation criterion adopted in response to stakeholder feedback: *“Respect for state and local authority to set procurement, environmental, reliability and other public interest policies.”*⁸ As detailed below, the recommendations for Steps 1 and 2 incorporate mechanisms to safeguard consumer interests and respect individual state and local policies in future market design.

⁶ Perkins Coie is a law firm with a large commercial and regulatory practice that was retained by the Launch Committee to provide legal analysis regarding California state law and federal energy regulatory law.

⁷ The Launch Committee throughout this straw proposal maintains fidelity to the nomenclature of the options that we first presented in the Evaluation Framework Paper. In our next revised proposal, we may rename these options (particularly the leading candidates for Step 2—Options 2 and 2.5) to reduce the numeric labels that readers must follow.

⁸ The criterion has been updated to include “local” interests. An updated and complete list of Evaluation Criteria is included in Appendix E.

II. STEP 1 PROPOSAL

A. Introduction

Step 1 would substantively move the existing governance of the CAISO's Western Energy Imbalance Market (WEIM) and Extended Day-Ahead Market (EDAM) toward greater independence from the CAISO Board of Governors (BoG). These changes should be familiar to stakeholders who have followed the evolution of the existing Joint Authority shared by the CAISO BoG with the WEIM Governing Body (GB). Step 1 aims to promote broader participation in WEIM/EDAM through three key changes, which would:

- ❖ Elevate the WEIM GB's decision-making authority in market-related matters from its existing "Joint Authority" with the CAISO BoG to "Primary Authority," placing the initial vote to approve or reject a proposed tariff change in the WEIM GB's hands. Disagreements arising in the CAISO BoG's later review of the change would be channeled into the existing dispute resolution process defined in Section 2.2.2 of the Charter for Energy Imbalance Market Governance (WEIM Charter);
- ❖ Modify the current process for resolving disputes between the WEIM GB and the CAISO BoG if and when the two bodies are unable to resolve a dispute. The CAISO would be required to make a "dual filing" of both bodies' proposals under its Federal Power Act Section 205 rights, with no stated preference, for the Federal Energy Regulatory Commission (FERC) to render a decision; and
- ❖ Incorporate changes to the WEIM Charter responsibilities to account for consumer and other state and local interests in its decision-making process. This step also contemplates a continued advisory role for a Body of State Regulators (BOSR) in WEIM GB and CAISO BoG decision-making and an active role in representing state interests, when necessary, in any "dual filing" before FERC.

As described in more detail below, the Step 1 governance transition would be triggered when a set of geographically diverse non-CAISO EDAM Entities accounting for at least 70% of the CAISO balancing authority area (BAA) annual load for 2022 have executed EDAM implementation agreements. The "trigger" aims to ensure that the proposed governance enhancements result in a broader EDAM footprint with sufficient benefits, in the form of load, resource, and locational diversity, to warrant implementing the Step 1 governance structure. Assuming all the entities who have expressed an intent to join EDAM as of April 10, 2024 execute implementation agreements, only one additional utility representing at least 10,000 GWh of load and located in the Southwest would be required to trigger the Step 1 governance transition.

Step 1 is just the first step toward the full realization of the regulators’ vision of energy markets with governance independent of any single state, participant, or class of participants. Step 1 is a near-term incremental increase in independent governance that shows commitment to that trajectory while continuing to protect reliability, control costs for consumers, and respect state and local policies. It recognizes that the time required to implement Step 2 does not neatly align with the pace of various entities’ day-ahead market decisions, and it is responsive to requests by some entities to take early action, as work moves forward on Step 2.

The Perkins Coie legal analysis assessed the Step 1 proposal for compliance with existing California state law and FERC regulations. Based on this analysis, the Launch Committee has concluded that the proposal may be implemented within the scope of existing state law and, while FERC precedent strongly suggests FERC approval of the proposal is feasible, FERC approval will likely still be required. Thus, it is a meaningful first step that can be taken quickly.

B. Step 1 Key Elements⁹

1) Elevate WEIM GB Decision-making from “Joint Authority” to “Primary Authority”

Existing Scope of WEIM GB Authority. Article IV, Section 1 of the CAISO Bylaws delegates to the WEIM GB “Joint Authority” with the CAISO BoG to approve or reject certain proposed tariff amendments as specified in the WEIM Charter.¹⁰ Charter Section 2.2.1 specifies that the WEIM GB has Joint Authority for tariff rules that are “*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 WEIM/EDAM.*”¹¹ The “apply to” test was carefully designed by the Governance Review Committee (GRC), and the GRC illustrated the application of the test with reference to the CAISO tariff Table of Contents in its Phase Three Final Proposal.¹² As cited here, the scope of Joint Authority was recently expanded to include day-ahead market and other related rules that are applicable to EDAM Entities.¹³

⁹ See Appendix A for a Step 1 schematic.

¹⁰ The CAISO Bylaws are available here:
<https://www.caiso.com/Documents/ISO-Corporate-Bylaws-amended-and-restated.pdf>.

¹¹ Further details on the application of the “apply to” rule for decisional classification is included in the Western EIM Governance Review – Phase Three (EDAM), Governance Review Committee Final Proposal, Jan. 9, 2023, at 13-24, available at:
<https://www.caiso.com/InitiativeDocuments/EDAM-Governance-Final-Proposal-WEIM-Governance-Review-Committee-Phase-3.pdf>.

¹² *Western EIM Governance Review – Phase Three (EDAM)*, Jan. 9, 2023, at 59-125.

¹³ The Board of Governors approved the expansion on March 20, 2024. The meeting recording is available at:
<https://www.caiso.com/informed/Pages/BoardCommittees/BoardGovernorsMeetings.aspx>; the amended WEIM Charter is available at:
<https://www.caiso.com/Documents/AttachmentB-CharterforEnergyImbalanceMarketGovernanceproposedredline.pdf>.

Joint Authority excludes, however, “any proposals to change or establish tariff rule(s) applicable only to the CAISO balancing authority area or to the CAISO-controlled grid,” which are reserved for CAISO Sole Authority (Charter Section 2.2.1).¹⁴ The WEIM GB also has “Advisory Authority” for tariff rule changes that would apply to the real-time and day-ahead markets but are not within the scope of its Joint Authority. Section 2.2.3 of the Charter provides procedures to resolve disputes over the classification of a decision made pursuant to the CAISO BoG approved process and the “apply to” test.

The adoption of the functional “apply to” test to determine the scope of Joint Authority marked a substantial extension of WEIM GB’s authority over the real-time and day-ahead markets. This change significantly elevated the WEIM GB’s role in decision-making for an extensive portion of the CAISO tariff.

Transition to Primary Authority. Step 1 would elevate the tariff areas currently under Joint Authority to Primary Authority for the WEIM GB. The scope of elevated areas would be determined using the same “apply to” test used today to identify areas of Joint Authority. In other words, any tariff section that today would be considered Joint Authority under the “apply to” test would be elevated to WEIM GB Primary Authority. Consequently, the scope of WEIM GB decision-making authority would not be increased or decreased, and the areas of CAISO Sole Authority would not be increased or decreased. The Charter Section 2.2.3 procedure for dispute resolution over decisional classification would remain unchanged, except for the dual-filing provision discussed below.

Primary Authority would be implemented by providing only the WEIM GB, rather than both bodies, the initial authority to approve or reject a proposed tariff rule. If the WEIM GB approves a proposed tariff rule, the rule would be placed on the CAISO BoG consent agenda for approval, with the option for full briefing and discussion if requested. The CAISO BoG may, however, remove the matter from the consent agenda and reject the proposal by majority vote, triggering the dispute resolution procedures discussed below.

2) Modify the Current Dispute Resolution Process to Include a “Dual Filing”

Existing Dispute Resolution Process. CAISO Bylaws Section 1(b) provides that the BoG “shall not approve the addition, deletion or modification of a part of the Tariff” within Joint Authority

The adopted expansion also extends Joint Authority to one topic area that would otherwise fall outside of the “apply to” test: tariff changes that directly establish or change the formation of locational marginal prices (LMP) for products common to the WEIM or EDAM markets. Hereafter in this paper, the Launch Committee intends references to the current scope of joint authority under the “apply to” to encompass this LMP formation addition as well. Readers may refer to the GRC’s Phase 3 Final Proposal for more background on this addition and its relation to potential future market power mitigation rules (*Supra*, note 4).

¹⁴ The GRC’s Phase Three Final Proposal further provides: “For avoidance of doubt, the joint authority definition set forth above does not include measures, such as parameters or constraints, the ISO may use to ensure reliable operation within its balancing authority area.” (at 39).

unless the proposal has first been submitted to the WEIM GB as required by the procedures in the Charter.¹⁵ In the case of a dispute, Section 2.2.2 of the Charter delineates a multi-step dispute resolution procedure. If the dispute resolution procedures are exhausted without agreement, however, the CAISO BoG may authorize a FERC filing to seek approval of its proposed tariff rule under exigent circumstances, with no further WEIM GB consultation required if the circumstances are time-critical. The WEIM GB rights in this circumstance are limited to an opportunity to provide a “written opinion or statement on the proposed tariff” that may be included in the CAISO filing. The GRC invested substantial time and effort in developing the dispute resolution procedures, as discussed in its Phase 3 Final Proposal.¹⁶

Modified Dispute Resolution Process. Step 1 would leave unchanged the procedure for submission of a tariff change approved by both the WEIM GB and the CAISO BoG (under the Primary Authority approach described above) and the general dispute resolution procedures delineated in Charter Section 2.2.2.

A pivotal change to these procedures, however, would require that the CAISO BoG, in the event that dispute resolution procedures do not resolve the dispute and either body votes in favor of a proposal that the other opposes, must make a “dual filing” (commonly known as a “jump ball”) with FERC pursuant to its Section 205 rights.¹⁷ The dual filing would present both the CAISO BoG proposed tariff and the WEIM GB proposed tariff as “co-equal” proposals, with no preference for either proposal indicated in the filing. FERC would not be required to consider whether the then-existing filed rate is unlawful and may adopt any or all of the CAISO BoG or WEIM GB proposed market rules. This requirement for co-equal filings would also apply in circumstances where either the CAISO BoG or the WEIM GB believes a tariff change is necessary, but the other body does not, and in non-time-critical exigent circumstances.

The ISO New England (ISO-NE) and the New England Power Pool (NEPOOL) rely on a “jump ball” process under Section 11.1.5 of their Power Pool Participants Agreement (Participants Agreement). In one instance, the ISO-NE argued to FERC that the issue fell outside the scope of

¹⁵ Amended and Restated Bylaws of the California Independent System Operator Corporation, as amended through March 20, 2024, available at:

<https://www.caiso.com/Documents/AttachmentA-Bylaws-AsAdoptedNovember32021proposedredline.pdf>

¹⁶ *Western EIM Governance Review – Phase Three (EDAM)*, Jan. 9, 2023, at 27-28.

¹⁷ Section 205 is the key provision of the Federal Power Act under which “public utilities” (generally, jurisdictional transmission owners, independent system operators, and regional transmission organizations), make filings at FERC seeking approval of organized wholesale market rules and related services. Any party may file a protest to a public utility filing under Section 206 of the Federal Power Act. The standard of review by FERC for filings under Section 205 (and therefore the legal burden borne by the filer) is a demonstration that the filing is just and reasonable. In contrast, the standard of review by FERC for Section 206 filings is substantially higher—the protestant must establish that an applicable tariff provision is unjust and unreasonable, before ever reaching the question of whether a potential alternative is itself just and reasonable, or somehow *more* just and *more* reasonable than the protested provision originally filed under Section 205. The Perkins Coie legal analysis that accompanies this straw proposal explains in more detail the nature of Section 205 rights, their significance, and their various forms in other contexts.

the jump ball provision; FERC determined that not only was the issue within scope but was “preferable” to the ISO-NE proposal.¹⁸ In another case, FERC determined that a NEPOOL proposal was “just and reasonable” and “preferable” to the ISO-NE alternative considering policy preferences, stakeholder support, and the evidentiary record.¹⁹ FERC has concluded that it may also choose between alternatives on an issue-by-issue basis, accepting elements of both proposals.²⁰

One exception to the dual-filing requirement remains. Under existing dispute resolution procedures delineated in Charter Section 2.2.2, the CAISO BoG unilaterally may authorize a filing with FERC when it proposes a change under *exigent circumstances* to preserve reliability or market integrity. The WEIM GB has the right, however, to obtain counsel and provide a statement or opinion along with the CAISO filing. Notably, the CAISO BoG and the WEIM GB have never deployed these provisions.

More specifically, the existing procedures allow CAISO BoG to take unilateral action when:

The Board, by unanimous vote, makes a finding that the two bodies have reached an impasse and that exigent circumstances exist such that a tariff amendment 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 management has presented an initiative to both bodies a second time in an effort to propose a tariff change that both bodies can approve. In such a time-critical circumstance where there is not sufficient time to develop and vote on a revised proposal, the Board may by unanimous vote approve a filing on an expedited basis without completing the second attempt to find an acceptable proposal. The Board must set forth the basis for any and all of its findings justifying exigent or time critical circumstances in writing.

Neither the WEIM Charter nor the CAISO tariff define “exigent circumstances” or “time critical.” Looking outside the CAISO for guidance, the term is defined in the ISO-NE/NEPOOL Participants Agreement but sheds no further light on the meaning because it tracks closely with WEIM Charter Section 2.2.2.²¹ The term also appears in the New York Independent System Operator’s System Operation Agreement but is not defined. The GRC also discussed the topic of “time-critical exigent circumstances.” It was, in fact, the GRC that proposed the bounded

¹⁸ *ISO New England Inc. et al*, 130 FERC ¶ 61,105 (2010).

¹⁹ *ISO New England Inc. et al*, 152 FERC ¶ 61,190 (2015); *see also ISO New England Inc. et al*, 130 FERC ¶ 61,105 (2010).

²⁰ *ISO New England Inc. et al*, 175 FERC ¶ 61,195 (2021) (rejecting certain elements of the NEPOOL proposal as “unjust and unreasonable” but adopting others as “preferable” to the ISO-NE proposal).

²¹ The Participants Agreement defines the term as “circumstances such that ISO determines in good faith that (i) failure to immediately implement a new Market Rule, Operating Procedure, Reliability Standard, provision of the Information Policy, Non-TO OATT Provision or Manual would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking the procedures set forth in Section 11.1, 11.3 or 11.4 would not allow for timely redress of ISO’s concerns.”

“time-critical” concept focused on urgent, emergency situations, as distinguished from other important but slower-moving circumstances. We quote the GRC’s discussion in its Revised Final Part Two Proposal in the footnote here to provide stakeholders additional context about the origin of this term.²² Given that the CAISO BoG and WEIM GB have never deployed these provisions, the Launch Committee has tentatively concluded that determining whether circumstances can be reasonably characterized in this way lends itself better to a case-by-case determination than to definition.

While the CAISO will retain this unilateral authority under these circumstances, Step 1 provides a partial counterbalance for the WEIM GB. In addition to the existing right to include a statement or opinion with the CAISO filing to FERC, the WEIM GB may, following a time-critical exigent circumstance filing and FERC resolution, trigger the Section 2.2.2 dispute resolution process to develop a durable solution to the circumstances giving rise to the filing. In other words, a time-critical exigent circumstances filing, should it ever be exercised, is itself subject to a potential future dual filing that the WEIM GB can trigger.

Relationship to GRC “Primary Authority” Model. The Primary Authority model proposed here bears a resemblance to the consent agenda model, also known as “primary authority,” that was in place when the GRC began its evaluation in 2019 that led to the current Joint Authority model. The Step 1 Primary Authority model differs, however, in two key respects. First, the move from the former primary authority model to the current Joint Authority model in 2021 significantly expanded the scope of decisions that fall within shared authority; moving from the current Joint Authority model to the new Primary Authority model would retain this expansion of decisional scope. Additionally, the proposed Primary Authority model uses a dual-filing mechanism at FERC to resolve disputes, placing WEIM GB proposals on equal footing with CAISO BoG proposals.

3) Incorporate Public Interest Safeguards for Participating States in WEIM GB

Existing Safeguards. Today state law and the WEIM Charter work together to serve the public interest. California Public Utilities Code §345.5 articulates California-specific public interest factors and related directives that must be addressed in the CAISO’s management of the transmission grid and “related energy markets.” The CAISO BoG has been clear that this statutory framing is not interpreted as a fiduciary requirement to prefer California consumers in

²² “We have also added, in response to several stakeholders’ comments, additional language to the exigent circumstances provision to make clear that in an emergency where the time sensitivity is too great to allow for a remand to occur, the Board can make such a finding and allow a filing to go forward. This will ensure that there is a path forward for filing at FERC in an extraordinary case where time simply does not permit completing the full dispute resolution process. We further include a requirement that the Board’s finding of such an emergency must be unanimous. This is meant to ensure that the provision is used only as a last resort and in cases where the urgency is clear.” (Western EIM Governance Review – Part Two, Governance Review Committee Final Proposal, July 19, 2021, at 15, available at: <http://www.caiso.com/InitiativeDocuments/Part-Two-Final-Proposal-EIM-Governance-Review-August-2021.pdf>)

decision-making, and the BoG has repeatedly recognized the interdependent nature of all market participants and consumers served by the market.²³ The WEIM Charter also includes several responsibilities aimed at controlling costs and mitigating market power for the benefit of consumers, as well as maintaining compliance with applicable legal requirements including “environmental regulations and states’ renewable energy goals.”

Augmented Safeguards. As Step 1 further empowers the WEIM GB, it will be important to ensure the body uses its authority in a way that considers the interests of consumers of all BAs and other entities participating in the markets, as discussed in Appendix C. The WEIM Charter would be updated to embed in its responsibilities and mandate the principle of respect for the public interest and for individual state and local policies, for all customers in the footprint. Regulators and public advocate representatives have proposed language for the Charter that the Launch Committee supports, which is provided in redline in Appendix D.

In addition to augmenting the WEIM GB responsibilities and mandate, Step 1 contemplates a continued, active role for state regulators and public power liaisons via the BOSR to ensure those responsibilities are met. The BOSR would continue to actively work with the WEIM GB and stakeholders to provide input into decision-making and, as necessary, provide its independent opinions to FERC in coordination with any submission of a proposed tariff rule within the scope of the WEIM GB’s Primary Authority.

Additionally, the Regional Issues Forum (RIF) will continue to collect stakeholder input and provide written opinions on issues being considered within an ongoing CAISO stakeholder proceeding or that otherwise impact the energy markets. The RIF continues to provide a valuable voice for stakeholders in the CAISO policy development process. While Step 1 does not propose any changes to the RIF, Step 2 will consider additional opportunities for stakeholder engagement in the policy development process.

4) Trigger for Step 1 Implementation

❖ Step 1 promotes expansion of the geographic footprint of EDAM in the near term to accelerate the benefits of greater regional coordination to consumers while Step 2 is fully developed and implemented. To ensure that governance changes produce the desired result – an expanded, geographically diverse EDAM footprint – Step 1 implementation would be deferred until triggered by the addition of incremental EDAM load meeting the following requirements:

²³ In addition, the CAISO Bylaws were amended on March 20, 2024, to include the addition of Article II, section 3: “Administration of Markets. 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 weigh the interests of all stakeholders within the footprint of the markets that it administers, including the Corporation’s balancing authority areas and WEIM balancing authority areas.”

- Execution of implementation agreements by utilities representing non-CAISO BAA load equal to or greater 70% of the CAISO BAA load²⁴.
- Geographic diversity of the incremental load additions beyond PacifiCorp, BANC, and Los Angeles Department of Water and Power (LADWP), including at least one new participant from the Southwest and one from the Northwest, and will exclude California participants.

With Portland General Electric (PGE) announcing its intent on March 21, 2024, to join EDAM, the trigger requirement translates to additional participation by at least one Southwest utility representing at least 10,000 GWh of load to meet both the load and the geographical diversity requirements.²⁵ This assumes that all the entities who express an intent to join EDAM execute implementation agreements. In addition to the Trigger Implementation, Step 1 will enhance the WEIM Governing GB's ability to perform a governance review within the WEIM Charter.

Ensuring timely implementation will require advance preparation of Step 1 tariffs by the CAISO and, potentially, participating EDAM entities. The Launch Committee anticipates that the CAISO, together with stakeholders, will develop a schedule and tariffs in advance of the triggering event to accommodate the expansion expeditiously following the triggering event.

C. Legal Analysis of the Step 1 Proposal

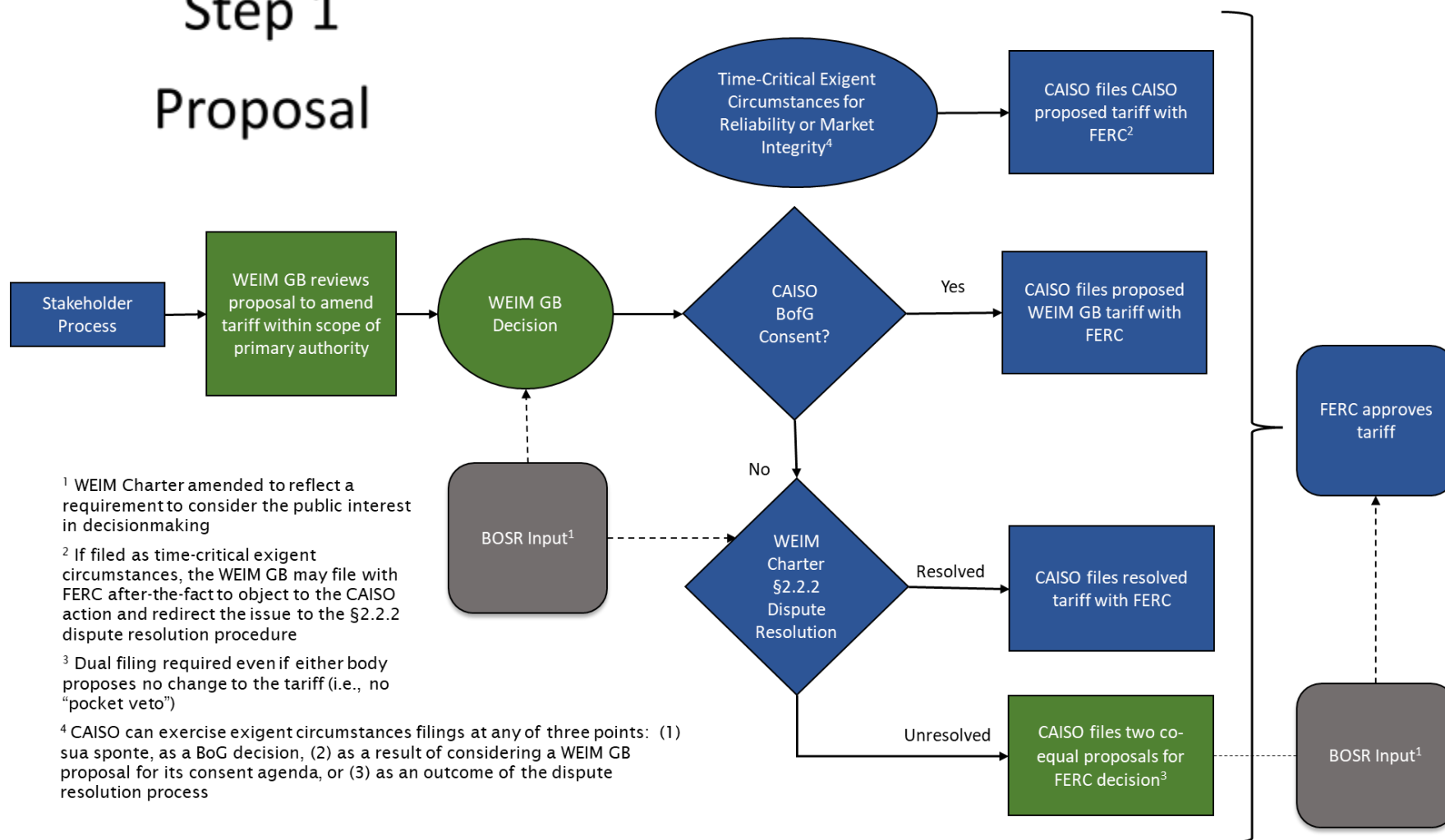
Perkins Coie, on behalf of the Launch Committee, performed a risk-based analysis of the options presented in the Launch Committee's Evaluation Framework Paper. In brief, they analyzed the California legal and FERC regulatory risk associated with the range of options. The Step 1 proposal generally reflects the Evaluation Framework Paper's Option 0. Perkins Coie determined that this option "provides a low risk of violating California law if the CAISO BoG retained the option to invoke its 'time-critical exigent circumstance'" right. Likewise, it presents a "low FERC regulatory risk" because the structure resembles similar structures previously accepted by FERC.

²⁴ Using 2022 WECC Annual Load Data, the CAISO BAA represented 224,800 GWh. At the time of publication, the entities that have announced their intention to join EDAM include PacifiCorp, BANC, LADWP, and Portland General Electric, with Idaho Power also publicly leaning toward EDAM, subject to resolution of several issues. Together, these entities represent 147,980 GWh or 65.8% of CAISO BAA load.

²⁵ PGE announced its intent to join EDAM on March 21, 2024.

Appendix A – Step 1 Schematic

Step 1 Proposal



Appendix B – Current Joint Authority over Market Rule Changes

From the Charter for WEIM and EDAM Governance, as amended by the CAISO Board of Governors on March 20, 2024²⁶

2.2.1 Decisions and Recommendations about Market Rule Changes

Through the ISO bylaws, the Board of Governors has delegated certain authority to the WEIM Governing Body to approve or reject proposed amendments to the Tariff. The Board has also authorized the WEIM Governing Body to provide it with advisory input on certain other market rules, as follows:

- “Joint authority”: The WEIM 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 WEIM/EDAM Governing Body will also have joint authority with the Board of Governors to approve or reject a proposal to change or establish any tariff rule for the day-ahead or real-time markets that directly establishes or changes the formation of any locational marginal price(s) for a product that is common to the overall WEIM or EDAM markets. The scope of this joint authority excludes, without limitation, any other proposals to change or establish tariff rule(s) applicable only to the CAISO balancing authority area or to the CAISO-controlled grid. Note: For the avoidance of any doubt, that the joint authority definition is not intended to cover balancing authority-specific measures, such as any parameters or constraints, the CAISO may use to ensure reliable operation within its balancing authority area.
- “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.

²⁶ Redline available at:

<http://www.caiso.com/Documents/AttachmentB-CharterforEnergyImbalanceMarketGovernanceproposedredline.pdf>

APPENDIX C

The Public Interest and Market Governance

March 5, 2024

Regulators catalyzed the West-Wide Pathways Initiative to maximize customer benefits across as broad a footprint as possible.²⁷ The enabling statutes for the CAISO set a foundation and template for this focus on customer benefits that can be extended to all customers served by the market operator.²⁸

As paths begin to come into focus, it is important to consider how the public interest and customer benefits remain centered in emerging options. There are two intertwined issues:

- 1) How customer interests, including affordability, are safeguarded in market design.
- 2) How state and local policies, even as they differ across the West, are respected in market design.

Customer Interest

In the Multi-State Governance Principles, published through CREPC and signed onto by regulators from across the Western Interconnection, Board Independence was elaborated as,

*“The independent board should be diverse, represent a range of sectors and geographies, and be expert enough to *substantively engage in decision making to balance diverse interests, including and beyond market participants.* The board may be advised by other bodies and delegate authority, though transparency in delegated decision making remains critical. *Customers are best protected when the board can directly weigh public benefit across the market footprint.*”²⁹*

²⁷

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

²⁸ California Public Utilities Code Section 345.5 (b) in part reads: To ensure the reliability of electric service and the health and safety of the public, the Independent System Operator shall manage the transmission grid and related energy markets in a manner that is consistent with all of the following:

- (1) Making the most efficient use of available energy resources. . . .
- (2) Reducing, to the extent possible, overall economic cost to the state’s consumers.
- (3) Applicable state law intended to protect the public’s health and the environment.
- (4) Maximizing availability of existing electric generation resources necessary to meet the needs of the state’s electricity consumers.
- (5) Conducting internal operations in a manner that minimizes cost impact on ratepayers to the extent practicable and consistent with the provisions of this chapter.
- (6) Communicating with all balancing area authorities in California in a manner that supports electrical reliability.

²⁹ Emphasis added. The Multistate Governance Principles are available at

<https://www.westernenergyboard.org/wp-content/uploads/Multistate-Governance-Principles-4-25-22.pdf>

The enabling statutes that led to the creation of the CAISO set out expectations for the market that similarly center customer interests, reliability and affordability. The market is a tool for efficient resource dispatch and cost reductions.³⁰

As the Launch Committee considers further empowering the WEIM Governing Body in Step 1 and creating a stand-alone RO in Step 2, the market transitions away from a board with a legislated mandate focused on customer impacts in a single state. The move away from a single state is necessary and appropriate – but it is critical to consider how to carry the customer centered mandate forward. That customer protection foundation is a critical through-line back to the enabling statutes that ensures the delegation and evolution carry forward a fundamental, positive aspect of CAISO. **The Governing Body’s governing documents may need to be updated to reflect these legislated mandates more clearly, for all customers in the footprint.**

State Policies

The Western EIM Governing Body and the CAISO Board of Governors have sought to ensure reciprocity or mutual respect of state policies in the WEIM footprint - implementing some state policies through the market but limiting their application to certain zones within the footprint. State regulators in the BOSR have similarly focused on limiting unreasonable impacts on other states. This approach reflects the reality that state policies already create impacts throughout the WECC via bilateral transactions, including at wholesale market hubs, but that the centralized market is not a tool to force one state’s resource decisions or costs on another state’s customers.

The newly adopted decision principle articulates much of how state regulators have addressed this state policy issue in recent years. As governance evolves away from a board appointed by one state’s policymakers to a stakeholder-selected board, **it is important that this principle of respect for individual state policies is captured and embedded in the stakeholder-nominated board’s duties and mandate.**

³⁰ The CAISO Board of Governors has been clear that this legislated mandate does not require them to place California customer interests above those of other states’ customers in decision-making today. Customer interests are deeply intertwined in the Western EIM and thus require thoughtful balancing of interests across the footprint. This position was elaborated in the Governance Review Committee.

APPENDIX D

Proposed Modifications to WEIM Charter

2. Mission and Responsibilities

2.1 Mission: The WEIM Governing Body shall promote, protect and expand the success of the WEIM and EDAM for the benefit of its participants as a whole **and the consumers they serve**, with due consideration of the interests of all participants in the ISO's real-time and day-ahead markets, including both participants transacting in the ISO's balancing authority area and participants transacting in WEIM/EDAM balancing authority areas (meaning the balancing authority areas of WEIM/EDAM entities, collectively).

The WEIM Governing Body shall make decisions and recommendations that will:

- **Preserve the benefits of existing market offerings and expand them across as broad a footprint as possible;**
- **Make the most efficient use of available energy resources;**
- **Reduce, to the extent possible, overall economic cost to customers within the market footprint;**
- **Maximize availability of existing electric generation resources necessary to promote reliability and meet the needs of all affected electricity customers;**
- **Help control costs to participate and in internal operations so as to ensure that favorable cost/benefit ratios are maintained for the benefit of market participants and customers;**
- Protect the ISO market, including the WEIM and EDAM, its participants, and customers against the exercise of market power or manipulation and otherwise further just and reasonable market outcomes;
- Facilitate and maintain compliance with other applicable legal requirements, including but not limited to environmental regulations and states' renewable energy goals;
- **Respect state authority to set procurement, environmental, reliability, and other public interest policies.**
- Allow WEIM/EDAM Entities to withdraw from the WEIM/EDAM prior to any action that would cause or create an exit fee; and
- Allow options to expand the functionality of the ISO market to provide additional services.

2.3 Re-evaluating WEIM Governance

No later than June 2026, the WEIM Governing Body will initiate a review of WEIM governance in light of accumulated experience and changed circumstances. **Additionally, the WEIM Governing**

Body has the ability to commence a governance review, in consultation with the CAISO Board, if a majority or greater number of existing EDAM entities were to announce an EDAM exit.

Appendix E – Evaluation Criteria

No.	Criteria
1	Maximized net benefits, including reliability, affordability and environmental benefits, recognizing startup and ongoing costs, and considering both new benefits and impacts on existing benefits.
2	Equitable representation across the Western region and among all market participants, including for a wide range of legal entities.
3	A governance structure independent of any single state, participant, or class of participants.
4	Organizational flexibility to accommodate future expansion of regional solutions and to create a credible and timely path to a voluntary RTO, including the balancing authority and transmission planning functions.
5	Optionality to allow market participants to choose the market services they value.
6	Preservation of existing balancing authorities' ability to maintain independence, authority, and governance.
7	An implementation timeline that promotes broad market participation.
8	Respect for state and local authority to set procurement, environmental, reliability and other public interest policies.