

LAUNCH COMMITTEE

**STEP 2 DRAFT PROPOSAL**

September 26, 2024

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## **LIST OF ACRONYMS**

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

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

## INTRODUCTION

In July 2023, a group of state regulators from Arizona, California, New Mexico, Oregon, and Washington sent a letter to the Western Interstate Energy Board and the Committee on Regional Electric Power Cooperation, advancing a proposal “for ensuring that the benefits of wholesale electricity markets are maximized for customers across the entire Western U.S.”<sup>1</sup> The regulators contemplated that the creation of a new nonprofit 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 CAISO’s EDAM and WEIM, “avoiding a duplication of the investments and expenses of the market infrastructure that has already been created, and avoiding a deterioration of the benefits of those programs [...]”

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

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

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

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

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

<sup>2</sup> [https://www.westernenergyboard.org/wp-content/uploads/Mission-and-Charter\\_Dec-21-Ex-B-FINAL.pdf](https://www.westernenergyboard.org/wp-content/uploads/Mission-and-Charter_Dec-21-Ex-B-FINAL.pdf)



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

- **Step 2: Durable, independent governance of markets and other potential services.** This step includes the formation of a new, independent Regional Organization (RO) that would have sole authority over the WEIM and EDAM, supported by some level of structural independence but with a strong focus on keeping costs low. It aims to implement the regulators' vision of a regional energy market with a large and inclusive footprint, maximizing independence while retaining and leveraging the existing market infrastructure to minimize costs.
- **Step 3: Beyond the Pathways Initiative.** As Step 2 matures, the Regional Organization may evaluate expanding the scope of regionalized functions and services offered by the Regional Organization. Proposing a particular design for these subsequent incremental stages goes beyond the scope of the Launch Committee's work, but Steps 1 and 2 have been developed with a clear line of sight to enable those potential voluntary future services to be extended beyond the scope of existing energy markets. The Launch Committee refers to this later evolution of additional services as Step 3.

In April 2024, the Launch Committee released a Phase 1 Straw Proposal<sup>3</sup> that included a detailed proposal for Step 1. The Launch Committee's goal for Step 1 was to create a governance framework that maximized independence under existing law over governance of the markets and centered on the public interest while preserving California's Governing Board oversight of the CAISO balancing authority. Step 1 was designed to facilitate the expansion of the EDAM and the continued success of the WEIM, ensuring it remains a vital component of the Western electricity market.

Based on stakeholder feedback, the Launch Committee refined Step 1 and adopted a final recommendation at a public meeting on May 31, 2024. The Launch Committee presented the Step 1 proposal to the CAISO Board of Governors and WEM Governing Body in June 2024, who conducted a stakeholder process and unanimously adopted the final Step 1 in August 2024.

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

At this stage, this document does not represent a full set of consensus recommendations from the Launch Committee. This is still a work in progress and the Launch Committee will continue its discussions in addition to accepting stakeholder feedback through workshops and written

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

comments over the coming weeks with the goal of finding additional areas for compromise, refinement, and agreement for a final proposal in November 2024.

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

Step 2 is an incremental and meaningful step for Western independence. Step 2 includes:

- Creation of a new, separate Regional Organization with completely independent governance
- Transfer of the CAISO Board of Governors and the WEM Governing Body's authority over the WEIM and EDAM to the RO, enabling the WEIM footprint and growing EDAM footprint to stay intact and include California
- A robust and independent stakeholder process that can drive and support additional market services or market design changes
- Protection of the public interest with mechanisms to incorporate customer interests and protection of state, local, and federal policies embedded throughout the RO formation, operations, and processes.

The Launch Committee is not proposing any staffing changes at the CAISO for the Option 2.0 starting point. The Launch Committee anticipates that the RO will work very closely with the CAISO staff on efforts including the stakeholder process, especially given their deep subject matter expertise and relevant experience.

This proposal breaks through a significant barrier and enables the additional progress for electricity markets through voluntary market structures that the West has been working towards for decades. While there is more work to be done to maximize customer benefits including affordability and reliability, minimize inefficiencies, and enable more clean energy resources and transmission infrastructure in the West, the Launch Committee is proud to offer this framework for fully independent governance over Western energy markets for stakeholder feedback and comments.

The Step 2 Draft Proposal is organized with a summary of recommendations, followed by a detailed discussion of the different elements of the proposal, next steps for implementation, and an appendix with supporting information, including a high-level summary of the written stakeholder feedback received from the workshops held over the summer. It is important to note that this is not a CAISO recommendation or proposal. The CAISO has served as a technical advisor as outlined in a Letter of Agreement with the Launch Committee and has provided invaluable input and feedback as the Launch Committee has developed this proposal.

## SUMMARY OF RECOMMENDATIONS

The Step 2 Revised Proposal comprises the following components: Regional Organization Scope and Function, Formation of the Regional Organization, Governance of the Regional Organization, Public Interest Protections, and the Stakeholder Process. A high-level overview of the elements proposed are summarized below:

### RO Scope and Function

- The RO will launch in the form of Option 2.0, serving as a policy-setting organization for the establishment and oversight of market rules for the WEIM and EDAM.
- Under Option 2.0:
  - The RO will have full governance authority over market rules, with sole Section 205 rights, and ultimate authority over the associated business practice manual provisions.
  - Market operations will continue to be performed and overseen on a day-to-day basis by the CAISO within the scope of its existing corporate authority, with varying levels of input from the RO. While the RO would not have direct day-to-day supervision of market operations, the RO would have audit rights and responsibilities to ensure the CAISO as market operator is following the tariff and business practices.
  - The RO and CAISO rules will remain in a single integrated tariff. The existing CAISO tariff, however, will be modified and reorganized through a joint RO/CAISO stakeholder process to facilitate the classification of existing provisions as sole RO authority, sole CAISO authority, or shared authority over market activities. The aim of the stakeholder process should be accurately identifying provisions that should be within the scope of RO sole authority while appropriately recognizing the continued functions performed by the CAISO and other Balancing Authority Areas (BAA).
  - The CAISO's existing financial responsibility, liability, and compliance responsibilities to FERC will not migrate to the RO immediately, reducing the time required and cost for RO start up.
  - The CAISO will remain the counterparty to existing market contracts, such as Participating Generator Agreements and Scheduling Coordinator Agreements.
  - CAISO staff will retain emergency operational authority under FERC oversight, during actual emergency conditions in the market, consistent with BAA authority under NERC, as it does today.
  - In response to stakeholder requests, the Launch Committee has taken a high-level cut at what might be an initial RO budget. Based on a host of assumptions, the RO will have initial limited staffing with an estimated annual cost of \$1.25 to \$1.5 million, which could increase to \$10 to \$14 million over time as the organization develops.
- The Launch Committee recommends that the RO consider a transition toward Option 2.5, or a similar structure, over a defined period as guided by a feasibility study by the RO Board with stakeholder input. The feasibility study would assess the costs, benefits, possible expanded market functions, and implementation details and to determine

whether a departure from Option 2.5 is warranted. Under further scenarios, we anticipate:

- The RO will have full governance authority over market rules and associated business practice manual provisions and will hold ultimate responsibility for the operation of the market with sole Section 205 rights.
- Reorganizing the tariff in Option 2.0 could lay a foundation for the separation of the RO tariff from the CAISO tariff under Option 2.5 if the feasibility study determines this step is beneficial.
- The CAISO's ultimate financial responsibility, liability, and compliance responsibilities to FERC will shift to the RO, increasing the cost and time required for the Option 2.5 transition.
- The CAISO will continue to operate the markets under a vendor contract with the RO.
- The RO likely will become a public utility as defined by the Federal Power Act under Option 2.5 if the RO assumes ultimate responsibility over the markets and maintains a separate tariff.
- The RO likely will become the counterparty to existing market contracts, such as Participating Generator Agreements and Scheduling Coordinator Agreements, if the feasibility study determines this step is beneficial, requiring modification of these contracts and adding to the complexity of transition.
- The RO will have more extensive staffing with an estimated annual cost of roughly \$25 million; the additional RO staff will enable the RO to meet its increased oversight responsibilities with respect to the markets. The feasibility study will examine the extent to which these RO cost increases would be offset by decreases in the administrative payments to CAISO.
- By creating a new regional entity, the proposal creates a platform for the RO to offer any additional services desired by Western stakeholders on a voluntary basis. While utilities may not have the regulatory authority at the outset to participate in this broader menu of services, opportunities exist to gain many of the benefits of broad participation in the RO services through co-optimization of the RO's new services under a vendor contract with the CAISO.

## **RO Formation**

- The RO will be incorporated as a 501(c)(3) nonprofit corporation enjoying tax exempt status. This will lower costs and enable the RO to utilize tax-exempt financing for long term debt. A 501(c)(3) operates for the public benefit and has restrictions on lobbying in addition to a prohibition on engaging in political activities.
- The RO will be incorporated in Delaware which has a well-developed body of corporate law, knowledgeable judges, and permissive rather than prescriptive corporate formation and operation.
- The Launch Committee recommends deciding on principal place of business upon seating of the initial RO Board, but that strong consideration be given to locating in Folsom, CA to capitalize on the benefits of being near the Market Operator. Board meetings would rotate among the market-participating states for additional geographic diversity and stakeholder access.

## **RO Governance**

- The RO Board of Directors will be comprised of a seven-member body that exercises sole authority over the WEIM and EDAM and meets FERC independence requirements. Board qualifications will include a diversity of expertise and a commitment to the public interest.
- Board seats will not be reserved, but there will be no restriction on the number of current WEM Governing Body members that can serve on the new RO Board. Any current WEM Governing Body member that applies will be interviewed and will go through the Nominating Committee process.
- A Public Policy Committee will be created as a committee of members of the RO Board whose function is to maintain active communication with representatives from each of the states, public power entities, and federal power marketing administrations to engage those representatives about whether a market initiative is consistent (or not) with each of these entities' policies.
- Articles of Incorporation, bylaws, and any other official policies and procedures (collectively the "Corporate Documents") will include language centering on public interest protections, drawing from the spirit of the current statutory mandate. They will also articulate a corporate obligation to respect state authority to set procurement, environmental, reliability, and other public interest policies.
- The RO will conduct meetings and make decisions in an open process with transparent, documented rationales, including responses to stakeholder comments. All meetings of the RO Board, excluding executive sessions, will be publicly noticed, available to remote participants, recorded and posted, open to the public, and subject to open records requirements.
- The RO Board of Directors and the CAISO Board of Governors will have a collaborative relationship and consider holding joint meetings for matters under joint authority, while each Board will meet separately for sole authority issues.
- An RO Formation Committee will be created to coordinate with the CAISO in the detailed creation of the RO. The Formation Committee will be a working/executive committee reporting to the Launch Committee. A charter for the Formation Committee will be developed by the Administrative Work Group of the Launch Committee, that outlines what activities the Formation Committee will conduct, how it will report out to and receive approval/concurrence from the Launch Committee, and how stakeholders will be engaged in the RO formation process.
- The Formation Committee will create and establish a Nominating Committee comprised of stakeholder representatives to select the RO Board. The use of a Nominating Committee process for selection of RO board members is similar to what has been used for selection of the WEM Governing Body and other similarly situated boards.
- The transition plan from the current WEM Governing Body to RO Board will be developed by the Formation Committee in collaboration with the CAISO in the 2025 timeframe.
- Initiation of pre-launch implementation efforts (e.g. – development of bylaws, tariff language, agreements) will be coordinated with legislative developments in California.

- Startup funding for the RO will likely be required before any market supported funding is available. Due consideration should be given to identifying funding that would not be considered as compromising Board independence, such as DOE grant funding or ongoing support from the Pathways Initiative 501(c)(3) funding via Global Impact.

**Public Interest:**

- The focus and definition of “public interest” is centered around the dual principles of:
  - How customer interests, including affordability and reliability, are safeguarded in non-discriminatory market design and operations; and
  - How state and local policies, even as they differ across the West, are respected in market design.

The following suite of tools will be used to protect the public interest:

- RO Structure and Board- The RO Board will embed a fiduciary duty to the public interest in its founding documents and operations, as described above in the RO Governance section. RO Articles of Incorporation, bylaws, policies and procedures (collectively “Corporate Documents”), 501(c)(3) status, RO Board member qualifications. Include transparent decision-making processes, including open meetings and responses to stakeholder comments, regular meetings with the RO BOSR, corporate obligation to respect state authority to set procurement, environmental, reliability, and other public interest policies. Create a Public Policy Committee of the RO Board to engage with states, local power authorities, and federal power marketing administrations about potential impacts to state, local, or federal policies before final board adoption of a tariff change or an initiative through the stakeholder process.
- RO Body of State Regulators (RO BOSR)- Extend the existing BOSR functions to the RO, maintain current self-governing and decision-making structures, maintain current membership, maintain role of advisory Public Power and PMA liaisons, extend at the outset the current BOSR funding arrangement with future triggers to consider whether the structures and the market have evolved to support modest funding into the tariff.
- Consumer Advocate Engagement- Create a new independent Consumer Advocate Organization (CAO) to facilitate engagement by each consumer advocate office authorized in state law, in the stakeholder process and other RO engagement opportunities. Modest tariff-based funding will be included to facilitate their participation.
- Office of Public Participation- Create a new Office of Public Participation (OPP) within the RO to provide information and education to members of the public about issues and initiatives at the RO, including facilitating engagement in those processes.
- Independent Market Monitor- Create a joint reporting structure for the Department of Market Monitoring with oversight by both the CAISO Board and the RO Board. This will include equal number of RO Board and CAISO Board representatives on the Department of Market Monitoring Oversight Committee, Market Surveillance Committee member qualifications to include public interest expertise, and the transfer of the WEM Governing Body Market Expert to the RO Board. For shared functions between the RO and CAISO, the RO Board will work with CAISO to define reporting and delineate roles and responsibilities.

- Stakeholder Process- Enhance opportunities for tracking and reporting stakeholder sentiments/preferences throughout the process and create a new initiative issue category: “compliance with state and local public policy.” The Launch Committee will continue to work on sector representation through the fall.

## **Stakeholder Process**

The following elements comprise the proposed RO Stakeholder Process:

- Creation of a Stakeholder Representatives Committee (SRC)- as a successor to the Regional Issues Forum (RIF) this committee will serve as the primary body responsible for overseeing and guiding the development of new initiatives. Structured to include a broad spectrum of stakeholders, the SRC will work closely with RO staff to catalog and prioritize initiatives, define problem statements, and develop solutions. The SRC will not be decisional, but will facilitate sector input.
- Sectors- The Launch Committee received extensive comments on sectors and has decided to take more time to evaluate that input and work with stakeholders before proposing a new list of sectors and SRC seats. The primary purpose of sectors is to organize diverse input and guidance on the SRC and to provide a forum for coordination and dialogue within each sector. With a goal of collaboration, diversity of opinion and ideas, and an accessible and efficient process that organizations can effectively participate in, the Launch Committee is working towards a recommendation that ensures thorough and diverse input into critical processes for the RO with a manageable and balanced structure.
- Classification of Stakeholder Initiatives- Three categories consisting of:
  1. Compliance/Non-Discretionary: Initiatives that address compliance with a FERC Order, a market design flaw, or an emerging reliability issue:
    - FERC Rulemaking responses
    - Exigent Circumstances
    - Minor corrections or adjustments
  2. Compliance with State and Local Public Policy: Initiatives that are needed to enable the market to address a state or local public policy issue.
  3. Discretionary Initiatives: Market improvements or evolution that can be brought by any stakeholder or may emerge from a workshop:
    - Emergent Operational Issues
    - Discrete: clear ideas to address known problem statements
    - Conceptual: broad topics where many stakeholders agree there is an opportunity to improve the market, but there is no clear consensus on solutions or problem statements at the beginning of the initiative.
- A three-part Stakeholder Process:
  1. Issue Identification and Prioritization: Catalog and Roadmapping process where the Catalog will be a listing of proposals (from all sources) for stakeholder initiatives and the Roadmap will be a document reflecting the stakeholder initiatives that will occur over a three-year period.
  2. Stakeholder Phase:
    - Stage 1 – Issue Evaluation: What is the objective of the stakeholder initiative and what are the issues and problem statements to be solved?
    - Stage 2 – Policy Development: Identification of solutions

### 3. Approval by the RO Board

- Voting:
  - Advisory voting at the individual entity level.
  - At a minimum, voting will occur during the Policy Roadmap process (approval of final Roadmap) and at various points during work group and initiative phases (problem statement/scope definition, straw proposal/revised straw proposal, final proposal).
  - A remand process if “significant opposition” exists among stakeholders to rework a proposal to address concerns and to achieve broader support (unless the initiative is time-critical, is an exigent circumstance or has significant impact on the justness and reasonableness of the overall market or to address particular circumstances of a market participant or group of participants). This would apply to final proposals prior to an initiative being sent to the RO Board.
  - Tabulated reporting of all underlying votes available to the RO Board and the public. A tabulated report and metrics reduce the emphasis on sector membership by diversifying the ways stakeholders are defined. Potential tabulations may include: geography, sector, line of business, supply and load.



## CHAPTER 1: REGIONAL ORGANIZATION SCOPE & FUNCTION

### SUMMARY OF RECOMMENDATIONS

The RO will launch in the form of Option 2.0, serving as a policy-setting organization for the establishment and oversight of market rules for the WEIM and EDAM.

Under Option 2.0:

- The RO will have full governance authority over market rules, with sole Section 205 rights, and ultimate authority over the associated business practice manual provisions.
- Market operations will continue to be performed and overseen on a day-to-day basis by the CAISO within the scope of its existing corporate authority, with varying levels of input from the RO. While the RO would not have direct day-to-day supervision of market operations, the RO would have audit rights and responsibilities to ensure the CAISO as market operator is following the tariff and business practices.
- The RO and CAISO rules will remain in a single integrated tariff. The existing CAISO tariff, however, will be modified and reorganized through a joint RO/CAISO stakeholder process to facilitate the classification of existing provisions as sole RO authority, sole CAISO authority, or shared authority over market activities. The aim of the stakeholder process should be accurately identifying provisions that should be within the scope of RO sole authority while appropriately recognizing the continued functions performed by the CAISO and other Balancing Authority Areas (BAA).
- The CAISO's existing financial responsibility, liability, and compliance responsibilities to FERC will not migrate to the RO immediately, reducing the time required and cost for RO start up.
- The CAISO will remain the counterparty to existing market contracts, such as Participating Generator Agreements and Scheduling Coordinator Agreements.
- CAISO staff will retain emergency operational authority under FERC oversight, during actual emergency conditions in the market, consistent with BAA authority under NERC, as it does today.
- In response to stakeholder requests, the Launch Committee has taken a high-level cut at what might be an initial RO budget. Based on a host of assumptions, the RO will have initial limited staffing with an estimated annual cost of \$1.25 to \$1.5 million, which could increase to \$10 to \$14 million over time as the organization develops.

The Launch Committee recommends that the RO consider a transition toward Option 2.5, or a similar structure, over a defined period as guided by a feasibility analysis by the RO Board with stakeholder input. The feasibility study would assess the costs, benefits, possible expanded market functions, and implementation details and to determine whether a departure from Option 2.5 is warranted. Under further scenarios, we anticipate:

- The RO will have full governance authority over market rules and associated business practice manual provisions and will hold ultimate responsibility for the operation of the market with sole Section 205 rights.
- Reorganizing the tariff in Option 2.0 could lay a foundation for the separation of the RO tariff from the CAISO tariff under Option 2.5 if the feasibility study determines this step is beneficial.
- The CAISO's ultimate financial responsibility, liability, and compliance responsibilities to FERC will shift to the RO, increasing the cost and time required for the Option 2.5 transition.
- The CAISO will continue to operate the markets under a vendor contract with the RO.
- The RO likely will become a public utility as defined by the Federal Power Act under Option 2.5 if the RO assumes ultimate responsibility over the markets and maintains a separate tariff.
- The RO likely will become the counterparty to existing market contracts, such as Participating Generator Agreements and Scheduling Coordinator Agreements, if the feasibility study determines this step is beneficial, requiring modification of these contracts and adding to the complexity of transition.
- The RO will have more extensive staffing with an estimated annual cost of roughly \$25 million; the additional RO staff will enable the RO to meet its increased oversight responsibilities with respect to the markets. The feasibility study will examine the extent to which these RO cost increases would be offset by decreases in the administrative payments to CAISO.

By creating a new regional entity, the proposal creates a platform for the RO to offer any additional services desired by Western stakeholders on a voluntary basis. While utilities may not have the regulatory authority at the outset to participate in this broader menu of services, opportunities exist to gain many of the benefits of broad participation in the RO services through co-optimization of the RO's new services under a vendor contract with the CAISO.

## ELEMENTS OF INDEPENDENCE

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



## THE RO AS AN INSTITUTION: RESPONSIBILITIES, STRUCTURE, AND RELATIONSHIP TO THE CAISO

### 1. Introduction

The most basic Step 2 structural question that the Launch Committee has deliberated over is whether the RO should be a corporation that primarily supports a policy-setting board, with the CAISO continuing to hold ultimate operational, compliance, and other responsibilities, or a corporation that bears ultimate supervisory authority and responsibility over the energy markets. We have described the former as “Option 2.0” and the latter as “Option 2.5.” They differ in the degree of independence, complexity, and cost. This corporate distinction is the key difference for references to Option 2.0 and Option 2.5. We have included many ideas about the different structures that Option 2.0 and Option 2.5 may represent but recognize that there are many structural details that are premature to evaluate at this stage.

### 2. Summary of Proposal

The Launch Committee recommends that the RO launch in the form of Option 2.0 with a further recommendation that the RO consider a transition toward Option 2.5, or a similar structure, over a defined period of several years. We recommend that the RO Board perform a deeper feasibility

analysis, with stakeholder input, to assess the costs, benefits, possible expanded market functions, implementation details of how to achieve the additional corporate independence and responsibility, and to determine whether a departure from Option 2.5 is warranted.

This feasibility analysis should be one of the RO's initial priority tasks and should be initiated within 9 months of the RO's formation. The analysis should assume that Option 2.0 is a transitional structure. The overall corporate objective of the analysis should be twofold ensuring: (1) the RO takes a form under which it assumes responsibility and accountability commensurate with its supervisory authority over energy markets, and (2) that the RO has a structure that will strengthen its ability to host or oversee additional regional services beyond energy markets for as many market participants as desire that expansion.

The feasibility analysis recommended here builds in an opportunity for the RO itself to analyze and possibly refine our tentative recommendation as one of its first acts as an independent corporation. At the risk of the RO diverging from our overall recommendation, we believe that this independent judgment is precisely the point of forming a new governing corporation.

While the Launch Committee is supportive of further steps toward fully integrated regional markets, we do not have a consensus view that Option 2.5 is the most appropriate outcome in Step 2. We have spent a significant amount of time since the release of our Straw Proposal in April 2024 evaluating this issue, including consulting with outside legal counsel, FERC practitioners, the CAISO, a credit rating expert, and specialists in corporate structure and personnel costs within our respective organizations. Some members of the Launch Committee continue to have reservations about moving straight to a structure like Option 2.5 given the time, complexity, and cost involved for the RO and for market participants.

In Option 2.5, deeper division of liability between two corporations, overall higher cost both to the CAISO and RO, and to stakeholders as a whole, plus the extensive negotiations we anticipate will be involved to rework dozens of *pro forma* regulatory contracts in Option 2.5 prevent us as a Committee from strongly (as opposed to tentatively) recommending Option 2.5 at this stage. At the same time, we recognize the generally strong, but not universal, support expressed by a variety of stakeholders for reaching Option 2.5, at least after a transitional period. We present this recommendation to stakeholders in the hopes of forming an institution that will attract the broadest possible array of market participants across the West, and thus lead to deeper, stronger energy markets overseen by the RO and a stronger starting point for future services beyond markets.

Like many areas of our deliberations, we appreciated the stakeholder feedback we received during and following our August 5 workshop on this topic. This input has helped shape our analysis and recommendation.

### **3. Comparison of Options**

In the April 10, 2024 Straw Proposal, the Launch Committee concluded that our primary objective of securing truly independent governance over the energy markets and future services

hinged primarily on vesting sole Section 205 filing rights in a new entity. Both Options 2.0 and 2.5 achieve that objective. Since then, we have further refined our thinking through extensive deliberation and engagement through stakeholder workshops.

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

Other than its elevation to sole authority, the RO Board in Option 2.0 is very similar in most other respects to what the WEM GB is today: a policy-setting board. This resemblance has a certain attraction. It is a model we know. Its formation represents an important but incremental evolution of the current WEM GB. It would not significantly disrupt the current organizational structure of the CAISO itself. It minimizes costs and duplication of staff and structure.

Yet as a committee, we have found it difficult to conclude that Option 2.0 is a robust enough institutional home for the aspirations of the Pathways Initiative and the vision of Step 3. While both Options 2.0 and 2.5 break with the past with respect to 205 rights and formation of a new corporation, Option 2.5 is a deeper break because it converts the CAISO into the role of a vendor subject to a service contract with the RO. This is a fundamentally different arms length relationship between the two corporations. While both Options 2.0 and 2.5 significantly increase the authority of an external decisionmaker over energy markets, Option 2.0 largely avoids increasing the accountability of that decisionmaker for its decisions. In Option 2.5, the responsibility and liability of the RO increases commensurate with its new authority over the markets.

This is not merely a case of independence coming at a monetary cost. The RO in Option 2.5 is a different kind of corporation: it largely supplants the CAISO as the outward-facing entity that offers organized energy markets to market participants and bears regulatory and financial responsibility for them. The CAISO continues to operate the markets, but the ultimate responsibility for them as a service regulated by FERC, rests with the RO.

In Option 2.0, the core function of the RO is to support a policy decision-making board that determines the content of another corporation's service offering. The other corporation offers and operates the service.

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

By contrast, in Option 2.5, the core function of the RO is to assume ultimate oversight responsibility for a service that is operated by another corporation under contract. This responsibility includes policy decision-making over the markets. It also includes bearing most consequences, as a legal, financial, and compliance matter, for failure. Unlike in Option 2.0, vendor management would become a primary day-to-day responsibility of the RO.

The following table compares and contrasts the RO roles and structure in Options 2.0 and 2.5, with a focus on the nature of the RO Board itself.

	<b>Option 2.0</b>	<b>Option 2.5</b>
Board role relative to markets	Policy setting	Ultimate governance and operating responsibility through vendor management
Is it a merely advisory board?	No	No
Does it have significant sole 205 rights?	Yes	Yes
Must it bear the financial consequences of market-specific liabilities resulting from its decisions (not merely general corporate liabilities)?	No	Yes
Does it have a significant need for contingency reserves to protect against unanticipated market-related expenses?	No	Yes
Does it exercise ultimate supervision over the service offering and operation of the markets, not merely the content of market rules?	No	Yes
Does it exercise direct day-to-day supervision over the operations of the markets?	No	No
Is the corporation it oversees a public utility under the Federal Power Act?	Probably not	Very likely <sup>5</sup> assuming separate tariff

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<sup>5</sup> There may be an argument under some scenarios, drawing on a recent case in New England about NEPOOL's status as a public utility (RTO Insider v NEPOOL, 167 FERC ¶ 61,021 (2019)), that the RO under Option 2.5 could be structured so as not to be a public utility. If, however, the RO (i) assumes ultimate supervision for market operations, controlling the decisions directly affecting day-to-day operation of the markets, and (ii) operates under a separate tariff, the RO would be a public utility. The Perkins Coie memorandum discussing this issue, attached as Appendix A, explained that "[t]he FPA defines a public utility as 'any person who owns or operates facilities subject to the jurisdiction of

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

We have weighed the factors above, including the similarities and differences spotlighted in this table. After considering what institutional structure and scope best meets the spirit of the Pathways Initiative and the Launch Committee’s vision for the RO, we offer the following overall recommendation.

#### **4. Central Structural Issues**

In Step 2, regardless of the selection of Option 2.0 or Option 2.5, the Launch Committee makes several further recommendations that complement the core recommendation.

##### **a. Single Tariff**

*For now, maintain a single integrated tariff under Option 2.0 rather than separate out two tariffs.* The RO Board may want to revisit this approach in the future and consider whether to file its own separate tariff at FERC for market services or other services, particularly as it progresses to the Option 2.5 structure. But for now, as described in our Straw Proposal, the Launch Committee believes that the most seamless and expedited transition from Step 1 to Step 2 argues for maintaining an integrated tariff with sole and shared 205 rights dispersed between the CAISO and RO. The integrated tariff is discussed in greater detail below.

##### **b. Business Practice Manual Oversight**

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FERC.” It further explained that “FERC precedent expansively defines “operates” to include control over a jurisdictional facility (and a tariff is itself a jurisdictional facility).” Even if the RO were not a public utility, however, “FERC would still have jurisdiction over the RO’s operations, rules and practices – including with respect to practices that impact filings with FERC under Section 205 to amend the Market Rules – to the extent they directly affect jurisdictional rates in the CAISO tariff.” Moreover, Perkins Coie highlighted potential advantages to accepting public utility status, including: (i) regulatory certainty; (ii) would remove a potential avenue of attack on the proposed structure, and (iii) “may provide CAISO comfort that any potential liability under the FPA for RO Decisions over changes to Market Rules will be appropriately shared between CAISO and the RO.” In that spirit, an RO with strong, independent authority over markets would present itself, and be treated by FERC, as a public utility.

*Vest the RO Board with the ultimate authority to resolve disputes about any market-related business practice manual (BPM) that carries out a tariff provision under the RO's control.*

The Launch Committee is unaware of any case in which a BPM was appealed by a market participant or stakeholder beyond the level of a committee of CAISO executives to the CAISO Board, which today would be the general ultimate decisionmaker in the case of such an appeal. Thus the practical effect of our recommendation may not be significant. But in Step 2, the Launch Committee recommends that the RO Board should supplant the CAISO Board as the ultimate authority over the associated BPMs that focus on the WEIM and EDAM, consistent with the sole 205 rights vested in the RO. We anticipate that the CAISO staff, as market operators, would likely continue to administer the day-to-day, or week-to-week, process of developing potential changes to BPMs, but the RO Board's oversight role would be an important change in oversight of the BPMs.<sup>6</sup>

### **c. Sole 205 Rights**

*Vest sole 205 rights in the RO such that the RO Board has exclusive and unilateral authority to have filings made at FERC for areas under its domain.* Sole 205 rights in Step 2 means that the CAISO Board does not have any lingering unilateral authority, which exists today and persists in Step 1 in some exigent circumstances, to make a 205 filing at FERC that unilaterally imposes the CAISO Board's policy view regardless of the views of the other body. Today, that other body is the WEM GB; under Step 2, it would be the RO Board. Under our proposal for Step 2, the manner in which the CAISO would retain governing authority going forward is in the form of sole 205 rights for rules applicable specifically to the CAISO Balancing Authority or the CAISO-controlled grid, described in this paper in the tariff section, and in the form of corporation protections described below that are not related to governing preferences about market design or public policy.

### **d. Emergency Conditions**

*Continue to delegate emergency operational authority to CAISO staff during actual emergency conditions in the markets.* Today, CAISO management and market operations staff have delegated authority from the CAISO Board to respond in real-time to emergency conditions

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<sup>6</sup> We note that FERC's rule of reason requires that any provisions that constitute or significantly affect rates, terms, and conditions of wholesale service must be included in the tariff itself rather than in BPMs. BPMs can only be used for provisions that don't meet FERC's test and are instead classified as implementation-related details. Except in some emergency situations, the CAISO's current business practice change management process provides stakeholders opportunities to comment on potential BPM changes. Final decisions adopted by the BPM change management coordinator can be appealed to a panel of CAISO executives. It is our understanding that this appeal process has occurred twice in the past 15 years. Under the current process, there is no approval role for the CAISO Board or WEM Governing Body for BPMs, but appellants may raise a concern following the appeal process to the CAISO Board. As noted above, we are not aware of stakeholders having pursued this last potential point of appeal (to the Board) in the past. (The relevant BPM about the business practice change management process is available here:



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

#### **e. Corporate Protections**

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

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

In our recent presentations about this topic, we have summarized the meaning of “corporation protections” to be that the RO cannot compel the CAISO to violate physics, break the law, or become insolvent. Stakeholders have given us feedback that the scope of these protections requires more explicit elaboration,<sup>7</sup> and we agree. We have considered the likelihood that “corporation protections” may be read more expansively (or protectively) in Option 2.0, and this interpretation informs our core recommendation about Options 2.0 versus 2.5. But for the immediate purposes of this Step 2 proposal, the Launch Committee wishes to underscore the point we made in our Straw Proposal in April that corporate protections for the CAISO pertain to the risk to the CAISO as a generic corporation carrying out a service under the direction of a third party (the RO), and not to policy judgments or preferences about market design and operations.

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

#### **f. Primary Market Liability Protection**

*Retain the reliance on credit and financial security requirements imposed on market participants themselves as the primary financial protection for the CAISO and the RO against the risk of market-related defaults.* The Launch Committee provides further detail below about how the formation of a new governing corporation will result in the RO being exposed to certain financial liabilities specifically related to overseeing WEIM and EDAM and generally related to being an incorporated entity. What we do not foresee or recommend changing is the pass-through nature of most financial exposure to market defaults or volatility by the CAISO or the RO. Namely, the CAISO's tariff today has credit standards that require market participants to post collateral (or maintain an equivalent line of credit) that is equal to their estimated liability. This requirement protects the CAISO from bearing the risk of loss if a market participant defaults on payment. Those losses do not come off the CAISO's balance sheet. In addition, the CAISO effectively has a lien on market revenues (a priority claim against market-related receipts) as a further layer of protection against defaults in payment.<sup>8</sup> These are common provisions in organized markets to mitigate the financial risks to the market operators themselves.

#### **g. Access to Capital**

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

#### **h. Basic Payroll and Direct Expenses**

*Hire a certain minimal level of staff, maintain adequate reserves, and pay certain minimum direct expenses as an independent corporation.* The Launch Committee provides an illustrative estimate of costs and staffing for the RO below in this section, highlighting potential differences in costs and organizational size between Options 2.0 and 2.5. But we make the more basic recommendation here that the RO will need to hire a certain number of personnel and carry out certain functions regardless of how it evolves beyond Option 2.0 and what the precise scope of Option 2.5 is. We anticipate that those common direct costs include:

- Basic payroll for RO employees, including systems for establishing and paying compensation, expense reimbursement, benefits, and payroll services
- Legal services (in-house, on retainer, or external hourly)

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<sup>8</sup> See section 11.29.9.6.1 of the CAISO tariff. We explore this topic in more detail below.

- An external affairs division
- Annual budget development
- A commercial bank account
- Annual tax filings
- Certified public accountant and bookkeeping services
- Corporate insurance (e.g., directors & officers, professional liability, workers compensation)
- Facility costs (leased or owned)
- A reserve account for unanticipated expenses

## 5. Key Issues in CAISO/RO Contract

We turn next to a deeper examination of distinguishing features of Option 2.5, and the three most challenging areas that we identified in the Straw Proposal: *financial liability*, *existing contracts*, and *staffing*. We have appreciated and considered the stakeholder feedback to date on each of these topics.

In order to remind readers of where the Straw Proposal left these open issues, we repeat its concluding discussion:

The tradeoffs between Options 2.0 and 2.5 fundamentally relate to the expectations of stakeholders and regulators about the administrative cost, on the one hand, and institutional independence, on the other hand. Given the issues above that affect the cost, implementation speed, and potential feasibility of a full contract-for-services model, the Launch Committee seeks additional stakeholder input to inform our deliberations on how expansive an initial contractual agreement to recommend between the RO and the CAISO. The Launch Committee hopes to gain a better sense of which approach (Option 2.0 or 2.5) would draw in the most interested parties and increase the depth of market participation, acknowledging that administrative costs are one of the most important decisional criteria for many entities.

We also note that Options 2.0 and 2.5 are not mutually exclusive: over time, the RO could grow institutionally and incrementally to the point of arriving at Option 2.5 and entering into a more thoroughgoing service contract with the CAISO. In addition, there may be other fruitful ways to structure independent governance that could grow out of Option 2 for future consideration.

The remainder of this section examines each of these open, challenging issues, describes the evolution in our thinking since the release of our Straw Proposal, and offers several recommendations.

### a. Financial Liability

We anticipate that the contingency reserve in Option 2.5 would need to be larger to address the RO's higher liability exposure, as the entity ultimately responsible for the provision of market

services. This higher exposure includes market-related legal liability, general litigation costs, and potential regulatory fines that the RO does not face in Option 2.0. The Launch Committee recommends that a deeper analysis be conducted of the anticipated size of the reserve needed by the RO. In addition to a contingency reserve (described in more detail below), the second liability-related element that we anticipate will be significantly more expensive in Option 2.5 is corporate insurance. The RO in Option 2.5 would likely need expanded corporate insurance to cover the risks associated with the corporation's greater responsibilities.<sup>9</sup>

The RO's assumption of greater responsibility may reduce equivalent liability and associated expense currently borne by the CAISO, but we have not conducted an examination of how many offsetting costs might conceivably shift from the CAISO to the RO. This topic will require further examination in 2025 by the Formation Committee and the RO Board itself, in the event that Step 2 is carried out as proposed here.

An additional area requiring further evaluation is how the RO would fund its operations and how that will relate going forward to the Grid Management Charge (GMC) and other fees currently collected by the CAISO. We do not propose any mechanism or particular way to address an RO share of those charges and fees, or other new mechanisms to fund the RO's obligations from market participants. We observe that the CAISO's triennial cost of service study, revenue requirement, and FERC-regulated market participant charges (with various allocations of costs based on CAISO's lines of service) may need to be changed to accommodate Step 2.

*Collection Priority/Lien Authority:* We noted in the Straw Proposal that because the coverage ratio of market settlements to the GMC has been consistently above 20:1 in recent years, there may be merit in providing the RO some form of subordinate lien authority to shore up its financial risk in addition to the primary protection (noted above) of continuing to impose most of the market-related default risk on market participants themselves. We continue to think that this approach of a second lien authority deserves more evaluation.<sup>10</sup> We also observe that broader

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<sup>9</sup> In the illustrative cost estimates below, we have included a mid-range estimate of \$2 million in annual corporate insurance costs to the RO, based on preliminary industry research into insurance obtained by comparable entities. Our preliminary best guess is that insurance costs may range widely from approximately \$100,000 to \$5 million annually. Because the market for such insurance (specific to energy market oversight and regulatory compliance) is not large, and actual costs are confidential, competitively sensitive information of the insurance purchasers, the Launch Committee recommends that the Formation Committee and the RO Board conduct additional market research and obtain specific insurance quotes. The need for specific forms of insurance depends on the terms of the contract between the RO and the CAISO, including any indemnification provisions.

<sup>10</sup> The term "lien" in this case refers to the CAISO's authority to collect the full amount of GMC that it charges on invoices issued to market participants each week. If one or more participants fail to pay their invoices, the CAISO can still collect the GMC out of the total pool of revenue received through market charges. Thus, failures to pay by individual market participants can be allocated to all market participants, who may thus receive less than full payment for the energy and other services they provided. This authority of the CAISO is not a broader financial cushion to cover general unanticipated expenses exceeding what the CAISO is authorized to charge in the GMC. It applies solely to GMC shortfalls in the event that a market participant fails to pay. We note that FERC Annual Charges (charges that the CAISO

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

We anticipate that a collection priority subordinate to the existing CAISO collection priority, or drawing on funds separate from what the CAISO may draw on, is likely required under the existing bond covenants. Our thinking has advanced beyond our Straw Proposal in concluding that the possibility of an additional collection priority, or lien authority, for the RO is not likely to be a decision on which the cost of Step 2 or the financial health of the RO hinges, but it could be a moderately supportive element of the RO’s financial protections.<sup>11</sup>

#### *Indemnification*

We anticipate that any contract-for-services agreement between the RO and CAISO for Option 2.5 would include a variety of financial protections and indemnity provisions for both parties. The indemnity provisions would likely flow in both directions, depending on each party’s roles and responsibilities.

#### *Contingency Reserve*

The greater degree of financial liability for the RO in Option 2.5 is from several sources. First is general exposure to more unanticipated expenses because the corporation itself is likely to be larger, as illustrated above. We understand this exposure to include facing damages liability under standard tort law principles. More employees, higher payroll, and a larger institution generally mean more financial exposure.

Second is the increased degree of regulatory responsibility that Option 2.5 entails. This includes complying with FERC rules and with FERC directives to the RO itself, including in response to the RO’s own Section 205 filings. It also includes at least a limited degree of exposure to reliability standards. The Launch Committee observes that energy market oversight does not entail the same degree of reliability risk as overseeing reliability-focused functions such as balancing authority services and reliability coordination. Thus we expect that the number of ways that the RO could violate FERC, NERC, and WECC reliability standards would be smaller than the ways that CAISO could violate them.

In general, the Launch Committee expects that the RO under Option 2.5 would have to be equipped with personnel and financial protections to address the outcomes of periodic FERC audits for compliance with applicable tariff sections and FERC regulations; FERC Office of

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collects from some market participants on behalf of FERC to fund the agency’s operations) also have a collection priority in the event of defaults on payment. Additional charges could, in theory, be added to the list of collection priorities to ensure that the RO received funds owed to it.

<sup>11</sup> We have also conducted initial research into the use of second liens in similar organizations. For example, in U.S. public finance, CPS Energy (San Antonio’s municipal electric and gas utility) and JEA (Jacksonville, Florida’s municipal electric, water, and sewer utility) both have revenue bond obligations with subordinate second liens that have received high credit ratings. Our understanding is that this approach is more common in corporate finance, project finance, and high-yield bond structures.

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

### *Monetary Fines*

We note that FERC has indicated that RTOs/ISOs may recover reliability-related penalties from market participants in some cases. FERC has indicated it will allow penalty recovery only after considering of a variety of factors: whether a compliance program was in place to prevent violations, whether violations were intentional or grossly negligent, whether management was involved in the violations, the ability of the RTO/ISO to pay the penalty, and the fairness of the assessment mechanisms proposed by the RTO/ISO.<sup>12</sup> Section 14 of the CAISO tariff embodies this authority granted by FERC, but we understand that the CAISO has not had to rely on it. We also note that FERC has denied authority to cover FERC penalties for tariff violations. The case-by-case criteria listed above are not a blanket protection for an RTO/ISO, but they do mute the potential financial exposure. Nevertheless, we expect the RO would continue to have some exposure to penalties for violating reliability standards and failing to comply with the tariff sections for which it has sole responsibility. A contingency reserve would address this risk.

Based on public information about monetary penalties,<sup>13</sup> the Launch Committee is aware of three instances since 2005 that the CAISO itself has paid regulatory compliance penalties or entered into related settlements with FERC.<sup>14</sup> After the Southwest outage on September 8, 2011, FERC entered into settlement agreements with six entities, including the CAISO.<sup>15</sup> This settlement agreement established a \$6 million penalty, which comprised a \$2 million monetary fine and credit for \$4 million of reliability-related enhancements implemented by the CAISO. The CAISO has also entered into settlement agreements that involved \$120,000 and \$200,000 penalties related to load-shedding events on November 7, 2008,<sup>16</sup> and on April 1, 2010,<sup>17</sup> respectively. The CAISO has not incurred FERC penalties in this same period related to violations of its tariff or FERC rules and regulations.

In sum, since Congress authorized FERC's reliability and enforcement authorities in 2005, CAISO's public monetary fines total less than \$3 million. It is the Launch Committee's understanding that none of these penalties resulted in a drawdown and subsequent replenishment of the operating reserve of the CAISO; instead, the CAISO had sufficient surplus funds collected in those years to absorb the penalties out of its operating revenue. We explain this track record in

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<sup>12</sup> See *Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators*, 122 FERC ¶61,247 P 27 (2008).

<sup>13</sup> In order to protect critical infrastructure, among other reasons, not all regulatory penalties imposed by FERC, NERC, or WECC are made public. Nevertheless, no other penalties have been large enough to be reported as material liabilities on the CAISO's public financial statements.

<sup>14</sup> Congress gave FERC substantial authority in 2005 to establish enforceable reliability standards and impose significant monetary penalties.

<sup>15</sup> See 149 FERC ¶ 61,189 (2014).

<sup>16</sup> See FERC Docket No. NP13-56.

<sup>17</sup> See 141 FERC ¶61,209 (2012).

some detail in order to provide stakeholders a concrete sense of the potential regulatory penalty exposure facing the RO.

#### *Legal Standard for RTOs/ISOs*

Finally, we observe that FERC has approved protections for RTOs/ISOs that limit their damages liability to market participants for the performance or non-performance of the RTO/ISO's duties to instances of gross negligence or intentional wrongdoing.<sup>18</sup> FERC has set forth a general methodology for determining penalty amounts for violation of its orders and regulations, including tariff requirements and reliability standard violations. This methodology indicates that factors in calculating penalty amounts can include the "pecuniary gain" incurred by a violator or the "pecuniary loss" caused by the violation. To the degree that FERC extended the same approach to the RO under Option 2.5, we anticipate that the financial exposure to regulatory penalties may be somewhat muted. Just as the RO would be protected structurally from some market-related financial risks by the pass-through nature of risk in the EDAM and WEIM tariff, the RO's lack of a pecuniary interest in any particular market outcome may insulate it somewhat from the liabilities faced by market participants.

#### *Size of Reserve*

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

Stakeholders may consider the CAISO's current operating reserve as a likely outer envelope of the absolute size of the reserve that the RO would need, given that most, if not all, of the financial protections for the CAISO's exposure to liabilities related to overseeing and operating the energy markets would continue in some form for the RO. Indeed, the size of the reserve may be much smaller than \$38 million, given all the other services and activities that the CAISO performs, including balancing authority, transmission, and reliability coordination services. We do not presume that 15% of the RO's operating budget would be sufficient financial protection against unanticipated liabilities, because the RO's financial exposure is more likely to resemble the CAISO's current overall exposure for its energy-market related activities.<sup>19</sup>

*Recommendation:* We recommend that an analysis be completed in 2025 of the appropriate size of a contingency or operating reserve for the RO, both at the outset of Step 2 (Option 2.0) and

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<sup>18</sup> See PJM Interconnection L.L.C. 112 FERC ¶ 61,264 at PP 9-10 (2005); Southwest Power Pool, Inc., 112 FERC ¶ 61,100, PP 36-44 (2005); Midwest Indep. Transmission Sys. Operator, Inc., 110 FERC ¶ 61,164 at p 29 (2005); *ISO New England Inc., et al.*, 106 FERC ¶ 61,280, at PP 220-231 (2004); and California Indep. Sys. Op. Corp., 123 FERC ¶ 61,285, at P 241 (2008) and California Indep. Sys. Op. Corp., 139 FERC 61,198 at P 17 (2012). This limitation is in Section 14.5 of the CAISO tariff and Section 22.1 of the Transmission Control Agreement.

<sup>19</sup> Based on the illustrative cost estimate below, a 15% reserve on an operating budget of \$24 million would be \$3.6 million.

upon completion of the transition to Option 2.5 (subject to the feasibility study and final judgment of the RO Board, as described in our core recommendation above).

#### *Credit Rating Impact*

The Launch Committee has engaged an independent financial analyst to better understand the potential effect of Step 2 and Option 2.5 on the financial health of the CAISO and the RO itself. We have sought to understand, for example, whether our proposal would have any effect on credit worthiness factors considered by rating agencies. These factors affected by our proposal include potentially diversifying risk to the CAISO (lessening the potential financial impact of a worst-case market failure); broadening of the credit quality of market participants who pay the CAISO's revenue requirement; and improving management of intermittent generation within the larger market footprint, potentially mitigating reliability challenges and extreme weather impacts. These factors would also be affected by implementation details such as the funding mechanism of the RO, what happens to the GMC, and the terms of the agreement between the CAISO and the RO. A preliminary analysis suggests that, all else being equal, our proposal would generally be credit positive, adding to a recent decade-long trend of the CAISO diversifying its revenue sources, reducing "concentration risk," and expanding the footprint of its services.

#### *Transitional Period*

Given the potential size of the contingency reserve needed by the RO in Option 2.5, the need for a granular analysis to narrow the wide range of potential reserve targets (likely somewhere between \$4 million and \$40 million, as described above), and the value to market participants of building up such reserves incrementally over several years, rather than in a single year, we have concluded that a several-year transition period to reach Option 2.5 makes the most sense. However, the ultimate decision on the transition time, and evolution would be determined by the RO Board per our proposal. We seek stakeholder feedback on that conclusion and on the discussion above.

### **b. Existing Contracts**

Our Straw Proposal (p. 29-30) noted the existence of approximately three dozen types of regulatory contracts between the CAISO and energy market participants that are included in or implicated by the CAISO tariff. What we mean by "regulatory" contracts is that they are subject to FERC's jurisdiction, as opposed to non-jurisdictional contracts (e.g., a vendor contract for food services). Option 2.5 probably requires reworking or re-assigning most of these contracts in order to ensure that the ultimately responsible party (the RO) overseeing EDAM and WEIM becomes a direct party to the contracts. (We do not anticipate that Option 2.0 would require reworking these contracts in the same way.) Some of the affected contracts cover agreements with the CAISO that address services in addition to energy markets.<sup>20</sup> There are also a number of non-conforming agreements, outside of the *pro forma* contracts.

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<sup>20</sup> For example, the Scheduling Coordinator Agreement addresses the submission of information into market applications, including ancillary services, and resource adequacy related requirements. EDAM and WEIM today do not extend to ancillary service co-optimization in non-CAISO balancing authority areas,



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

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

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

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

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

We do not believe that the time and complexity involved in reworking the affected contracts is a reason *not* to pursue Option 2.5 or whatever final structure the RO Board pursues following the feasibility analysis recommended above. Our proposal takes this topic seriously by recommending a transitional period.

### **c. Staffing**

In this subsection, we address two principal staffing topics relevant to both Options 2.0 and 2.5, but particularly relevant for Option 2.5: (1) a recommendation for the RO to provide input and shape management-level hires overseeing energy markets at the CAISO, and (2) illustrative cost estimates and possible staffing structures for dedicated RO staff and functions.

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nor do they impose a single resource adequacy requirement through the resource sufficiency evaluation. Therefore, the SCA may need to be modified rather than just assigned.

*i RO Input on CAISO Management Hires*

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

Under both Options 2.0 and 2.5, the RO and the CAISO would indeed be separate and independent corporations whose corporate interests and fiduciary responsibilities may diverge. Any contract between them would have some elements of a traditional arms-length arrangement, particularly in cases where the RO could elect to forego the services of the CAISO and instead either contract with some other party or bring the services in-house. For example, the Launch Committee envisions information technology (IT) services as an obvious candidate for potential initial reliance on the CAISO on a vendor basis, but in the future the RO Board may decide that the RO would be better served by having its own IT team or hiring an outside firm, of which there are many.

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

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

When considering these points of proximity in the relationship between the two corporations, we have returned repeatedly to the notion of a bundle of elements of independence. No single element guarantees independence, given the variety of ways that it could be overtly or subtly eroded. It is rather the collection of different elements, as well as clear divisions of authority, that would create a stronger, more independent RO.

*Primary RO Hiring Input Recommendation:* We recommend advisory authority of the RO Board to provide non-controlling input on the hiring of one or more officer-level senior CAISO managers responsible for the business line (or "vertical") that oversees the markets. This will help to mitigate the sole-source aspect of the contract between the RO and CAISO (in both Options 2.0 and 2.5). Our objective with this recommendation is to help ensure that the markets' business line of the CAISO has some structural encouragement to be responsive, both in reality and in perception, to the RO as a principal client.

The current CAISO Bylaws (Article VI, Sections 1, 2, and 10) specify that the Board of Governors shall appoint all officers of the CAISO, both those named in the bylaws and any additional officers that the Board may appoint.<sup>21</sup> We recommend that the CAISO Board retain this ultimate authority to appoint all corporate officers but delegate to the RO Board the authority to sign off on one or more officers at the Vice President level who oversee market services whose policies will be governed by the RO. We do not recommend any particular change in the process of how the CAISO recruits and considers candidates for these manager positions apart from including senior RO management in the interviewing process for, and securing RO Board agreement prior to hiring a candidate. In this arrangement, the CAISO Board would still retain a controlling interest over the ultimate hiring in the form of a veto of any proposed candidate that received RO Board approval. In other words, a candidate could not be forced on the CAISO or hired over the objections of the Board. This approach could be carried out through a veto option or an affirmative concurrence by the Board.

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

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

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

We add one important caveat about labor law: the arrangement described above appears permissible and in fact a somewhat common way for two separate entities to establish a closer

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<sup>21</sup> Available at: <https://www.caiso.com/documents/iso-corporate-bylaws-amended-and-restated.pdf>.

working relationship, but it does create a potential risk of joint employment claims by the affected CAISO management hires.

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

For example, claims of harassment, discrimination, retaliation, or wrongful termination, of current, former, or prospective CAISO hires subject to this arrangement (including candidates not selected to be hired), could lead to both the CAISO and the RO being named by a plaintiff in a lawsuit. Because the CAISO would retain ultimate authority over the final hiring and firing decisions, we anticipate that this joint employer risk is somewhat lower. Similarly, an annual performance evaluation by the RO Board of how CAISO officers and the business units that they manage are carrying out market services would be one of several inputs, and a non-binding input, that might determine bonus compensation decisions, for example, by the CAISO CEO or Board.

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

We look forward to continued feedback from stakeholders on this recommendation. We also anticipate the need for further consideration about which business units are most suited to staying integrated within the CAISO’s structure and subject to the arrangement above, versus being established within the RO directly.

## *ii Other Staffing-Related Recommendations*

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

- (1) *CAISO CEO*: We recommend that the CAISO Board consult with the RO Board on the selection of new CAISO CEOs, including bringing the RO Board on an advisory basis into the interview process (such as including members of the RO Board on an interview panel, alongside CAISO governors). We believe that the CAISO Board should retain both primary and ultimate control over any CEO hiring decision, for both legal and practical reasons, and we therefore do not recommend RO Board input on CAISO CEO selection beyond this purely consultative, advisory approach. In other words, the RO Board would

have no vote nor formal authority to prevent or slow down a CEO hiring decision of the CAISO. Should the RO's scope of authority one day encompass a great deal more of the CAISO's current services and corporate responsibilities, we suggest that this purely advisory, consultative approach may need to be revisited, but we do not make any recommendation beyond it at this time.

- (2) *DMM*: We recommend that the CAISO Board and the RO Board jointly select future heads of the Department of Market Monitoring (DMM), given the very significant role that DMM plays in monitoring the markets overseen by the RO. Because the DMM monitors activity in services offered by the CAISO (including balancing authority and transmission services) that fall outside the RO's authority, we do not at this time envision a logical way for the DMM in its current form to report solely to the RO or to become solely a function of the RO. A joint hiring approach by the two Boards seems like a sensible way to provide both corporations significant authority over an already semi-autonomous unit of the CAISO. Today DMM reports directly to the Board rather than the CEO, consistent with FERC's directives. The Launch Committee is recommending a change to DMM's reporting structure, moving to a shared joint reporting with the CAISO Board and the RO Board (See Chapter 4). We seek further feedback from stakeholders and all affected parties about this recommendation and the best way to structure DMM's responsibilities in Step 2. We believe this topic deserves a deeper evaluation, including of the relevant FERC precedents and directives, than the Launch Committee has been able to devote to the topic to date. We also recognize that there may be a variety of other ways to organize market monitoring in Step 2 that we have not considered, and we welcome initial feedback in that regard.
- (3) *MSC*: At present, the members of the Market Surveillance Committee, an independent body of industry experts that critiques and comments on CAISO market issues and market monitoring, are jointly selected by the CAISO Board and the WEM GB. We recommend retaining this approach in Step 2, with the RO Board supplanting the WEM GB.
- (4) *Ongoing Performance Evaluations*: We recommend that the contract between the RO and the CAISO formalize an opportunity for the RO Board to provide an annual performance evaluation of the CAISO management personnel subject to the RO's non-controlling hiring input above, including the CAISO officer(s) (and business units under them) overseeing market services as well as the DMM. The CAISO Board and CEO should consider this evaluation as important advisory input into their decisions about matters such as bonus compensation.

We have considered alternatives, such as recommending a *controlling* interest by the RO in CAISO management or staffing hires, or shifting more staff and business units from the CAISO to the RO, or duplicating more CAISO staff and business units at the RO. We mention those alternatives while recognizing and endorsing the need to be sensitive about how to portray potential corporate restructuring and employment. Talented, dedicated staff currently and ably

perform the services we describe here, and the Launch Committee anticipates that the overall size of the combined CAISO and RO is likely to be higher than the CAISO alone at present.

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

We summarize the approach described above in the following table:

**Proposed RO Input on CAISO Management**

<b>Role</b>	<b>CAISO Board input</b>	<b>RO Board input</b>
<b>CEO</b>	Final selection authority	Advisory input and direct inclusion in interview and discussion process; no vote
<b>Markets VP (assuming one)*</b>	Veto authority	Conditional approval authority: conditioned on no CAISO Board veto
<b>Non-market VPs*</b>	Final approval authority	Consultation to address any material concerns for verticals with mixed functions affecting markets
<b>DMM and MSC</b>	Joint selection authority	Joint selection authority
<b>All other positions subject to current CAISO Board input</b>	Sole authority	None

\*No change to CAISO management's process to recruit, vet, interview, and consider Vice President candidates; the sole effect of proposal is on Board approval stage.

*iii RO Dedicated Staff and Costs*

In this subsection, we sketch out a preliminary proposal for how to build out the RO staff under both Options 2.0 and 2.5. We emphasize that this preliminary proposal is not a recommendation yet, but rather an illustration of an adequate but fairly minimal level of dedicated staff that the Launch Committee believes would be appropriate for the two options. This exercise has allowed us to develop an illustrative cost estimate for the two options and to identify the likely different cost centers and incremental cost of moving from Option 2.0 to 2.5. This cost estimate is not a budget and not a recommendation: it is similarly a preliminary attempt to describe in some concrete detail the size, functions, and potential cost of the RO.

We note the connection between this preliminary proposal and the recommendation above about RO input into CAISO management hiring decisions. Avoiding duplicative or parallel business units at the two corporations will be easier to achieve if the RO and stakeholders have higher

confidence that the remaining CAISO management and staff will be somewhat responsive to the RO through its dotted-line authority recommended above. Thus, if the recommendation above is not adopted, we anticipate that stakeholders and the RO are more likely to seek to increase the size of the staff dedicated to the RO alone, and hence in the overall personnel payroll of Step 2.

#### *Distinguishing Features of Option 2.5*

In addition to assuming that the recommendation above about the RO Board's input in CAISO management hires has been adopted, in the cost estimate below, we have distinguished the RO's role in Option 2.5 from Option 2.0 in the following manner: in Option 2.5, unlike in Option 2.0, a primary function of the RO would be vendor management. This point is fundamental. The RO is not a second independent system operator or a competing organization to the CAISO; the RO would need sufficient staffing not to duplicate most of the CAISO various roles and business units, but rather to ensure that the CAISO is performing such services adequately under the terms of the vendor services contract and that the RO is adequately protected from litigation or other potential liabilities. Those liabilities arise from the RO's position as the entity legally responsible for providing market services and complying with associated contracts, tariffs, business practices, laws, and regulations.

In addition, we assume that under the terms of the vendor services contract between the RO and the CAISO, the RO would retain the responsibility to evaluate periodically the performance of the CAISO as a vendor and to elect to establish some discrete services or business units directly under the RO, to be paid for by the RO, rather than continue to contract for them from the CAISO. Such services might include, for example, information technology.

Our preliminary proposal assumes that the vast majority of existing CAISO employees involved in market operations and market design remain at the CAISO, while the RO has input on the senior management team in charge of much of those functions and secures its own legal team and limited market expert team to evaluate the CAISO's performance as a vendor.

What is not included here? We do not in this preliminary proposal suggest on which "side of the fence" (the RO or the CAISO) professional stakeholder facilitators or subject-matter experts closely involved in stakeholder processes should reside. A recommendation about where to house staff closely involved in stakeholder processes requires further dialogue with stakeholders and the CAISO, but we note, at last conceptually, how shifting the responsibility and housing of the stakeholder process may not result in a major incremental cost to market participants, since the cost for the current stakeholder process is already embedded in the GMC and other fees paid by market participants.

This preliminary proposal also does not address incremental services beyond EDAM/WEIM and any associated staff. We leave that analysis to other parties in the future.

Lastly, the illustrative cost estimates consist mostly but not purely of incremental costs. For example, the cost to market participants of the current WEM GB today is about \$640,000 annually, including compensation paid to GB members. For a governing board with two additional members, more responsibilities, and one to two dedicated support staff, we estimate an

annual cost of \$1.25 to \$1.5 million. Our focus here is to float an organizational size that is seaworthy, as it were, and to illustrate the costs of being at least minimally seaworthy. These costs are mostly but not strictly incremental to the cost of running the WEIM and the upcoming cost of running EDAM. They include major non-labor costs as well.

### *Option 2.5 Roles*

For Option 2.5, we tentatively propose that the RO likely has a need for at least one employee in the following roles. We indicate in footnotes here which roles we anticipate would not be needed or would be needed in smaller numbers in Option 2.0:

- A small executive and administrative staff, including a corporate secretary role focused on corporate obligations
- Lawyers (in-house or on retainer) with a non-conflicted ethical and professional responsibility toward the RO and not toward the CAISO<sup>22</sup>
- Actual market experts on staff to help the Board exercise oversight responsibility over the CAISO as market operator, including compliance with the tariff and business practice manuals<sup>23</sup>
- Compliance staff who are FERC regulatory experts to assist with FERC tariff compliance (but perhaps not NERC or WECC reliability compliance *per se*)<sup>24</sup>
- Regulatory affairs to monitor Congress, states, and FERC<sup>25</sup>
- Corporate finance staff who manage budgets and accounting
- A communications and external affairs desk<sup>26</sup>
- Human resources staff, to the extent staff size grows large enough<sup>27</sup>
- External audit staff or consultants to help audit the CAISO's performance<sup>28</sup>
- Staff or one-off consultants to vet elements of vendor management (e.g., to vet a hypothetical CAISO claim about the impracticality of an IT component of market design)

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

- An IT department
- Markets-related finance staff who manage market settlement distributions, allocations, and dispute resolution processes

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<sup>22</sup> We anticipate a smaller legal team would be needed in Option 2.0.

<sup>23</sup> Since tariff compliance would not implicate the RO in Option 2.0, we anticipate fewer staff needed in this business unit. We also note that the WEM GB today has a market expert under contract, and so the incremental cost of this business unit in Step 2 is for staff or costs beyond the current market expert cost in WEIM/EDAM.

<sup>24</sup> This business unit is probably not needed in Option 2.0, given the RO's lack of direct liability to FERC.

<sup>25</sup> This business unit could probably be smaller in Option 2.0.

<sup>26</sup> In any option for Step 2, we anticipate that the RO would want its own independent capacity to communicate its positions and interface with external audiences.

<sup>27</sup> At least in Option 2.0, this function can probably be filled by the RO's executive director, corporate secretary, or legal counsel.

<sup>28</sup> This function may not be needed in Option 2.0.



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

We express some uncertainty about some existing business units at the CAISO and whether the RO would need its own dedicated staff. These include a significant stakeholder process-related team (mentioned above), a customer relationship team (market participant account executives who track market operational questions and facilitate resolving disputes), and a markets policy staff. We seek stakeholder feedback about which business units or functions listed or not listed here and contained or not contained in the preliminary cost estimate below, should be considered essential to standing up and running the RO in Step 2. We ask stakeholders to provide this feedback keeping in view the costs of more personnel and the recommendation above for RO input into CAISO management hires.

#### *Summary of Illustrative Cost Estimate*

The illustrative estimates below indicate an all-in annual cost for Option 2.5 of about \$24 million and for Option 2.0 of about \$14 million, with an all-in cost difference of about \$10 million annually. The RO will have limited staffing at the outset with an estimated initial annual cost of \$1.25 to \$1.5 million, which could increase to \$10 to \$14 million over time as the organization develops.

Apart from seven paid board members in both options, the Option 2.5 illustrative estimate encompasses 42 full-time employees and the Option 2.0 illustrative estimate encompasses 23 full-time employees. In other words, Option 2.5 reflects an organization about twice the size as the RO in Option 2.0.

Labor costs in Option 2.5 are estimated at about \$18 million, and non-labor costs are estimated at about \$6 million. Labor costs in Option 2.0 are about \$11 million, and non-labor costs are about \$3 million.

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

We have indicated a number of functions that could be outsourced, as well as their potential cost. We have also estimated a facility cost based on research into commercial leasing costs in the greater Sacramento area: approximately \$400,000 per year. (This assumes a \$2.50/square-

foot/month cost, plus \$0.25/square-foot/month for utilities, for an office space of 10,000 square feet, plus a 21% contingency margin.)

The two main cost differences between the options are the legal department and the cost of corporate insurance. The other major cost centers for Option 2.5 are the vendor management business unit and corporate affairs.

The size of the legal department in Option 2.0 is about two-thirds its size in Option 2.5 (14 people versus 20 people). We note that this rough attempt at calculating a staff size may be revised in either option to substitute more subject matter experts who are not attorneys. We have attempted to reflect in Option 2.0 that the role of the RO in exercising its sole 205 rights may require intensive legal advice and assistance, even in the absence of the institutional liability and vendor management role of the RO in Option 2.5. But we seek stakeholder feedback on whether the overall staff size and the legal department in Option 2.0 appears too large for a seaworthy organization.

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

Option 2.5							
	Organization FTE Cost				Outsourcing Costs	Total	Total by Function
	#	Salary	Fully Loaded Cost (1.5x)	Total			
<b>1. RO Staffing Cost</b>				1.5			
<b>Board</b>							<b>\$1,500,000</b>
Board Members	7	\$100,000	\$150,000	\$1,050,000		\$1,050,000	
Board Support Staff	2	\$150,000	\$225,000	\$450,000		\$450,000	
<b>Executive Staff</b>							<b>\$1,575,000</b>
Executive Director	1	\$600,000	\$900,000	\$900,000		\$900,000	
Executive Assistant	1	\$150,000	\$225,000	\$225,000		\$225,000	
Corporate Secretary	1	\$300,000	\$450,000	\$450,000		\$450,000	
<b>Legal</b>							<b>\$7,560,000</b>
General Counsel	1	\$400,000	\$600,000	\$600,000		\$600,000	
Assistant Counsel	1	\$350,000	\$525,000	\$525,000		\$525,000	
Lawyer	12	\$300,000	\$450,000	\$5,400,000		\$5,400,000	
Legal Operations Mgr	1	\$150,000	\$225,000	\$225,000		\$225,000	
Paralegal	2	\$120,000	\$180,000	\$360,000		\$360,000	
Legal Assistant	3	\$100,000	\$150,000	\$450,000		\$450,000	
<b>FERC Compliance</b>	1	\$250,000	\$375,000	\$375,000		\$375,000	<b>\$375,000</b>
<b>Regulatory Affairs</b>							<b>\$1,125,000</b>
Federal RA Director	1	\$250,000	\$375,000	\$375,000		\$375,000	
State RA Manager	2	\$250,000	\$375,000	\$750,000		\$750,000	
<b>Market Vendor Mgmt</b>							<b>\$2,400,000</b>
Market Experts	2	\$300,000	\$450,000	\$900,000		\$900,000	
External Audit (of CAISO)	2	\$250,000	\$375,000	\$750,000		\$750,000	
Other RO-CAISO Contract Oversight Staff	2	\$250,000	\$375,000	\$750,000		\$750,000	
<b>Corporate Affairs</b>							<b>\$3,200,000</b>
Finance							
Finance	1	\$300,000	\$450,000	\$450,000		\$450,000	
Accounting / Payroll	1	\$200,000	\$300,000	\$300,000		\$300,000	
Communications			\$0				
Communications Director	1	\$250,000	\$375,000	\$375,000		\$375,000	
Social (outsourced)					\$250,000	\$250,000	
Graphics					\$250,000	\$250,000	
HR							
HR Director	1	\$250,000	\$375,000	\$375,000		\$375,000	
Recruiter	1	\$200,000	\$300,000	\$300,000		\$300,000	
HR Consultant (initial set up of docs/tools/processes)					\$300,000	\$300,000	
IT							
IT Director	1	\$250,000	\$375,000	\$375,000		\$375,000	
Desk Top Support / support	1	\$150,000	\$225,000	\$225,000		\$225,000	
<b>Total Cost Inhouse RO (incl. 7 Board Members)</b>	<b>49</b>	<b>\$ 5,870,000</b>	<b>\$8,805,000</b>	<b>\$16,935,000</b>	<b>\$800,000</b>	<b>\$17,735,000</b>	<b>\$17,735,000</b>
<b>2. RO Non-Labor Costs</b>							
<b>Infrastructure (Office Lease)</b>							<b>\$400,000</b>
Unused 1					\$400,000	\$400,000	
<b>IT Equipment</b>							<b>\$1,166,500</b>
Staff Equipment (laptop, phones)	49	\$ 5,000		\$245,000		\$245,000	
Office Equipment (desks, chairs, other)	49	\$ 2,500		\$122,500		\$122,500	
Software Licenses						\$0	
Desktop	49	\$ 1,000		\$49,000		\$49,000	
Legal record management	1	\$ 500,000		\$500,000		\$500,000	
HR	1	\$ 250,000		\$250,000		\$250,000	
<b>Insurance</b>		\$ 2,000,000				\$2,000,000	<b>\$2,000,000</b>
<b>Travel</b>		1,470,000				\$1,470,000	<b>\$1,470,000</b>
<b>Entertainment (Meetings, Conferences)</b>		\$ 800,000				\$800,000	<b>\$800,000</b>
<b>Conferences / Prof. Development</b>		\$ 300,000				\$300,000	<b>\$300,000</b>
<b>Total RO Non-Labor Costs</b>		<b>\$ 5,328,500</b>	<b>\$0</b>	<b>\$1,166,500</b>	<b>\$400,000</b>	<b>\$6,136,500</b>	<b>\$6,136,500</b>

Another way to think about these costs is how they might translate in relationship to the Grid Management Charge (GMC). These costs would only be able to be presented as “incremental” to the CAISO GMC as it is not certain how CAISO would choose to allocate these costs at this point. Nevertheless, the incremental cost in a GMC calculation of the two options would be predicated on the footprint and the load involved in that footprint. If one assumes a “conservative” notional footprint involving the utilities who have either currently committed to join EDAM or indicated a “leaning” to EDAM, the incremental cost in a GMC representation of Option 2.0 is estimated to be approximately \$0.0281/MWh. The incremental cost of Option 2.5 in this “conservative” footprint is estimated as \$0.0498/MWh.

If one assumes a more robust footprint that involves most of the utilities in WECC west of the Rockies, the incremental cost of Option 2.0 is estimated at \$0.0182/MWh and the incremental cost of Option 2.5 estimated at \$0.0322/MWh.<sup>29</sup>

## **6. Retaining an Integrated Tariff**

### **a. History and Evolution of Tariff Scope of Authority**

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

#### *i The Transitional Committee and Creation of the EIM Governing Body*

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

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

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<sup>29</sup> This calculation is based on WECC load data for 2030, using a 2x load factor to reflect anticipated costs applying to both load and generation.

a key advisory role. For initiatives that include elements of both, the role of the EIM Governing Body would depend on the primary reason for the initiative – was it driven primarily by EIM or by other factors?<sup>30</sup>

These categories of decision-making were often referred to as the “but for” and “primary driver” test. If the market rule would not exist “but for” the EIM, the issues was under the primary authority of the EIM Governing Body. Also, if the underlying rationale for moving a market initiative forward was the proper functioning of the EIM, then too the market rule would be under the primary authority of the EIM Governing Body. If approved by the Governing Body, the rule would go on the Board consent agenda and only affirmative negative action by the Board could prevent approval. The Transitional Committee went as far as to note that “pocket veto” of the Board were not permitted.<sup>31</sup>

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

*ii Establishment and Recommendations of the Governance Review Committee and the “Applies to” Test*

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

The GRC recommended the “joint authority” model. Specific to scope issues, the GRC recommended that the scope of authority be broadened by the “applies to” test, which moved from limited EIM rules, to also include more applicable market rules. As stated by the GRC:

Joint authority extends to all proposals to change or establish any CAISO tariff rule(s) applicable to 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. This scope excludes from joint authority, 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. This definition would establish a clear and straightforward rule that is easier to interpret and apply than the previous definitions we have considered. If a rule applies to an EIM Entity or to market participants within an EIM Entity BA in their capacity as EIM participants, then it is

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<sup>30</sup> *Final Proposal, Long Term Governance of the Energy Imbalance Market (August 9, 2015)* at 19-20. The proposal also included treatment of Category 3 and 4 “hybrid” issues that affected both markets, but these hybrid categories followed the same guiding principles.

<sup>31</sup> *Id.*, fn 6.

subject to joint authority. If a rule does not apply to such entities in that context, then the approval authority is held solely by the Board.<sup>32</sup>

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

### *iii Pathways “Step 1” Proposals and Primary Authority*

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

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

### **b. Tariff Authorities and the RO**

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

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

- ✓ *RO Sole Authority*: Generally speaking, if an operation of a tariff provision governs the market operation, obligation of the market participant, or the market operator, in its capacity as RO market participants, the section will be elevated from primary authority under the Step 1 model to RO *sole* authority. The elevation of market functions to sole authority is a central feature of the Step 2 progression toward RO independence.

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<sup>32</sup> Western EIM Governance Review, Part 2 Draft Final Straw Proposal

- ✓ *CAISO Sole Authority*: If operation of a tariff provision governs an issue that applies to only the CAISO BAA or the CAISO-controlled grid, the section will remain within CAISO *sole* authority. This is not a change from the current governance structure and our recommendations in Step 1.
- ✓ *Shared Authority*: If operation of a tariff provision governs operation of a market rule, market operator obligation, or market participant obligation that may fall in either of the above categories, or is a matter of potential corporate or financial consequence to the RO or CAISO, the section will be treated as shared authority, similar to the joint authority existing today, but accounting for the new RO structure.

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

### **c. Examples of Decisional Classification**

The Launch Committee explored the existing CAISO tariff to assess how the tariff might be separated or organized to delineate areas of RO sole, CAISO sole, and shared authority more clearly. This was discussed at length in the public Tariff workshop held August 5, 2024.<sup>33</sup> An illustrative analysis was included for that meeting.<sup>34</sup> As discussed above, the Launch Committee anticipates that this work product would only serve as a starting point. We expect the RO/CAISO stakeholder process to refine any recommendations, and indeed as we note, consider tariff reorganization to provide further clarity.

#### *i RO Sole Authority*

Presently there are two sections of the tariff that fit in the sole authority of the RO without modification (sections 29 and 33). Those two sections address the operation of the WEIM and EDAM. Since these sections focus solely on the operation of markets for non-CAISO entities, they are immediately and clearly separable as RO sole authority.

#### *ii CAISO Sole Authority*

There are 18 sections of the tariff that govern the operation of CAISO-only activities.<sup>35</sup> For example, procurement of reliability must-run resources to provide reliability to serve CAISO

<sup>33</sup> <https://www.westernenergyboard.org/wwgpi>.

<sup>34</sup> <https://www.westernenergyboard.org/wp-content/uploads/CAISO-Tariff-Analysis.pdf>

<sup>35</sup> These include sections, 2 Access to the California ISO Controlled Grid, 3 Local Furnishing Other Tax Exempt Bond Facility Financing, 5 Black Start and System Restoration, 8 Ancillary Services, 9 Outages, 16 – 19 (Existing Contracts; Transmission Ownership Rights; Reliability Coordinator (note section 18 is not used)), 23 – 26 (Categories of Transmission Capacity; Comprehensive Transmission Planning Process; Interconnection of Generating Units and Facilities; and Transmission Rates and Charges), 28 Inter-Scheduling Coordinator Trades, 36 Congestion Revenue Rights, and 40 – 43a (Resource Adequacy Demonstration for Scheduling Coordinators in the CAISO Balancing Authority Area; Procurement of



BAA load, resource adequacy within the CAISO, interconnection to the CAISO controlled grid, and the CAISO's transmission planning process will not directly affect RO entities in their role as RO entities. These activities are particular to the operation and planning of the CAISO as it relates to the CAISO BAA. Since the activities are CAISO specific, they would fall under CAISO sole authority. On a comparable basis, the RO does not have an oversight role in the resource procurement, interconnection, and transmission provision of the non-CAISO Balancing Authority Areas participating in the WEIM and EDAM.

*iii Shared Authority*

There are seven sections of the tariff that govern general relationships and responsibilities in the tariff. These include the following: items like definitions, credit worthiness, and confidentiality among others.<sup>36</sup> Since these sections govern general participation in any of the markets, they are not easily separable and would remain under shared authority.

*iv Organization of Tariff Sections to Provide Greater Clarity*

Preliminary analysis of the tariff reveals 14 sections that could be separated to create a scope that would be RO sole authority while moving CAISO specific provisions to a section that would be CAISO sole authority.<sup>37</sup> For example, Section 31 addresses the day-ahead market. Many of the elements in this section apply to both the EDAM and the CAISO DA Market. Some of the language is specific to activities that only occur in the CAISO market and do not occur in the EDAM. These include elements such as ancillary services, reliability must-run dispatch, and residual unit commitment among others. While it would be an intensive exercise, the elements specific to CAISO-only operation could be extracted and moved to their own section or another existing CAISO sole authority section. With these provisions removed, this would enable the current section to be placed under RO sole authority. In separating these sections, as BPA pointed out in their comments, care will need to be taken to ensure that elements which impact the system marginal cost of energy or congestion costs between areas have adequate oversight from both the CAISO and RO. This form of CAISO tariff restructuring is not unprecedented. In FERC Docket No. ER05-1501, the CAISO presented its Simplified and Reorganized Tariff. The filing sought to organize and consolidate the provisions of the tariff into a more accessible document that would serve as a baseline for the new market structure, without amending any of the substantive provisions.

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Reliability Must-Run Resources; Adequacy of Facilities to Meet Applicable Reliability Criteria; and Capacity Procurement Mechanism)

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

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

With the proposed delineations and decisional classification elements above, we expect to reduce the challenge of presenting a set of clear, transparent, and fully separable elements especially with a new separate sole authority entity, the RO. Using the proposed elements above and continuing to use the decisional classification test will enable forward progress.

#### **d. Process Enhancements**

No tariff analysis will be static. Therefore, the Launch Committee is proposing process enhancements that invest stakeholders with more input into how scope and category delineations are made. The Launch Committee recommends that the Stakeholder Process Work Group consider a change to the current decisional authority process. The current process outlined in “Decisional Classification Guidance for the WEM Governing Body” (7/17/2024 v.1.4) is a process run by CAISO management and approved by the CAISO Board and/or WEM Governing Body currently. The change we are recommending be explored is migrating this process to the stakeholder process and for it to be a decisional item for stakeholders to present to the CAISO Board and RO Board.

The Stakeholder Process Work Group who has been tasked with helping shape an enhanced stakeholder process (outlined in Chapter 5) has not had an opportunity to consider this change but can take it up as conversation and work refining the RO stakeholder process progresses. The following paragraphs lay the groundwork to begin this conversation with stakeholders.

Migrating the decisional authority responsibility from CAISO management to stakeholders represents a move toward transparency and independence for all those that are impacted by the decision-making process. For each change, which requires decisional classification (e.g., tariff change, BPM update, etc.) an initial action within the stakeholder process will be a Stakeholder Recommendation for Decisional Authority. The Stakeholder Decisional Authority Recommendation will be presented to the CAISO Board and RO Board for initial approval.

Commonly with policy development efforts, the potential for scope to expand or contract during development may create a need to change the decisional classification. As a result, we are recommending an additional step in the decisional classification process to introduce a “re-assessment” or “confirmation” of decisional classification to take place when a final proposal is made to the CAISO Board and RO Board. Details for how this process could be executed must wait for further development by the stakeholder process itself.

As acknowledged above, additional details around this idea will need to be developed, including a dispute resolution process to ensure that timely decisions are made, and initiatives can move forward.

### **7. Balancing Authority Separation**

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

We have endeavored in this proposal to create a bundle of elements of institutional independence for the RO, energy market participants, and stakeholders in general. The Launch Committee has not placed its faith in any single element to ensure independent governance, such as a bare vesting of sole 205 rights in the RO Board. In our view, a number of complementary elements of independence are needed to reinforce one another and deliver on the objectives of the Pathways Initiative. No single element is sufficient.

In that spirit, we seek stakeholder feedback on how the various elements contained in this proposal address a concern expressed by some stakeholders about the CAISO's ongoing separate responsibilities within the same market footprint, particularly its balancing authority (BA) responsibilities. We offer two additional recommendations here that address the multiple "hats" worn by the CAISO within the same market footprint.

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

We note that this recommendation does not affect or dilute the CAISO or any BA's responsibility and authority to carry out its functions. Rather, it directs the RO to create a better forum where all BA responsibilities and concerns can be identified more clearly and addressed.

*Recommendation:* The CAISO, in consultation with stakeholders, should evaluate and consider whether there are additional physical or informational firewalls between its BA operators and market operators that could be adopted or strengthened. The goal of any potential changes should be to increase the structural separation between the two groups and increase stakeholder confidence in such separation and the independence of action that it may support.

We understand that CAISO's reliability coordination operations team occupies a separate room within the Folsom control room from the BA/transmission operators and the market operators (who are on the same control room floor), and that some data restrictions apply to three separate group of operators. DMM offers another example of mild physical separation; as we understand it, DMM staff are located in a separate area of the Folsom office building, albeit without restricted access that would prevent other CAISO employees from entering the work area.

The Launch Committee has given some thought to whether FERC's model of functional separation might be a good approach to address stakeholder concerns about the CAISO's simultaneous BA and market operator roles. This approach is sometimes referred to as "badging," for the color-coded badges that restrict vertically integrated transmission owners' merchant function employees from mingling with their transmission function employees and undermining transmission open access principles. We have *not* concluded that the EDAM/WEIM

context is analogous enough to the separation of functions requirements of FERC (the standards of conduct for transmission providers) to lean heavily into that approach.

In short, the challenge in EDAM/WEIM seems to be more about competing CAISO interests that manifest at the managerial level and in proceedings to reform market design, as well as a lack of transparency about when a CAISO policy position about a potential tariff change relates primarily to its BA responsibilities versus its other responsibilities. Operator-level separation of functions will have only a limited (but possibly still positive) effect on that dynamic. Our proposal above about RO input on CAISO management hires may address this dynamic more squarely.

In conclusion, we seek stakeholder feedback on the recommendations above and how to reasonably address this topic.

## **CHAPTER 2: FORMATION OF THE REGIONAL ORGANIZATION**

### **SUMMARY OF RECOMMENDATIONS**

Setting up the RO involves three primary decisions: the form of incorporation, the state of incorporation, and the location of its principal place of business. The Launch Committee recommends incorporating the RO as a 501(c)(3) nonprofit corporation. Nearly all regional organizations are structured as nonprofits, either under 501(c)(3) or 501(c)(4), and using a 501(c)(3) will preserve the option for tax-exempt financing if needed in the future. The Committee also recommends incorporating the RO in Delaware, a neutral choice for the West that offers flexibility, ease of incorporation, and the most robust legal framework for corporations, along with an expertly trained judiciary. Additionally, several existing regional organizations are incorporated in Delaware. Finally, the recommended location for the RO's principal place of business is Folsom, due to the expected close interactions with CAISO during Step 2.0/2.5 and potential further integration in Step 3. However, board meetings should rotate among the market-participating states.

### **PROPOSED FORM OF CORPORATE ORGANIZATION**

The Launch Committee has examined various types of exempt organizations and proposes that the Regional Organization (“RO”) be formed as a not-for-profit corporation and that it seek tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), as a public charity under Section 509 of the Code. A public charity will provide the organization and various third parties with tax benefits along with assurances to such persons and those working within the RO that its purposes will serve the public benefit. A 501(c)(3) will also preserve the potential availability of tax-exempt financing for long term debt.

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

#### **1. Purpose of Nonprofit Organization**

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

The formation of a nonprofit corporation, by itself, does not result in the corporation being exempt from federal income taxation. With certain exceptions, in order to have exempt status, an

organization must file an application with the Internal Revenue Service. There are various types of organizations that are exempt from taxation. Among these types, most regional organizations have used three forms<sup>38</sup> of tax-exempt status set forth in the Code:

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

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

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

A Section 501(c)(3) organization may conduct revenue-generating activities, even if such activities are a substantial part of its activities. However, if such activities are a trade or business that is regularly carried on and that is not substantially related to an organization’s exempt purposes, such activities could be treated as an unrelated trade or business and be subject to the tax on unrelated business taxable income. If such unrelated activities become substantial, they could adversely impact the exempt status of an organization. For example, the U.S. Supreme Court has held that “the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption, regardless of the number or importance of truly educational purposes.”<sup>39</sup>

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

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

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

<sup>39</sup> Better Business Bureau v. United States, 326 U.S. 279 (1945).

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

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

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

A Section 501(c)(4) organization must operate exclusively for the promotion of social welfare. This requirement is met if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. A Section 501(c)(4) organization must be operated primarily for the purpose of bringing about civic betterments and social improvements.

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

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

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

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

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

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

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

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

## **2. Other Key Considerations in Selecting a Nonprofit Form of Organization<sup>46</sup>**

### **a. Activities of the Organization**

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

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

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<sup>43</sup> [SPP Wavelength \(arcgis.com\)](https://www.spp.org/)

<sup>44</sup> Section 2, [WPP Restated Bylaws May 30 2023 approved.pdf \(westernpowerpool.org\)](https://www.wppool.org/wp-content/uploads/2023/05/WPP-Restated-Bylaws-May-30-2023-approved.pdf)

<sup>45</sup> [WPP Restated Bylaws May 30 2023 approved.pdf \(westernpowerpool.org\)](https://www.wppool.org/wp-content/uploads/2023/05/WPP-Restated-Bylaws-May-30-2023-approved.pdf)

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

<sup>47</sup> *Better Business Bureau v. United States*, 326 U.S. 279 (1945).<sup>48</sup> There are limited exceptions under (c)(4) for certain contributions to volunteer fire companies and war veterans organizations.



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

## **b. Federal Tax Consequences**

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

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

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

## **c. Lobbying and Policy Advocacy**

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

A Section 501(c)(3) organization may not engage a "substantial part" of its activities" in the "carrying on propaganda, other otherwise attempting, to influence legislation...."<sup>49</sup> An entity that "conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax."<sup>50</sup> The "substantial part" test is a rather subjective test, however, a Section 501(c)(3) organization may make a Section 501(h) election to be subject to a more objective, numeric limit on lobbying expenditures. This permitted lobbying amount is based

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

<sup>49</sup> 26 U.S. Code §501(c)(3).

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

on a percentage of exempt purpose expenditures subject to a total aggregate limit of \$1,000,000.<sup>51</sup> The Code also limits “grass roots” expenditures to 25% of total permitted lobbying expenditures.<sup>52</sup> Lobbying expenses exceeding the permitted amounts are subject to tax, and if the amounts exceed certain levels, such excess expenditures could result in a loss of charitable status.<sup>53</sup>

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

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

#### **d. Tax-Exempt Financing**

A Section 501(c)(3) organization may qualify for tax-exempt financing<sup>56</sup> using “qualifying private activity bonds” under IRS Code section 103(a),<sup>57</sup> which can reduce the costs of financing capital investments, such as software systems. This type of financing, however, is subject to numerous limitations that could reduce their desirability.

The CAISO, as a Section 501(c)(3) organization, used tax-exempt bonds for its MRTU software investment and its Iron Point building. Tax-exempt financing subjects an organization to a variety of obligations and limitations, including for example, restrictions on private use (*i.e.*, use outside of its exempt purpose). The CAISO deployed tax-exempt financing until 2021, when non-exempt bond rates declined substantially because low interest rates could be achieved without the limitations of tax-exempt financing.

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

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

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

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

<sup>54</sup> [Lobbying | Internal Revenue Service \(irs.gov\)](#)

<sup>55</sup> [Lobbying | Internal Revenue Service \(irs.gov\)](#)

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

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

### 3. Discussion

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

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

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

Recognition under Section 501(c)(3) provides a full complement of nonprofit benefits, including tax-exempt status, tax-exempt financing, and the ability to receive deductible charitable contributions.<sup>58</sup> The only material trade-off is the limitations on lobbying and political activities. The CAISO and two other regional organizations have made this trade-off, and the CAISO reports no disadvantage stemming from its limits on lobbying and its inability to engage in political activities. Moreover, because the RO will span several states, taking these political factors entirely out of the equation for the RO may be beneficial.

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

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

## STATE OF INCORPORATION: DELAWARE

The RO could incorporate in any Western state where members' service territories are located. Incorporating in a specific Western state, however, could present questions related to perceptions rather than valid legal concerns, but which may result in some increased costs. Stakeholders in other states may question the RO's independence if it appears to be tied to any particular member state's court system and rule of law, especially if the state of incorporation had little to no contact with the RO due to changing footprint within the market. The Launch Committee has not, however, investigated the various advantages or disadvantages in specific areas of law (e.g., employment) of incorporating in Delaware or any individual Western state.<sup>59</sup>

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

Delaware does not have a separate nonprofit statute. Instead, nonprofits in Delaware are formed as nonstock corporations under the public benefit provisions of its corporate code.<sup>60</sup> In addition to the Delaware General Corporations Code, the Delaware Chancery Court has developed controlling common law principles relied upon by entities to attract strong leaders to serve as directors and officers.

The benefits of incorporating in Delaware include simplicity in corporate formation and operation. Corporate governance based on Delaware law is permissive, rather than prescriptive. No prior approval is needed from state agencies (such as is required in CA) to form a nonprofit in Delaware. Delaware does not require that nonprofits formed under Delaware law register with and file annual financial reports with the attorney general (unless conducting activities in Delaware, when filing of the federal Form 990 is required.) Therefore, the initial start-up can be quite simple, which may provide a benefit to the RO, since the timing of our nomination and retention of directors may be fluid over the next 18 months. Delaware nonstock corporations that are exempt from federal income tax are automatically exempt from Delaware corporate income tax and are exempt from Delaware franchise tax. It is important to note, however, that the state designated as the principal place of business and locations where property is held by the RO may indeed apply their own sales

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<sup>59</sup> See generally, "Leitner, J.J. and McGrory, L, "The 'Delaware Advantage' Applies to Nonprofits, Too", *Business Law Today*, Nov., 2016, available at: [https://www.americanbar.org/groups/business\\_law/resources/business-law-today/2016-november/the-delaware-advantage/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2016-november/the-delaware-advantage/);

<sup>60</sup> See 8 Del. C. § 361, <https://casetext.com/statute/delaware-code/title-8-corporations/chapter-1-general-corporation-law/subchapter-xv-public-benefit-corporations>.

and property tax laws, rules and regulations, requiring separate applications for state tax exemption; these applications are often granted for activities consistent with the federal exemption. There are some built-in costs for out of state nonprofits that choose to form as Delaware entities, as is true in any state in which the corporation is registered to do business as a foreign corporation, such as the requirement to maintain a registered agent in Delaware and the likelihood of having to pay fees in both Delaware and all states in which it is actively doing business, or at least the state of domicile (*i.e.*, the principal place of business.)<sup>61</sup>

## **PRINCIPAL PLACE OF BUSINESS: FOLSOM, CALIFORNIA**

The Launch Committee recommends that the RO adopt Folsom, California as the principal place of business. A corporation's principal place of business is generally the location where its business operations are managed. Courts apply the "nerve center" approach to make this determination. The U.S. Supreme Court concluded that principal place of business

[R]efers to the place where a corporation's officers direct, control, and coordinate the corporation's activities. In practice it should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the "nerve center," and not simply an office where the corporation holds its board meetings.<sup>62</sup>

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

Establishing a principal place of business has three primary implications for a corporation. First, tax benefits vary by state. Because the RO will be a nonprofit corporation, and since some state taxes (sales and property taxes) will only be exempt upon application and approval by the domicile state and local authorities, state-by-state and local tax benefits or exemptions will differ. Second, if a Section 501(c)(3) organization is used, there are different registration and reporting requirements among the states with respect to charitable trusts and solicitations. California, for example, has the most expensive laws, and organizations that operate in California are subject to the oversight by the California Attorney General, which actively tries to impose California law to organizations formed under other state's laws. Third, having a principal place of business in California, would likely subject the RO to the jurisdiction of the California courts and make it more likely that lawsuits would be filed in California.<sup>63</sup>

The RO, in theory, could establish a headquarters anywhere in the Western states where it could house its board meetings, employees, and operate its stakeholder processes. In a model where the RO's business is closely integrated with CAISO operations—close collaboration between employees, decision-making for shared functions, integrated stakeholder processes, and operations

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<sup>61</sup>See Delaware Dept. of Revenue website re required tax filings, <https://revenue.delaware.gov/business-tax-forms/non-profit-corporations/>.

<sup>62</sup> *Hertz Corp v. Friend*, 559 U.S. 77 (2010).

<sup>63</sup> In contrast, choice of law to govern a dispute may be specified by contract.

in Folsom – justifying a headquarters in another state could prove challenging and result in incremental costs for RO operation. Such an ongoing relationship also could trigger qualification or registration in California and the oversight of its Attorney General.

Acknowledging these factors, the Launch Committee recommends establishing the RO headquarters, and thus principal place of business, to be decided upon seating of the initial RO board, but that strong consideration should be made for domiciling the organization and most or all of its staff in or near Folsom, California. While the close integration with CAISO operations and related cost efficiencies strongly suggests this result, it will no doubt raise concerns regarding neutrality and true independence from California state government. The formation of the RO under Delaware law and broad governance principles incorporated into governing documents are intended to partly dispel these concerns. These perceptions, while they cannot be eliminated, can be mitigated into the future by (1) a board nomination process and composition which draws nominees from areas throughout the market footprint and independent of any single state; (2) an advisory board of state regulators representing all affected states; (3) rotating monthly (or quarterly) public board meetings around the West; and (4) facilitating stakeholder processes, where feasible, in other states.

## CHAPTER 3: REGIONAL ORGANIZATION GOVERNANCE

### INTRODUCTION

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

The Launch Committee formed the RO Governance Work Group to address governance related issues such as RO Board selection, seating and structure, its relationship to the CAISO Board, funding efforts, and additional measures to protect the public interest.

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

To implement the recommendations contained in the proposal, the Launch Committee will create an RO Formation Committee whose purpose will be to coordinate with the CAISO in the detailed creation of the RO. The Formation Committee will consist of up to ten members from the Launch Committee and a non-quorum of the existing WEM Governing Body, selected by the WEM Governing Body. The Formation Committee will be a working/executive committee reporting to the Launch Committee. A charter for the Formation Committee will be developed by the Administrative Work Group of the Launch Committee that outlines what activities the Formation Committee will conduct, how it will report out and receive approval/concurrence from the Launch Committee, and how stakeholders will be engaged in the RO formation process. Additional details regarding the RO Board selection procedure are discussed in the proposal and contained in Appendix B, but as a preamble to the Governance Proposal this description of the Formation Committee will hopefully help orient the reader about the structure and vision for implementing the following recommendations.

### PROPOSAL

#### 1. Selection of RO Board

The Launch Committee recommends that the RO Board of Directors be a seven-member body that exercises sole authority over the WEIM and the EDAM and is intended to meet the definition of an independent board of directors. Appendix B describes the recommended procedure for board member selection, including a specific procedure for selecting the initial RO Board of Directors. The procedure provides that the RO Board Members will be selected by a Nominating Committee comprised of stakeholder representatives. The use of a Nominating

Committee process for selection of RO Board Members is comparable to what has been used for selection of the WEM Governing Body and other similarly situated boards. For the initial slate of RO Board Members, the procedure assumes that the Formation Committee will provide the approval of the final slate of initial Board Members as proposed by the Nominating Committee. Board nominees will be subject to approval by the RO Board of Directors in an open meeting or, in the case of establishing the initial membership of the RO Board, by the RO Formation Committee.

#### **a. Nominating Committee: Membership**

There will be a Nominating Committee of sector members (to be identified by the Stakeholder Process workstream) as well as a member from the BOSR and the RO Board.

The Launch Committee received a range of comments from stakeholders on sector definitions, proposing various concepts for sectors and considerations for the selection process. In response to feedback, the Launch Committee is taking additional time to work with stakeholders on the creation of a sector proposal. The Launch Committee proposes mirroring the sectors identified in the Stakeholder Process as the nominating committee sectors, as outlined in the draft procedure. Once the sector conversation has progressed, the list of sectors will be added to this proposal.

The RO Board and the BOSR will also have one representative each on the Nominating Committee. Because the Nominating Committee plays a critical role in selecting the RO Board, the Launch Committee agreed that including a representative from the BOSR was an important tool for protecting the public interest in this part of the RO structure. The representative from the RO Board will serve two functions: they will help the Nominating Committee select nominees and serve as a liaison between the Nominating Committee and the RO Board, which will approve or reject the ultimate panel of nominees. Each of these bodies may determine its own method of selecting a representative to serve on the Nominating Committee, provided that the representative of the RO Board shall not be a member whose current term will be expiring.

#### **b. Nominating Committee: Roles and Responsibilities**

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

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



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

With assistance from an executive search firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. This can include allowing for self-nomination by potential candidates and recommendations brought forward from sector representatives by their respective sector participants if the Nominating Committee desires. Optimally, the Committee's selections should ensure that the overall composition of the RO Board reflects a diversity of perspectives that may result from different areas of expertise, geographic background, ethnicity, gender and professional backgrounds, and life experience. Similarly, no one state or sub-region in the West should have excessive representation - meaning members whose place of residence or work history tends to associate them with a particular Western state. The Committee should strive to ensure that the RO Board includes at least one member with expertise in Western electric systems and markets. If the Nominating Committee can identify a qualified candidate with a Western background who has as strong overall experience and knowledge as the other candidates, and all other factors being equal, the Committee should prefer the candidate with a Western background.

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

- Electric Industry - such as former electric utility senior executives currently unaffiliated with any market participant or stakeholder, as described below; present or former executives of electric power reliability councils or power pools; retired military officers with relevant experience; or present or former executives of firms that perform professional services for utilities; or academics or consultants with expertise in electric utility issues.
- Markets - such as present or former financial exchange executives; present or former executives of commodity trading companies or commodities markets; executives or attorneys with extensive background in anti-trust law; present or former executives in other regulated industries; former state or federal regulators with deregulation experience; or academics or consultants with relevant market expertise.

- General Corporate/Legal/Financial - such as present or former management consultants or service industry executives; present or former chief executives; chief financial officers; chief legal officers or chief information officers of profitmaking companies or nonprofit organizations; present or former law firm partners; present or former law professors; present or former senior executives of financial institutions, investment banking or financial accounting/auditing organizations.
- Public Interest – such as former state or federal regulators; executives of environmental, consumer or labor organizations; former attorneys general or consumer affairs officials; former legislators, academics or economics experts with relevant public interest background; individuals with a demonstrated reputation and record of commitment to consumer issues; former energy officials; or public policy experts.

All potential candidates must possess a proven reputation for excellence in their areas of expertise, and optimally should reflect a diverse background (e.g., ethnicity, gender) and viewpoint.

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

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

## **2. Board Structure**

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

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

### **b. Reservation of Seats on the RO Board of Directors**

The Launch Committee recommends not reserving board seats and allowing the Nominating Committee and stakeholder processes to provide stakeholder input on the selection of directors. There should be no restriction on the number of current WEM Governing Body members that can serve on the new RO Board and any current WEM Governing Body member that applies will

be interviewed, but they will be expected to go through the Nominating Committee process like other applicants. This recommendation is based upon successful experiences with other Nominating Committee processes and was supported by a majority of the stakeholder comments.

### **c. Public Policy Committee**

Numerous public interest tools are discussed in Chapter 4, but an additional tool to help safeguard the public interest with respect to the RO Board is the creation of a Public Policy Committee of the RO Board. Before a tariff change or an initiative gets approved by the RO Board, an Advisory Committee of the RO Board, which would maintain active communication with representatives from each of the states, representatives from local power authorities, and federal power marketing administrations, would confirm with those representatives whether the tariff change or initiative is consistent (or not) with each entity's policies. That Committee would then report the results of its communications with these representatives to the full RO Board to consider before taking a vote. The report would be informational only. This outreach by the Committee Members to these entities should take place late enough in the process so that the terms of the tariff change or initiative are well defined, but sufficiently in advance of any Board action so that the report can be fully considered. The Committee would also engage in early screening of initiatives to determine whether the initiative has the potential, or not, to affect any state, local power authority or PMA policy so that any potential impacts can be addressed during the initiative process.

## **3. Corporate Documents**

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

The stated corporate purposes would define what "public interest" means for the RO by incorporating principles and standards found in state and federal laws applicable to existing ISOs/RTOs. Language such as a commitment to expand public benefits by attracting new participants, as well as requirements to respect individual state and local generation preferences should be included. For example, the CAISO Articles state "the specific purpose of this corporation is to ensure efficient use and reliable operation of the electric transmission grid[.]"<sup>64</sup> The Launch Committee recommends that the recent amendment to the WEM Governing Body charter that clarifies that the Governing Body must preserve and enhance the benefits to customers that arise from participating in the energy markets as well as requiring the body to "respect state authority to set procurement, environmental, reliability, and other public interest

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<sup>64</sup> CAISO Articles of Incorporation section II.B.

policies”<sup>65</sup> be included in the RO Corporate Documents. Additionally, the RO Corporate Documents should include a commitment to just and reasonable electricity rates for consumers as a result of RO participation by seeking efficient dispatch and appropriately disciplined price formation. The RO should incorporate these standards and purposes, with the addition of other relevant protections, into the Corporate Documents.

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

#### **a. Open Meetings**

The Launch Committee proposes that the RO conduct meetings and make decisions in an open process with transparent, documented rationales.<sup>66</sup> The bylaws should describe requirements for meeting notices, frequency and diversity of locations, and access. Other than executive sessions, all meetings of the RO Board will be publicly noticed, available to remote participants, recorded and posted, open to the public, and subject to open records requirements. The location of meetings should reflect the intent for the RO Board to meet in various states throughout its service territory. These documents will establish the standards and practices for the RO Board of Directors, who will have ultimate oversight and control over the RO policy and operations. The bylaws should also require that elected board members adhere to the purposes and standards contained therein and specifically pledge to protect the public interest when making decisions.

### **4. Relationship and Interaction with CAISO Board**

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

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

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

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

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<sup>65</sup> See [CAISO adopts Step 1 proposal - looking for best document to refer to]

<sup>66</sup> Like every entity, certain decisions and deliberation may be required to be in a closed session such as matters pertaining to litigation, personnel, or confidential business information. The corporate documents can describe these exceptions more fully.

## **5. Timing and Funding of the RO**

### **a. Timing for RO Launch**

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

### **b. Use of Startup Funding**

The Launch Committee recognizes that startup funding for the RO will likely be required before any market supported funding is available. Due consideration should be given to identifying funding that would not be considered as compromising Board independence. The recommendation is to consider sources such as DOE grant funding or ongoing support from the Pathways Initiative 501(c)(3) funding via Global Impact. There was little stakeholder comment on this proposal, though general support existed.

## CHAPTER 4: PUBLIC INTEREST

### INTRODUCTION

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

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

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

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

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

### RECOMMENDATIONS

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

<b>Category</b>	<b>Recommended Tools</b>
<b>RO Structure and Board:</b> See Chapter 2 and 3 for more detailed information about the tools and recommendations in this category.	<ul style="list-style-type: none"> <li>• RO Articles of Incorporation, bylaws, policies and procedures (collectively “Corporate Documents”)</li> <li>• 501(c)(3) status</li> <li>• Board Member qualifications</li> <li>• Transparent decision-making processes including open meetings and responses to stakeholder comments, and regular meetings with the BOSR</li> <li>• Corporate obligation to respect state authority to set procurement, environmental, reliability, and other public interest policies</li> <li>• Public Policy Committee of the RO Board to engage with states, local power authorities, and federal power marketing administrations about potential impacts to state, local, or federal policies before final board adoption of a tariff change or initiative through the stakeholder process</li> </ul>
<b>RO BOSR:</b> Section 1 of this chapter provides more information about the RO BOSR.	<ul style="list-style-type: none"> <li>• Extend the existing BOSR functions to the RO</li> <li>• Maintain current self-governing and decision-making structures</li> <li>• Maintain current membership</li> <li>• Maintain role of advisory Public Power and PMA liaisons</li> <li>• At the outset of the RO the current BOSR funding arrangement will remain with the exploration of future triggers to consider whether the structures and the market have evolved to support modest funding into the tariff</li> </ul>
<b>Consumer Advocate Engagement:</b> Section 2 of this chapter provides more information about consumer advocate engagement.	<ul style="list-style-type: none"> <li>• Create a new independent Consumer Advocate Organization (CAO) to facilitate engagement by each consumer advocate office authorized by state law in the stakeholder process and other RO engagement opportunities</li> <li>• Include modest tariff-based funding to facilitate their participation</li> </ul>
<b>Office of Public Participation:</b> Section 3 of this chapter provides more information about the OPP.	<ul style="list-style-type: none"> <li>• Create a new Office of Public Participation (OPP) within the RO to provide information and education to members of the public about issues and initiatives at the RO, including facilitating engagement in those processes</li> </ul>
<b>Independent Market Monitor:</b> Section 4 of this chapter provides more	<ul style="list-style-type: none"> <li>• Create a joint reporting structure for the Department of Market Monitoring to both the CAISO Board and the RO Board</li> </ul>

information about independent market monitoring.	<ul style="list-style-type: none"> <li>• Equal number of RO Board and CAISO Board representatives on Department of Market Monitoring Oversight Committee</li> <li>• Expand the criteria for selecting Market Surveillance Committee members to include consumer issues and public interest expertise</li> <li>• Transfer the WEM Governing Body Market Expert to the RO Board</li> <li>• Some functions will be shared between RO and CAISO; RO Board will work with CAISO to define reporting and delineate roles and responsibilities</li> </ul>
<b>Stakeholder Process:</b> See Chapter 5 for more detailed information about the stakeholder process.	<ul style="list-style-type: none"> <li>• Enhance opportunities for tracking and reporting stakeholder sentiments/preferences throughout the process</li> <li>• Create a new initiative issue category: “compliance with state and local public policy”</li> </ul>

## 1. RO Body of State Regulators

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

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

The RO BOSR will be supported by the WIEB staff in the manner that WEM BOSR is supported today. At the outset of the RO the current BOSR funding arrangement will remain, with the exploration of future triggers to consider whether the structures and the market have evolved to support modest funding into the tariff.

The RO BOSR will maintain its ability to retain market and policy expertise to assess the market and policy impacts of the WEIM and EDAM markets on consumers and state policies. The expertise will be available to help all states more effectively engage in on-going or potential stakeholder initiatives at the front end of the process. The RO BOSR will have the right to



examine Department of Market Monitor (DMM) data with appropriate confidentiality and non-disclosure agreements. CAISO and RO market and policy experts will be available to the RO BOSR to assist with engagement on issues in an active stakeholder process or potential items for the stakeholder catalog and roadmap. With appropriate protections for confidentiality, RO BOSR members will also have access to the DMM for information on market trends, tailored requests for information, and raw market data<sup>67</sup>. The RO BOSR may also engage the Market Surveillance Committee (MSC) where the RO BOSR wishes to offer state perspectives on active or emerging market impacts. The Launch Committee does not support any change that would limit the amount of data and analysis that state regulators can access today.

## **2. Consumer Advocate Engagement**

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

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

The Launch Committee recommends that the consumer advocates take the lead on developing the CAO and its governance structure. The CAO would be a new 501(c)(3) organization similar to the Consumer Advocates of PJM States, with membership by the state-designated utility consumer advocate for each state with a load-serving utility participating in any RO-governed market. The CAO would serve as a liaison between individual state-designated consumer advocates and the RO, monitor RO initiatives and identify work of interest and priority to the consumer advocates, convene and coordinate the consumer advocate members, as well as assist with general information sharing and support for advancing their collective positions. The CAO would have full access to data and analysis from the Department of Market Monitoring, subject to appropriate confidentiality requirements and commensurate with at least the same level of access that CalAdvocates receives today via California statute. The Launch Committee also envisions that this organization would be able to collaborate with other consumer advocate-focused entities in the West.

This organization will only be successful if it has ongoing, reliable funding. The Launch Committee proposes that funding be included in the RO tariff at an amount commensurate with

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<sup>67</sup> These recommendations are consistent with FERC's requirements for market monitors as codified in *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73FR64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008).

the level of functions and processes of the electric utilities that are overseen by the RO. The Launch Committee recommends that routine updates reflecting general cost increases of the functions conducted by the CAO be approved via relative routine processes, with requests for more significant changes receiving an additional level of review.

Although this proposal lays out the core elements of a CAO, the LC recognizes that many details are yet to be determined. The LC recommends that the Formation Committee incorporates additional work on a CAO in their scope, which would include:

- Pursuing the administrative tasks necessary to establish a new organization such as where to incorporate, what organization to authorize for ongoing administrative obligations, and developing governance principles and documents; and
- Developing a recommendation regarding the specific method and formula for including ongoing funding in the RO tariff.

### **3. Office of Public Participation**

The Launch Committee proposes to create an Office of Public Participation (OPP) within the RO structure. The OPP would be internal to the RO, tasked with educating and facilitating engagement by individuals, entities, and non-governmental interest groups in regional market issues and governance. It would also provide the RO Board and staff with direct feedback regarding the effectiveness of public participation. The OPP is modeled on the FERC Office of Public Participation whose mission is to “empower, promote, and support public voices in FERC proceedings.”<sup>68</sup> With this foundation, the OPP's mission would be *to empower, promote, and support public voices in the RO processes and decision-making*.

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

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

This model addresses a portion of the capacity and funding barriers faced by individuals, smaller entities, and non-governmental public interest groups by providing accessible, reliable, and neutral explanations of RO processes and issues. These technical barriers are the most common hurdle to effective participation by these types of public interest-oriented entities. This model

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<sup>68</sup> See “About the Office of Public Participation” section of the FERC OPP webpage available at: <https://www.ferc.gov/OPP> (Accessed September 5, 2024).

also provides the RO Board and staff with a regular assessment of the effectiveness of stakeholder engagement at an operational level that will help the RO Board and staff improve processes to represent public interest values in RO decision-making.

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

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

The Formation Committee will identify appropriate scope of work and organizational structure to complement and leverage these existing tools and teams while building an Office focused on the regional market.

#### **4. Market Analysis & Monitoring**

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

##### **a. Market Monitoring**

Embedded market monitoring is the foundation of FERC's market oversight framework. In 2005, FERC issued a Policy Statement on Market Monitoring Units stating that they perform an important role in enhancing the competitiveness of ISO/RTO markets by consistently and impartially evaluating ineffective market rules, identifying potential anticompetitive behavior, and providing analysis to inform policy decision making.<sup>69</sup> In 2008, FERC required that each independent system operator include "goals to be achieved by the MMU, including the protection of both consumers and market participants by the identification and reporting of market design flaws and market power abuses."<sup>70</sup> FERC Order 719 establishes the requirement that the MMU functions to review and report on the market performance, evaluate and make recommendations on market rules, make notifications to the FERC Office of Enforcement, and monitor inputs for market power mitigation.<sup>71</sup> It also set requirements for independence and information sharing, including the ability for state commissions to "make tailored requests for

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<sup>69</sup> FERC Docket No. PL05-1-000

<sup>70</sup> Order No. 719 is 73 FR 61,400 (Oct. 28, 2008), FERC Stats. & Regs.

<sup>71</sup> Ibid.

information from the MMUs, so long as the request is limited to information regarding general market trends and the performance of the wholesale market.”<sup>72</sup> As stated above, the Launch Committee recommends that state commissions and consumer advocates have access to at least the same amount of data and analysis as the California agencies and CalAdvocates receive today.

*i Department of Market Monitoring (DMM)*

Accordingly, the CAISO’s Department of Market Monitoring (DMM) mission is to “provide independent oversight and analysis of the CAISO [m]arkets for the protection of consumers and Market Participants by the identification and reporting of market design flaws, potential market rule violations, and market power abuses.”<sup>73</sup> The DMM is structured as an internal, yet fully independent, business unit of the CAISO. The DMM may rely on CAISO for legal support, provided there is no potential for a conflict of interest, but can also use outside legal counsel. The DMM has direct access to the full Board, and each individual Board member at any time, as it deems necessary.<sup>74</sup>

Since the DMM has oversight of the energy markets including ancillary services, the Launch Committee recommends a joint reporting structure to both the CAISO and the RO that could be reevaluated as the RO adds services in the future. In addition, the Launch Committee recommends maintaining the DMM as an internal, fully independent business unit at the CAISO because FERC does not see a material difference between internal and external market monitors so long as they are independent.

*ii Department of Market Monitoring Oversight Committee*

The Department of Market Monitoring Oversight Committee<sup>75</sup> is a committee of the CAISO Board of Governors consisting of at least two Governors. The Committee advises the Board in its oversight of DMM’s market monitoring functions. Members are not employees or agents of the CAISO.<sup>76</sup> Each member of the Committee must possess sufficient knowledge about general management principles, administration, and electricity markets.<sup>77</sup> The Committee reports to the Board regularly including reviewing significant issues it identifies. The Committee delegates to the DMM Executive Director day-to-day responsibilities within the approved budget.

The Launch Committee recommends adding an equal number of RO Board members to the Market Monitoring Oversight Committee.

*iii Market Surveillance Committee*

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<sup>72</sup> 73 FR 61, 446

<sup>73</sup> CAISO Tariff, Appendix P.

<sup>74</sup> [https://www.caiso.com/documents/appendixp\\_caisodepartmentofmarketmonitoring\\_asof\\_apr1\\_2017.pdf](https://www.caiso.com/documents/appendixp_caisodepartmentofmarketmonitoring_asof_apr1_2017.pdf)

<sup>75</sup> <https://www.caiso.com/documents/department-marketmonitoringoversightcommitteecharter.pdf>

<sup>76</sup> <https://www.caiso.com/meetings-events/topics/department-of-market-monitoring-oversight-committee>

<sup>77</sup> CAISO Tariff, Appendix O.

[https://www.caiso.com/documents/appendixo\\_californiaisomarketsurveillancecommittee\\_asof\\_apr20\\_2011.pdf](https://www.caiso.com/documents/appendixo_californiaisomarketsurveillancecommittee_asof_apr20_2011.pdf)

<sup>77</sup> <https://www.caiso.com/documents/department-marketmonitoringoversightcommitteecharter.pdf>

In addition to the DMM and Oversight Committee, the CAISO established a Market Surveillance Committee (MSC)<sup>78</sup> to provide independent external expertise and recommendations to the CAISO Chief Executive Officer and CAISO Board of Governors. The MSC is separate and independent from the DMM and market participants. A minimum of three outside experts are nominated by the CAISO CEO and approved by the Board of Governors and the WEM Governing Body for staggered 3-year terms.<sup>79</sup> Their expertise is in economics, operational aspects of generation and transmission, antitrust or competition law in regulated industries, and energy and commodities trading financial expertise. The MSC serves to provide independent review of market performance and market power problems, develop a record of structural problems and propose corrective action, and review rule changes, penalties, and sanctions.<sup>80</sup> The MSC may also review and comment on DMM analyses and reports.

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

#### **b. WEM Governing Body Market Expert**

The WEM Governing Body receives its own independent market analysis through the Governing Body Market Expert. This individual reports only to the WEM Governing Body and is tasked with providing comprehensive explanations and technical opinions, as requested.<sup>81</sup>

The position came from a Governance Review Committee recommendation and was jointly approved by the WEM Governing Body and CAISO Board of Governors in the fall of 2021.<sup>82</sup>

This position is expressly not a market monitoring function, but rather advises the WEM Governing Body on the fairness and efficacy of market rules, business practices, and market design alternatives consistent with their mission to promote the success of WEIM and EDAM for all market participants.<sup>83</sup>

The Launch Committee recommends that the Market Expert transition from the WEM Governing Body to the RO Board but otherwise maintain its existing role and duties.

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<sup>78</sup> <https://www.caiso.com/meetings-events/topics/market-surveillance-committee>

<sup>79</sup> <https://www.caiso.com/documents/marketsurveillancecommitteecharter.pdf>

<sup>80</sup> <https://www.caiso.com/meetings-events/topics/market-surveillance-committee>

<sup>81</sup> <https://www.westerneim.com/Documents/WesternEIMGoverningBodyMarketExpert-Role-Responsibilities.pdf>

<sup>82</sup> <https://www.caiso.com/documents/weim-governing-body-announces-new-market-expert.pdf>

<sup>83</sup> <https://www.westerneim.com/Documents/Charter-for-WEIM-and-EDAM-Governance.pdf>

## CHAPTER 5: STAKEHOLDER ENGAGEMENT

### INTRODUCTION

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

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

- a. Openness – participation open to all persons;
- b. Transparency – transparent to the public;
- c. Consensus building – build and document consensus;
- d. Fair balance of interests – not dominated by a small number of sectors, and respect for minority positions;
- e. Due process – reasonable notice and opportunity to participate and to have views considered; and
- f. Timeliness – getting things done, not bogged down in stalemates<sup>84</sup>

The Launch Committee believes these principles, in addition to and balanced with efficiency and cost minimization, capture the goals of this proposed stakeholder process well.

The proposed process was crafted through a collaborative effort involving stakeholders representing a wide range of perspectives from across the West. To inform this effort, the Launch Committee engaged Gridworks to conduct a comprehensive review of Regional Transmission Organization (RTO) stakeholder processes across the United States and facilitate a series of workshops. These workshops provided valuable insights into existing engagement models and gathered extensive input from stakeholders on the goals, objectives, and desired design of the new process. Parallel to these workshops, the Stakeholder Process Work Group<sup>85</sup> convened to discuss the findings and refine the proposed stakeholder process design, ensuring that it aligns with the needs and expectations of market participants.

### RECOMMENDATIONS

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<sup>84</sup> NERC Rule of Practice 304(1)-(6) (effective November 28, 2023).

<sup>85</sup> The Stakeholder Process Work Group is composed of members of the Launch Committee and an expanding working group of interested parties.

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

To further enhance stakeholder engagement, the proposed process introduces a classification system for initiatives, distinguishing between Compliance/Non-Discretionary, Compliance with State and Local Public Policy, and Discretionary Initiatives. Each type of initiative will follow a tailored stakeholder process, allowing for more targeted and effective engagement. Additionally, the process includes indicative voting to gauge stakeholder sentiment and guide policy development, complementing the existing comment process. This combination of voting and commentary will provide a clearer picture of stakeholder positions and facilitate more informed decision-making by the SRC and RO staff, as well as provide detailed information to the RO Board.

The transition to this new stakeholder process will also require a cultural shift, emphasizing the importance of active and effective participation from all stakeholders. This proposal acknowledges the need for a more decentralized approach, where both technical expertise and diverse stakeholder perspectives are valued and integrated into the process. By empowering the SRC and leveraging sector-based discussions, the proposed process aims to create a more dynamic and responsive stakeholder environment, one that is capable of addressing the complexities of the WEIM and EDAM markets.

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

The Launch Committee is committed to refining and evolving this process in collaboration with stakeholders, ensuring that it continues to meet the needs of all participants and supports the sustainable growth of the WEIM and EDAM. To that end, the Launch Committee is approaching the recommendations in the Stakeholder Process in particular as a work in progress and will continue to engage stakeholders over the coming months to identify refinements as we get closer to transition and implementation. As this proposal moves forward, the Launch Committee invites ongoing feedback and participation from all stakeholders, reaffirming its commitment to a transparent, collaborative, and effective stakeholder process for the future of Western energy markets.

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

## BACKGROUND

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

Recognizing the complexity and importance of the stakeholder process, the Launch Committee gave the Stakeholder Process Work Group some unique characteristics as compared to the other Phase 2 Work Groups. First, the membership of the Work Group extended beyond Launch Committee members to ensure that there was a diversity of experience and perspectives on stakeholder engagement that represented the varying structures in the West. Second, the Launch Committee engaged Gridworks to assist with research and information gathering and to provide an additional layer of independence to the facilitation of the workshops. And finally, the Launch Committee set the expectation that the efforts of this Work Group will extend beyond the release of the Step 2 proposal to ensure thorough engagement with and input from stakeholders.

For purposes of this proposal, we have referenced “RO staff” in all instances where staff would play a role in the stakeholder initiative process. However, the Stakeholder Process Work Group



has discussed a scenario where the staff could be at both the RO and the CAISO (referred to herein as the “market operator” to emphasize the role the CAISO will fill for the RO). The Launch Committee anticipates that the RO and CAISO will work very closely on the stakeholder process in particular, especially given the CAISO staff’s extensive and critical subject matter expertise on the policies and procedures.

Below is a draft structure for a stakeholder process, which consists of the following components: a Stakeholder Representatives Committee, Sectors, Classification of Stakeholder Initiatives, Stakeholder Process, and Voting. This draft structure is based on feedback from the Stakeholder Process Work Group, the four workshops facilitated by Gridworks, and written stakeholder comments received to date. Of note, the Launch Committee is not including a specific sector breakdown recommendation in this document in order to take more time to evaluate and incorporate the extensive feedback received in the most recent comment period. The Work Group will be soliciting additional stakeholder feedback during a workshop on October 7 and subsequent comment period to refine the sector recommendation prior to a final recommendation.

### **THE STAKEHOLDER REPRESENTATIVES COMMITTEE (SRC)**

The Stakeholder Representatives Committee (SRC) will be the primary stakeholder body that works with RO staff to catalog and prioritize initiatives, as well as to define initiative problem statements and solutions. SRC representatives will work directly with RO staff, market operator staff, and other SRC representatives to shape the timeline and process for stakeholder initiatives, identify emerging issues, and develop initiative framing and solution sets. SRC representatives will actively communicate and engage with the organizations within their sector. The SRC is designed to promote compromise and collaboration within and across sectors on initiatives that will result in changes to the RO and market services it oversees. The SRC is committed to promoting access and transparency for stakeholders across the West. Meetings of the SRC will be public, recorded, and available for remote participation.<sup>86</sup>

The SRC sectors are self-organized and SRC representatives will be selected by the stakeholder organizations within each sector, along with any criteria to establish diversity on the SRC that is important to any given sector (e.g., geographic diversity, sector subgroups, etc.). SRC representatives will have responsibility for maintaining regular communication with and fairly representing the input of stakeholder organizations within their sector. The SRC structure is designed to ensure adequate and diverse representation for the work that body is tasked with, putting more emphasis on individual entity votes than the sector-level positions. The number of seats for each sector may evolve as market services at the RO evolve.<sup>87</sup>

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<sup>86</sup> Meetings convened by SRC representatives for the purpose of conducting organizational activities of the SRC may be non-public.

<sup>87</sup> For example, while the EDAM Entities have a single seat on the Regional Issues Forum today, by the time the RO is created and a stakeholder process is implemented, the number of utilities who have executed implementation agreements may have increased.

The Launch Committee recommends allowing each SRC representative to have one alternative to participate on behalf of that SRC representative when the primary representative is unable. This would help spread the burden of participation and enable sectors to have more consistent representation in the SRC efforts.

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

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

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

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

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

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

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

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

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

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

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

The SRC may—but will not necessarily be required to—identify two or more sector “sponsors” for stakeholder initiatives who will help drive the initiative. Sponsors do not have to be SRC representatives, and will act as “co-chairs” of the stakeholder process partnering with RO staff to move the initiative through both Stage 1 and Stage 2. The SRC sponsors should advise and provide guidance to the RO staff throughout the stakeholder initiative, but the RO staff will retain primary responsibility for the administration of the stakeholder process. For example, the RO staff will be responsible for identifying guidelines for Stage 1 work, including the process, timeline, number of working groups, and scope of discussions, and for organizing and administering the Stage 1 stakeholder process, including public stakeholder working group meetings and comment periods. The RO staff can consult with and seek input from the SRC sponsors throughout the Stage 1 process, and the SRC sponsors may provide input and feedback.

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

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

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

Some initiatives, particularly conceptual initiatives, may benefit from the formation of smaller work groups of stakeholder participants to help shape both the Stage 1 Issue Evaluation/Problem Statement and the Stage 2 Policy Development phases or to work on a particular element of a stakeholder initiative. If the SRC sponsors, in collaboration with the RO staff, determine that a smaller work group would help advance the stakeholder initiative process (or an element of the

stakeholder process) for a particular conceptual initiative, then the SRC sponsors will solicit participation from relevant sectors to form a work group. Work groups may not be needed for all initiatives, and the SRC and SRC sponsors would need to evaluate and use judgment to determine where a work group would be helpful to the stakeholder process and represent a productive use of stakeholder time and resources. The intent with SRC work groups would not be to supplant or replace RO staff-led activities in the stakeholder process, but to assist in analyzing and addressing issues that are of particular importance, may raise unique technical concerns, or otherwise would benefit from the focused attention of a smaller group of stakeholders outside of the public stakeholder process. The work groups would be expected to provide the results of their work back to the public stakeholder process and to coordinate and collaborate with both the RO staff and the stakeholder community at large with respect to their assigned activities.

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

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

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

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

#### 4. SRC Representative Roles, Responsibilities, and Expectations

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

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

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

This proposal attempts to balance requests for more stakeholder-driven processes supported by some stakeholders with requests by other stakeholders to manage the level of resource commitment required for the stakeholder process overall. If stakeholders believe that the level of commitment required of stakeholders (including participation on the SRC as a representative or to serve as an SRC sponsor) may be excessive based on the described level of activity, please so indicate in comments.

We also note that an increase in the level of time commitment required of SRC representatives to perform the actions described in this section may be balanced by a reduction in a current key task of the RIF, which is to provide educational and informational content, which will shift to the Office of Public Participation as described above in Chapter 4. The activities of the SRC are expected to shift from generalized discussion of issues to actions that are focused on carrying out the responsibilities of the SRC in the stakeholder initiative process. As noted previously, it is anticipated that there will be an increased need for RO staff support of the SRC, including with respect to the production of written work product.

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

## SECTORS

As outlined in this Chapter, the role of sectors within the stakeholder process is to provide diverse input and guidance on the SRC and to coordinate with the organizations within each sector. In the Discussion Draft, the Launch Committee proposed a list of nine sectors with between one and three representatives each. The list was intended to capture the diversity and commonalities of interests among stakeholders to the Western energy markets. The Launch Committee places an emphasis on sector definition and representation that appropriately addresses newer sector interests reflecting the evolving nature of the Western grid, the importance of respecting public interest goals, and the variety of consumer and commercial interests. Following the release of the Discussion Draft, the Launch Committee received extensive comments on the specific composition of sectors and the number of representatives for each sector. To further refine the sector definitions and representative allocation, the Stakeholder Process Work Group will conduct further outreach, detailed below. For purposes of this proposal, the Launch Committee wishes to emphasize the intended purpose of sectors and the SRC for stakeholder consideration that will inform future conversations about a sector recommendation. The chart below is provided as context for what was initially proposed in the Discussion Draft:

	<b>RO Sectors for Stakeholder Voting</b>	<b>Sector-based seats on SRC</b>
1	EDAM Entities	1 seat
2	WEIM Entities	2 seats
	<i>[no PMA standalone sector]</i>	*1 additional seat reserved for PMAs in either EDAM or WEIM sector, assuming the PMA is either an WEIM or EDAM Entity
3	ISO PTOs	2 seats
4	Transmission-dependent utilities	3 seats including (1) reserved for CCA
5	PIOs	1 seat
6	Consumer advocates	1 seat
7	Large C&I customers	1 seat

8	IPPs, independent transmission developers, and marketers	3 seats (need to ensure both IPPs and marketers have the opportunity for a seat, representing different business models)
9	Distributed Energy Resources (including distributed generation, storage and demand response resources, aggregators, and enabling hardware and software providers)	1 seat
		<i>Total: 16 seats on committee</i>

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

The proposed Stakeholder Process has more opportunities for stakeholder input, with a potentially significant time and resource commitment for SRC representatives. However, the proposed indicative voting structure gives each organization an opportunity to vote and for the RO staff to track and tabulate voting data to provide much more data to RO staff and the RO Board that would potentially get lost in a more sector-focused voting structure. When the SRC conducts a vote, every organization who is registered to vote will have the opportunity to register its support, opposition, or neutrality to the issue under consideration. RO staff will provide administrative support for the vote and will tabulate the vote. The SRC representative will report on any specific splits that have been established by that sector, consistent with the self-organizing principle described above.<sup>88</sup> The results of all votes will be provided in the materials related to the issue. More details on the proposed voting structure are below.

The Launch Committee will host a workshop on October 7 to hear from stakeholders about what they see as most important for sectors and the SRC, discuss the appropriate number and categories of sectors, and the appropriate number of seats for each sector on the SRC, given the role and responsibilities of SRC representatives.

### Timeline

Sept. 26 - Step 2 Draft Proposal released  
Oct. 4 - Pathways Initiative Public Meeting  
Oct. 7 - Sector Workshop  
Oct. 14 - New Sector Proposal Released  
Oct. 25 - Step 2 and Sector Comments Due

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<sup>88</sup> For example, the WEIM Entity sector may choose to report votes by 1) POU/IOU 2) geographic region or 3) load ratio share. Likewise, the IPP sector may choose to report by 1) generation asset owners/independent transmission providers/marketers or 2) generation type.



The Launch Committee looks forward to continuing to work with stakeholders to refine the sector proposal based on the information in this document and additional stakeholder perspectives.

## CLASSIFICATION OF STAKEHOLDER INITIATIVES

Stakeholder Initiatives will be classified into three categories: Compliance/Non-Discretionary Initiatives, Compliance with State and Local Public Policy Initiatives, and Discretionary Initiatives. A description of each category is provided below.

1. Compliance/Non-Discretionary: Initiatives that address compliance with a FERC order or address a market design flaw or emerging reliability issue.
  - FERC Rulemaking responses
    - If a tariff change is required as a result of a FERC rulemaking process, there will likely be adequate time for a full stakeholder process. The initiative would be initiated by the RO Board or staff and will go into the Catalog and Roadmap, with an evaluation of timing based on the compliance requirement.
  - Exigent circumstances
    - If a temporary tariff change is made under the exigent circumstances provisions, it will not have gone through a stakeholder process. These tariff provisions must undergo a subsequent stakeholder review if they are to become a permanent feature of the market. This review should kick off no later than 30 days after FERC approval and must be approved by the RO Board within 6 months. Alternatively, the RO Board can vote to extend the exigent tariff changes in 6 month increments to enable ongoing stakeholder development.
  - Minor corrections or adjustments
    - Because these initiatives are likely the result of a tariff filing at FERC that already went through a stakeholder process, RO staff may forgo a stakeholder process but should notify the SRC and RO Board in accordance with RO notice procedures (as adopted in the future).
2. Compliance with State and Local Public Policy: Initiatives that are needed to enable the market to address a state or local public policy issue.
  - Any entity including a state agency representative, RO BOSR representative, or market participant who may be impacted by a state or local policy or law that may require a tariff change for the market may propose an initiative. The proposal should include an evaluation of why the initiative is necessary to comply with the policy or law and should include whether implementation of that state or local policy into the market would adversely affect other states.
  - If the RO staff determines that a tariff change is required and the Public Policy Committee determines that there will not be adverse impacts to other state, local, or federal policies, the initiative is treated the same as a Compliance/Non-

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

## STAKEHOLDER PROCESS

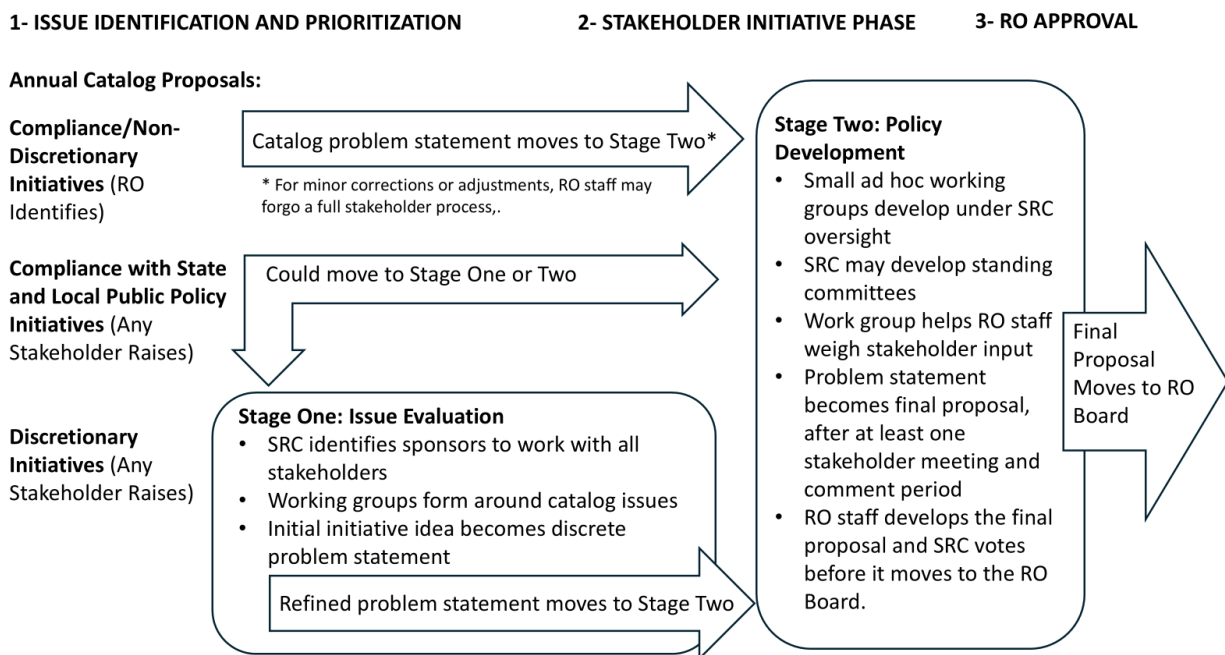
After initiatives are categorized, the Stakeholder Process can begin and will include three primary steps:

1. Issue Identification and Prioritization (Catalog/Roadmap process)
2. Stakeholder Phase:

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

### 3. Approval by the RO Board

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



### 1. Issue Identification and Prioritization

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

The number and complexity of initiatives that the RO can pursue depends in large part on the amount in the RO budget allocated for stakeholder initiatives and RO staffing resources. The Catalog/Roadmap should inform the RO budget discussions and vice versa. RO staff should ensure that the SRC understands the RO budget as initiatives are identified and prioritized.

### **a. Catalog Process – Issue/Initiative Identification**

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

- Known Compliance/Non-Discretionary Initiatives will automatically be included in the Catalog, including those State and Local Public Policy Initiatives that meet this criteria.
- The SRC should assist in identification of discretionary issues for inclusion in the Catalog. This can occur through a roundtable-type process, where SRC representatives review, assess, and organize submittals by their sectors.
  - Roundtable process: The SRC obtains sector-level input to an annual process for identifying discretionary stakeholder initiative priorities, discusses priorities in one or more meetings, and produces a report or other work product identifying stakeholder prioritization that provides direct input to both the Catalog and the Roadmap. The SRC should act as a facilitator, not a gatekeeper, for identifying and incorporating new initiatives into the Catalog.
- A new discretionary, non-compliance initiative could originate from any source. This includes (but is not limited to): all stakeholders and market participants, market operator staff, RO staff, DMM, MSC, RO BOSR, etc.
- The Catalog should include a proposed disposition for all submittals by stakeholders—i.e., initiative (if tariff amendments may be needed), BPM change, process change, etc. Note that only initiatives that require a tariff change are included in the Catalog.<sup>89</sup> The SRC should review and advise the RO staff on the proposed disposition.
- Based on input from the SRC, RO staff will release a Draft Catalog and host at least one stakeholder meeting with a comment period. A Final Catalog will be released with the Roadmap.

### **b. Roadmap Process – Issue Initiative Prioritization**

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

Roadmap development includes the following steps:

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

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<sup>89</sup> For example, BPM changes are addressed through the BPM Change Management Process.

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

**c. What proposals are included in the Roadmap**

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

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

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

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

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

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

The SRC should provide a report to the RO Board on the process for developing the Catalog and Roadmap.

## **2. Stakeholder Initiative Phase**

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

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

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

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

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

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

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

## **b. Stage 2 – Policy Development: Identification of solutions**

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

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

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

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

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

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

The RO staff can establish the maximum number of Stage 1 and Stage 2 processes that the RO can support based on the annual budget for stakeholder initiatives and the scope of the initiatives/work groups that are established.<sup>90</sup> RO staff support the Work Groups in coordination with the stakeholder co-chairs. One approach used in other regions that may encourage coordination and collaboration between the RO staff and a Work Group is the use of one stakeholder representative and one RO staff representative as co-chairs (or a chair and vice-chair).

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

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

### **3. Initiative Consideration by RO Board**

Upon issuance of a Final Proposal by the RO staff and voting by the stakeholders, the proposal is ready to be presented for approval by the RO Board.

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<sup>90</sup> The RO can identify staffing constraints based on the scope of an initiative (e.g., Bidding above the price cap is small vs. EDAM/DAME that is large) or expertise (e.g., an RO employee may be the SME for both price formation and ancillary services).



RO staff takes the lead in preparing materials for RO Board consideration. Those materials should include all voting results and summaries of comments and positions from stakeholders as well as a “Statement of Reasons” that includes the rationale for the recommendation. The SRC provides opinions to the RO Board on key decisional items—most likely discrete initiatives in which the SRC elected to take an advisory role, and Conceptual initiatives. The SRC may:

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

## VOTING

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

Voting should not be seen as a substitute for robust stakeholder comments and dialogue. While voting helps identify general support or opposition to a proposal, stakeholder comments help shape and guide an initiative. Comments provide the “why” behind a vote and help RO staff and especially the RO Board understand if a sector is opposed to the whole initiative or a specific component.<sup>91</sup> Comments continue to be a critical component that provide guidance and direction from stakeholders to the RO on market evolution.

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

### 1. Who votes?

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<sup>91</sup> For example, in the Price Formation Enhancements – Rules for Bidding Above the Soft Offer Cap stakeholder initiative, many commenters express concerns with the initiative when the proposal was scoped to apply to both the day ahead and real-time (WEIM) markets, while those stakeholders that supported the initiative were focused on the application to the WEIM. Because of these comments, CAISO staff were able to modify the proposal to only apply to the WEIM, creating a final proposal that reflected more of a consensus position among stakeholders. Without the comments, this middle ground may not have been identified. Another example is the Energy Storage Enhancements Initiative where a few targeted solutions were achieved that both industry stakeholders and consumer advocates generally agreed upon, such as the ability to restrict co-located resources to charging from on-site generation.

The RO staff will create an automated voting and reporting system that can be used for all voting processes. The primary voting metric (detailed further below) is at the individual entity level. As described below, the remand process is driven by individual votes tallied at the sector level. RO staff will ensure the votes are tallied for each individual entity and then cross-tabulated by characteristics including sector.<sup>92</sup> Sector representatives may supply additional information or context about individual votes within their sector during subsequent meetings of the SRC or RO. In addition, the RO staff and RO Board may draw additional insight from the detailed cross-tabulations of votes by subgroup as described below.

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

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

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

To have a vote, a stakeholder must register in a specific sector with the RO and agree to a code of conduct, or similar formalization of expectations about how to participate, as a stakeholder (see Appendix C for an example of a possible Stakeholder Registration and Participation Agreement). There will be no fee for registration. RO staff will establish a process for a stakeholder to modify or cancel their registration as appropriate. Registration will be renewed annually to ensure accurate registration information. Individual stakeholder organizations are responsible for keeping their registration and contact information up to date. Disputes regarding sector assignments will be reviewed by the SRC (see section above on Sectors). This approach would be distinguishable from the formality of a “membership” and associated agreement. Stakeholders who elect not to agree to a code of conduct and registration could still participate and comment but would not be eligible to vote.

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<sup>92</sup> In order to avoid situations where only a small portion of a sector actually votes, we seek stakeholder feedback on whether a minimum percentage of eligible voters in each sector could be used for purposes of the remand criteria described below. For example, if less than 30% of the eligible stakeholders in the sector vote, then the sector’s vote would still be reported along with every other sector, but the sector would not be counted as part of the remand criteria for that particular vote.

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

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

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

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

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

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

### **Policy Roadmap Process**

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

### **Work Group/Initiative Process:**

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

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

## **3. How is voting used?**

Voting is ultimately advisory and provides visibility and information to the SRC, market operator, other stakeholders, RO BOSR, RO staff, and the RO Board. Voting is indicative of whether widespread support exists for an initiative or issue and whether any particular sectors or similarly situated subgroups are strongly opposed. All organization votes will be reported and a

remand to the stakeholder process would occur if the votes indicate a need for more collaboration or deliberation in order to generate more agreement. The remand process is defined to ensure that the stakeholder vote has a meaningful impact on the decision-making process if there are significant barriers to agreement and compromise. The remand process is used on final proposals prior to an initiative being sent to the RO Board. However, the goal of the robust stakeholder process defined in this proposal is to promote collaboration and compromise and successfully avoid the need for automatic remands. The process is described below, followed by a diagram of the process.

*Automatic remand:* Although the voting is advisory, specific criteria should be defined to determine a threshold for “significant opposition” (defined below). If a vote meets these criteria, the expectation is that the proposal would be reworked to address the stakeholder concerns and to achieve broader support, unless the RO staff believe the initiative is time-critical, is an exigent circumstance or has significant impact on the justness and reasonableness of the overall market or to address particular circumstances of a market participant or group of participants. If the RO staff believe it is important to proceed with an initiative in the face of substantial stakeholder opposition (defined below), the RO staff should seek and receive approval from the RO Board to continue the process. A remand to the stakeholder process could apply to a full initiative or part of the initiative if these are severable. Thus, if an initiative had multiple elements, staff would have the discretion about which level or group of elements on which to conduct voting. Voting could either be broken up into each element, or a vote could be taken on the overall initiative and staff could determine which elements need further work based on written and verbal stakeholder comment.

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

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

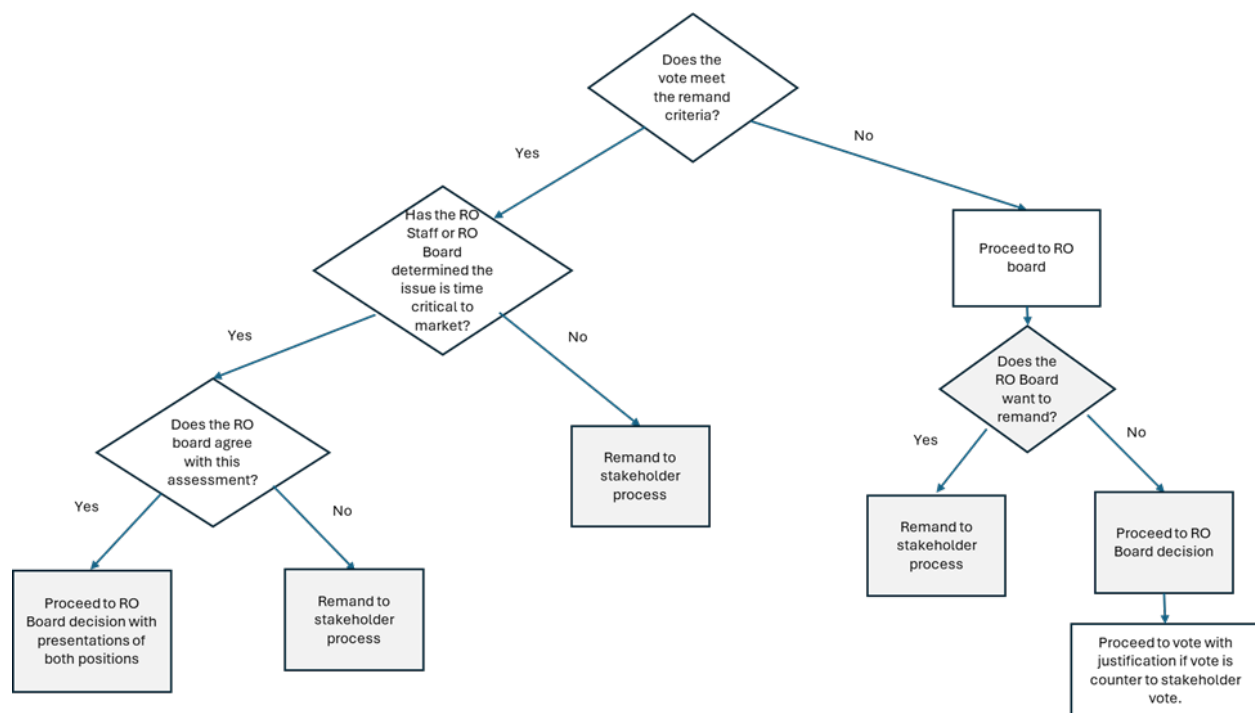
*Elective remand:* If the criterion for significant opposition is not met, but the RO staff is poised to make a recommendation or the RO Board is poised to make a decision that is counter to the recommendation from the stakeholder vote, the RO Board or staff could elect to send the issue back to the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

*Elective override:* If the RO staff strongly disagrees with the stakeholder vote, it may present a recommendation that is counter to the stakeholder recommendation. If that occurs, both RO staff and stakeholders would present their recommendation to the RO Board and the RO Board would make the decision. The RO Board could also override the stakeholder majority opinion (or

specific “opposition” criteria described below) if the RO Board decides that a proposal should move forward nonetheless, notwithstanding stakeholder opposition. Such an override should be based on consideration of the RO Board’s overall responsibility for the markets. In that event, the RO Board would have to provide an explanation for the decision, such as an identification of overriding concerns like protecting consumer interests, addressing time-critical circumstances, or mitigating undue impacts on a particular region or group of entities. Factors in the decision could include, but not be limited to, opinions from the DMM, MSC or the Independent Market Advisor.

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

### Flowchart of Remand Process



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

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

- Geography (e.g., Southwest, California, Northwest, Intermountain (or Mountain) West)
- Sector

- Line of business (Participating Transmission Owner, Investor-Owned Utility, Consumer-Owned Utility (cooperative, municipal utility, public utility district, etc.), Power Marketing Administration, Community Choice Aggregator, Independent Marketer, Independent Power Producer, Distributed Energy Resource Provider, Consumer Advocate, Large Load (Commercial or Industrial), Public Interest Organization, etc.)
- Supply and load

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

## CHAPTER 6: PATHWAYS TO ADDITIONAL SERVICES – STEP 3

### SUMMARY OF PROPOSAL

Both Options 2.0 and 2.5 will position the RO to offer additional services to any market participant interested in those services on a voluntary basis. Under Option 2.0, in which the RO is not a FERC-regulated public utility, the options will be more limited in design following the approach used for energy markets: the RO will hold authority over only the *governance*, but not operation, of the services. Under Option 2.5, in which the RO becomes a FERC-regulated public utility, the RO will have greater flexibility to offer additional services with control over both governance and operations; operational functions could be contracted with the CAISO, as contemplated for energy markets under Option 2.5.

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

### BACKGROUND

The July 14, 2023, letter from nine Western energy regulators to CREPC/WIEB<sup>93</sup> envisioned a new non-profit regional organization that could provide a “full range of regional transmission operator services” utilizing a contract for services with the CAISO and including eventual assumption of the EDAM and WEIM. The regulators explicitly recognized that departing from past CAISO-centered regionalization efforts to center efforts around a new RO would lay the foundation necessary to realize their vision: a governance structure independent of any one state. Taking the regulators’ lead, the Launch Committee adopted core principles, including ensuring the RO would be sufficiently “flexible to accommodate the future voluntary provisions of full regional transmission organization (RTO) services for those entities that desire to do so, but not mandate that any entity must join such a future potential RTO.”<sup>94</sup>

The Launch Committee devoted considerable time to whether the structures being contemplated could be the home for future service provisions. We take as a “given” that enabling the RO to “assume” existing regional EDAM and WEIM functions with the current footprint, which were built around and include the CAISO BAA, will require a change in California law. California Public Utilities Code § 345.5 requires the CAISO to “manage the transmission grid and related energy markets” consistent with certain public interest principles. A legal analysis commissioned

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<sup>93</sup> State regulators’ call for viable path to electricity market inclusive of all western states, with independent governance, July 14, 2023. <https://www.westernenergyboard.org/wp-content/uploads/Letter-to-CREPC-WIEB-Regulators-Call-for-West-Wide-Market-Solution-7-14-23.pdf>

<sup>94</sup> Mission and Charter of the West-Wide Governance Pathways Initiative (WWGPI) Launch Committee, Dec. 21, 2023. [https://www.westernenergyboard.org/wp-content/uploads/Mission-and-Charter\\_Dec-21-Ex-B-FINAL.pdf](https://www.westernenergyboard.org/wp-content/uploads/Mission-and-Charter_Dec-21-Ex-B-FINAL.pdf)

by the Launch Committee confirmed that for the RO to assume governance over and thus “manage” the existing CAISO energy market functions, a statutory amendment is required.

In contrast, creating a new RO can offer a pathway to a broader range of yet-undefined services beyond the day-ahead and real-time markets. These types of services could take many forms. Again, we are not proposing them here; rather, we are assessing whether the RTO as contemplated can be a vehicle for further market evolution, which was one goal of the July 14<sup>th</sup> Letter.

## GREATER OPPORTUNITIES FOR TRANSMISSION OPTIMIZATION

A primary design concept of the WEIM and EDAM is to minimize disruption of existing transmission utilization. This leaves out significant transmission that, if utilized, could bring greater consumer benefit through greater utilization of transmission connectivity. While we do not believe that any market should extinguish pre-existing rights, there are mechanisms that have been used to honor rights, while maximizing the benefits of the market optimization. This could take several forms, including a footprint that includes California, or any subset of the overall market footprint that finds this beneficial. This additional functionality could include greater optimization of systems and potentially reciprocity of access to systems.

Specific concerns have been raised that the contemplated legislative change may not enable California to participate in a future RO service offering because it is arguably beyond management of market services. In light of the complexity of that additional statutory change and the successful history of incremental steps in the West, it could be that two regimes can be put in place that honor California or other state restrictions, but enables others in the West to move forward with more ambitious concepts. The RO may choose to offer, on a voluntary basis, whatever services the market participants direct, with or without participation from the CAISO BAA and transmission owners *without a change in California law*. This approach leaves the West with a platform for fully independent governance for a voluntary RTO. It also positions the CAISO BAA and transmission owners in parallel to all other market participants, to decide which additional services to participate in and pursue any necessary approvals on a timeline that best suits their individual circumstances. By leveraging CAISO experience and infrastructure through a contract for services with the RO, the RO participant’s transmission systems could be operationally co-optimized through a common full network model and the transmission access reciprocity provided today with the WEIM and EDAM markets. This framework enables the RO participants to benefit from a more expeditious, efficient, and lower cost implementation of these additional services without creating a market “seam” in energy market operations.

The Launch Committee acknowledges that this approach may not be optimal. Successful implementation of a “two worlds” transmission system operation *may* encounter more “points of friction” between the rules and governance of the two systems than a unified approach; arguably, however, bringing the West together for transmission consolidation will be challenging regardless of the approach. The two TCA approach nonetheless provides other Western states and transmission owners the opportunity continue participation in the WEIM and EDAM with California and to consolidate transmission and other services under the RO, without a change in



California law, until such time California may be ready to take that step. The Launch Committee supports the RO exploring this option by placing the issue in the RO Stakeholder Catalogue.

The foundation of the West-Wide Governance Pathways Initiative is to enable the Western electricity market to continue an evolutionary path that captures the incremental benefits of organized market participation while recognizing and preserving the unique attributes of Western energy markets. There is broad consensus that continued progress towards an RTO, that encompasses the Western interconnection to the greatest extent possible, will provide additional benefits for market participants. Enabling individual market participants, especially the existing balancing authorities, to voluntarily progress down this path at a pace that is supported by their customers and their regulators/boards is a core value of the Pathways Initiative. The Launch Committee's proposal provides a path that *enables* incremental participation without *requiring* participation.

The path towards market integration and optimization for the West can incorporate lessons learned from other markets as well as the unique attributes of Western participants. The path to an RTO in the West and even the end state will likely not look the way RTOs exist in other parts of the country because of the incremental approach the West has taken, and the value provided by standalone programs and services. Building on the incremental steps the West has taken requires exploring paths that are legally possible today but that no one has ever pursued; past stakeholder efforts have instead been focused on changing the governance of CAISO as a whole, rather than smaller, more targeted steps that address specific, demonstrated benefits for regional integration. The Launch Committee's proposal includes a combination of incremental legislative change and steps that are legally possible today that have support from a broad coalition of Western market participants. This targeted package has a greater likelihood of success through the creation of the RO and a broadly consolidated Western energy market.

The Launch Committee's proposal creates the foundation for continued evolution to an RTO for those interested parties by enabling the RO to provide transmission and other services as it evolves into a FERC-regulated public utility. California law is not a barrier to achieving this goal since the RO can offer transmission services for interested entities with or without participation by California or any other state.

### **SIMPLIFYING RULES FOR TRANSMISSION ACCESS**

As the RO evolves, transmission owners and market participants may wish to launch an initiative to develop its own Transmission Control Agreement (TCA), analogous to what the CAISO does for existing Participating Transmission Owners, to provide transmission operations to interested parties, or to offer a consolidated transmission tariff, or consolidated balancing authorities. Nothing prevents this outcome today except the will of interested parties. The specific interests of stakeholders, however, will drive the RO's evolution through the Roadmap and prioritization process.

The RO could consider development of a transmission paradigm rate that relieves rate pancaking and removes barriers to trade. This combined transmission rate would offer transmission service

across the voluntary footprint. The RO could operate the non-CAISO transmission system on either a contract path/transmission rights holder basis or move to a flow-based, financial transmission rights framework.

While this approach to regional RTO formation has been and will continue to be available, it is not currently accessible to CAISO PTOs since California law specifically requires the CAISO to manage their combined transmission system. The legal and regulatory paths available to other transmission service providers will be decided by them and/or their applicable regulators.

## **PATHWAYS TO OTHER SERVICES**

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

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

### **1. Ancillary Services Market:**

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

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

Already bids to provide certain of these services cross Balancing Authority Area boundaries. The RO could create a tariff to enable all resources that are able to meet the technical requirements of the specific ancillary service to participate in a bid-based market for each service. The RO would develop the technical requirements for each service based on NERC and WECC standards. The RO tariff would enable the co-optimization and deployment of these services across the market footprint.

### **2. Balancing Authority Consolidation**

Balancing Authority Area obligations are burdensome to host utilities and come with significant liability. It is not hard to envision that some BAs may wish to consider consolidation or negotiating a shift of BA responsibilities to others. This stakeholder initiative would enable balancing authorities outside of the CAISO to consolidate operations under the RO's tariff. The Launch Committee's proposal preserves the CAISO balancing authority under the CAISO Board in perpetuity. This is one of the key compromises that has enabled collaboration and consensus for the Launch Committee's work.

### **3. Single Generator Interconnection Queue**

As part of a consolidated transmission tariff, the RO could develop and manage a single queue for generator interconnection for the non-CAISO grid. While this queue would be operated separately from the CAISO interconnection queue and under the RO's sole authority, the timing of the interconnection study process could be aligned with the CAISO's queue, with an enhanced "interregional" queue to enable delivery from one Balancing Authority to another without having to participate in two interconnection queues.

### **4. Congestion Revenue Rights (CRR)**

Subsumed within options for greater transmission optimization, future service offerings could include replacement of contract-path methodology with a flow-based methodology and financial transmission rights. This methodology could include an approach that enabled CRRs to be auctioned/allocated on tie points between BAs under joint authority.

## **STAKEHOLDER PROCESS INITIATION**

The Launch Committee offers a list of stakeholder initiatives to be included in the RO's Catalogue as a potential roadmap to enable continued incremental evolution to the RO providing "a full range of regional transmission operator services." Some of these initiatives would be predicated on the RO's evolution into a public utility under Option 2.5.

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

## NEXT STEPS

The Launch Committee has created an approximate timeline outlining next steps for the remainder of Phase II and the expected activities that will comprise Phase III. The comment period for the Step 2 Draft Proposal opens on September 26 and will close on October 25. A Stakeholder Comment Template is located on the WIEB landing page: [WWGPI - Western Interstate Energy Board \(westernenergyboard.org\)](http://WWGPI - Western Interstate Energy Board (westernenergyboard.org)) and comments should be submitted to [Comments@WestWidePathwaysInitiative.org](mailto:Comments@WestWidePathwaysInitiative.org).

### Phase II

- October 4: Pathways Initiative Public Meeting on the Draft Step 2 proposal
- October 7: SRC Sectors Workshop on October 7
- October 14: New SRC Sector Proposal Release
- October 25: Comments due on draft Step 2 proposal and SRC Sectors
- November 15: Final Step 2 Proposal Release
- November 22: Pathways Initiative Public Meeting on the Final Step 2 Proposal

### Phase III (December 2024- December 2026)

- December 2024: RO Formation Committee member selection
- January 2025: Develop the Formation Committee Charter
- January 2025: Ongoing Launch Committee Public Meetings Continue
- August 2025: In addition to fundraising for start-up costs, the Launch Committee will conduct a RO Operational Funding Study. This will include additional evaluation of fees currently collected by the CAISO, the use of a second lien authority, and further analysis of contingency or operating reserves.
- August 2025: Evaluation of where to house staff closely involved in stakeholder processes
- October 2025: Draft RO Corporate Documents as well as RO Board and executive staff job descriptions
- November 2025: Seat the Nominating Committee
- December 2025: Select an executive search firm for Board members and executive staff
- December 2025: WEM Governing Body Transition Plan
- February 2026: Incorporate the RO
- April 2026: Seat the RO Board

## **APPENDIX**

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

Appendix B: Selection Procedure for Regional Organization Board of Directors

Appendix C: Example Voting Cross-tabulation from PJM

Appendix D: Stakeholder Registration and Participation Agreement

Appendix E: Stakeholder Comment Summary

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



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DRAFT OF August 9, 2024

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

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You asked us to analyze (1) whether the RO would be considered a “public utility” as defined in the FPA under Option 2.0<sup>95</sup> or Option 2.5<sup>96</sup> (or both) of the range of options for structural alternatives to the governance of wholesale electricity markets operated by the CAISO identified in our memo dated April 4, 2024 (“April 4 Memo”); and (2) whether, under Option 2.5, FERC would tolerate an integrated tariff assuming the RO is a “public utility” under that option. Capitalized terms not defined herein have the definitions provided in the April 4 Memo.

**I. Executive Summary**

There is a good argument that the RO is not a “public utility” under either Option 2.0 or Option 2.5, because under both options the RO neither “owns” nor “operates” the CAISO tariff that contains the Market Rules. The FPA defines a public utility as “any person who owns or operates facilities subject to the jurisdiction of” FERC.<sup>97</sup> Under both Option 2.0 and Option 2.5, CAISO

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<sup>95</sup> Option 2 is: The EIM GB becomes an RO, a separate legal entity, and CAISO retains market activities within its corporate scope and operates the market. The CAISO tariff continues to house, and CAISO Administers, the Markets Rules. CAISO delegates or transfers to the RO the sole authority to direct CAISO to file changes related to Markets Rules, with no remaining CAISO Board involvement.

<sup>96</sup> Option 2.5 is: The EIM GB becomes an RO, a separate legal entity, and CAISO transfers responsibility for market activities from its corporate scope to the RO. The CAISO tariff continues to house, and the CAISO administers, the Markets Rules pursuant to a Market Operating Agreement. The RO has independent section 205 filing rights and sole authority to propose and file changes related to Markets Rules with no remaining CAISO Board involvement.

<sup>97</sup> 16 U.S.C. § 824(e).

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

Though there is little precedent directly on point, this argument is supported by FERC’s decision finding that NEPOOL is not a public utility because it neither owns nor operates jurisdictional facilities.<sup>98</sup> Under the ISO-NE Participants Agreement, if NEPOOL supports an alternate proposal made at the ISO-NE Participants Committee, ISO-NE must include that alternate proposal in its section 205 filing of its preferred proposal, explain its reasons for not agreeing with the alternate proposal, and explain why its preferred proposal is superior. Thus, NEPOOL has a modicum of control over ISO-NE’s exercise of section 205 filing rights and, by extension, the ISO-NE tariff. Nonetheless, FERC concluded in *RTO Insider* that NEPOOL is not a public utility. However, FERC did not provide a detailed analysis for its conclusion in *RTO Insider*, and our research has not found cases directly assessing whether an entity having *sole* decision-making authority over aspects of another entity’s tariff (i.e., more extensive rights than the ability to trigger a “jump ball” filing) would result in that entity being a public utility.

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

In addition, there are certain potential advantages to accepting public utility status that should be considered.<sup>99</sup> While public utility status may subject the RO to additional regulatory oversight than if it was found not to be a public utility,<sup>100</sup> accepting public utility status immediately would provide the RO with certainty as to its regulatory status; conversely, not doing so would require continued evaluation of (1) whether changes to the RO’s relationship with CAISO over time impact the analysis of whether the RO is a public utility and (2) which of the RO’s operations, rules and practices are subject to FERC’s oversight because they sufficiently affect jurisdictional rates in the CAISO tariff. In addition, accepting public utility status would take off the table a potential avenue of attack that parties opposed to Option 2 or Option 2.5 might otherwise bring regarding the extent of FERC’s ability to regulate the RO. Finally, accepting public utility status may provide CAISO comfort that any potential liability under the FPA for RO decisions over changes to Market Rules will be appropriately shared between CAISO and the RO.

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<sup>98</sup> *RTO Insider v NEPOOL*, 167 FERC ¶ 61,021 (2019) (“*RTO Insider*”).

<sup>99</sup> Even if the RO could argue that it should *not* be deemed a public utility, we would not expect FERC to take any issue with the RO voluntarily submitting to its jurisdiction as a public utility.

<sup>100</sup> For example, unless a blanket authorization or exemption applies, public utilities must apply for prior authorization from FERC to issue securities under Section 204 of the FPA, and certain transactions involving public utilities may also require prior authorization from FERC under Section 203 of the FPA.

## II. Analysis

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

Section 201(e) of the FPA defines a “public utility” as “any person who owns or operates facilities subject to the jurisdiction of” FERC.<sup>101</sup> Under section 201(b)(1) of the FPA, jurisdictional facilities are facilities used in the transmission or sale for resale of electric energy in interstate commerce.<sup>102</sup> In addition, jurisdictional “facilities” may include tariffs, contracts, accounts, memoranda, papers, and other records, insofar as they are utilized in connection with wholesale sales of electric energy.<sup>103</sup> The jurisdictional facilities in this case are comprised of the CAISO tariff and associated books and records.

Under both Option 2 and Option 2.5, the CAISO arguably continues to own the CAISO tariff, because the CAISO tariff will be on file with FERC in CAISO’s eTariff database. However, it is a closer question whether the RO would be deemed to “operate” the jurisdictional facilities here. Under FERC precedent, FERC includes as “public utilities” entities that have control and decision-making authority concerning the operation of jurisdictional facilities or activities.<sup>104</sup> Moreover, “control” has been found even where that control is not absolute or unfettered.<sup>105</sup>

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

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<sup>101</sup> 16 U.S.C. § 824(e). The definition excludes owners of facilities subject to FERC’s jurisdiction solely due to certain provisions of the FPA such as FERC’s authority to direct interconnection and transmission service or oversight over electric reliability. In addition, the FPA excludes from regulation under the FPA various governmental entities and electric cooperatives. 16 U.S.C. § 824(f). These exclusions are not applicable to this analysis.

<sup>102</sup> 16 U.S.C. § 824(b)(1).

<sup>103</sup> See *Hartford Elec. Light Co.*, 131 F.2d 953, 961 (2nd Cir. 1942) (“*Hartford*”); *Golden Spread Elec. Coop.*, 39 FERC ¶61,322, at 62,022 (1987), *reh’g denied*, 40 FERC ¶61,348 (1987) (“*Golden Spread*”).

<sup>104</sup> Compare *Bechtel Power Corp.*, 60 FERC ¶61,156 (1992) (finding Bechtel was not a “public utility” in its role as O&M services provider to a generating facility because it operated the facility as an agent of the owner, and did not have independent authority to make decisions or control when the facility operated) with *D.E. Shaw Plasma Power, L.L.C.*, 102 FERC ¶61,265 (2003) (finding that an investment advisor affiliate of a D.E. Shaw power marketing public utility was itself a public utility because the investment advisor had control over the wholesale contracts to be executed under the power marketer’s market-based rate schedule as a result of (1) the investment advisor having sole discretion to enter into contracts, (2) the investment advisor having exclusive ownership of the intellectual property on which contracts would be based, and (3) the intention that the investment adviser would recommend the contracts into which the power marketer would enter).

<sup>105</sup> See, e.g., *R.W. Beck Plant Management, Ltd.*, 109 FERC 61,315 (2004) (finding that an energy management company was a public utility due to its governance over the physical operation of a generating facility and effectively served as the decision-maker in the sales of power at wholesale, even though various other affiliates and a trustee had some input into operations as well).



press access to private meetings at which members decided on votes related to filings in connection with the ISO-NE tariff, among other things. NEPOOL asked FERC to dismiss the complaint, arguing that NEPOOL is not a public utility because it does not have a tariff on file with FERC and does not operate facilities used for transmission service or wholesale sales of energy. NEPOOL further argued that press rules did not “directly affect” jurisdictional rates and so were beyond FERC’s jurisdiction. Comments supporting the complaint argued that NEPOOL should be deemed a public utility in part because of its “jump ball” filing rights with regard to the ISO-NE tariff. FERC denied the complaint and in relevant part concluded that NEPOOL is not a public utility.<sup>106</sup> FERC did not elaborate or engage expressly with arguments that NEPOOL’s “jump ball” filing rights gave it control over ISO-NE’s tariff and therefore caused NEPOOL to be a public utility. FERC noted that in a prior decision, it had found that rules governing NEPOOL membership “directly affect what filings the Commission receives pursuant to FPA section 205” because they dictate who may vote on proposed ISO-NE filings and NEPOOL-originated “jump ball” proposals; however, FERC concluded that NEPOOL rules prohibiting press and public attendance at NEPOOL meetings do not directly affect such filings because they do not affect who may vote on NEPOOL proposals.<sup>107</sup>

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

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

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<sup>106</sup> *RTO Insider v NEPOOL*, 167 FERC ¶ 61,021, at P 46 (2019) (“NEPOOL is not a public utility as defined by the FPA. As an organization, NEPOOL does not “own[] or operate[] facilities” engaging in “the transmission of electric energy in interstate commerce” or “the sale of electric energy at wholesale in interstate commerce.” As such, the Commission can exert jurisdiction over NEPOOL’s operations only insofar as they directly affect jurisdictional rates.”).

<sup>107</sup> *RTO Insider* at P 48 (citing *New England Power Pool Participants Committee*, 166 FERC ¶ 61,062 at P 48 (2019)).

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

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

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

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

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

\* \* \*

Shared tariffs refer principally to ISO and RTO tariffs, portions of which may be revised by FPA Section 205 filings by the ISO/RTO or other transmission owners. Depending on the tariff section involved, one party may have exclusive rights to modify the section or multiple parties may have rights to modify the section. The structure of all the ISO and RTO tariffs as well as their filings rights are different.<sup>108</sup>

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

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<sup>108</sup> *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 at PP 60, 65 (2008).

## **APPENDIX B: SELECTION PROCEDURE FOR THE REGIONAL ORGANIZATION BOARD OF DIRECTORS**

### **1.0 Introduction and Scope**

The Regional Organization (RO) Board of Directors is a seven-member body that exercises sole authority over the Western Energy Imbalance Market (WEIM) and the Extended Day-Ahead Market (EDAM). The RO Board is intended to meet the definition of an independent board of directors. The procedure defined in this document, which governs selection of Members of the RO Board, is drawn from other similar procedures and defines the process to be used once the RO is established as an ongoing organization. Since the RO will be a new entity when it is first launched, this procedure is provided to define the selection of the initial RO Board of Directors. The Members of the RO Board will be selected by a Nominating Committee comprised of stakeholder representatives. Board nominees will be subject to approval by the RO Board of Directors in an open meeting or, in the case of establishing the initial membership of the RO Board, by the RO Formation Committee.

This procedure explains the selection and composition of the Nominating Committee, how the Nominating Committee will select a slate of nominees for each open position, and how those nominees will be subject to a vote of approval by the RO Board.

### **2.0 Definitions**

“Body of State Regulators (BOSR)” means the group of state regulators to be established pursuant to the charter of the RO Board of Directors, consisting of representatives from each state in which load-serving utilities participate in the ISO’s Energy Imbalance Market and its Real-time Market as those terms are defined in the tariff.

“Regional Organization Board of Directors” or “RO Board” means the independent body established by the tariff to have sole authority over the rules of the Energy Imbalance Market and Extended Day-Ahead Market.

“Executive Search Firm” means the firm retained by the Regional Organization to assist the Nominating Committee with identifying qualified candidates for the RO Board.

“Member” means a member of the RO Board.

“Nominating Committee” means the committee established by this procedure to identify a slate of nominees for positions on the RO Board, as detailed below in Section 3.0.

“Regional Organization (RO) Formation Committee” means the temporary group, acting as a subcommittee of the WWGPI Launch Committee, that has been established to develop, in collaboration with the CAISO, the details for establishing the Regional Organization. It is intended that the RO Formation Committee be established with up to ten (10) members from the Pathways Launch Committee and a less than quorum number of the WEM Governing Body.

### **3.0 Roles and Responsibilities**

### 3.1 Nominating Committee

There will be a Nominating Committee of (XX) members, consisting of one representative each from the following sectors or groups:

- [Placeholder for sectors]

\* Sectors are still in the process of being defined in the Stakeholder Process workstream. Once they are solidified those sectors will be listed here.

### 3.2 Selection of Sector Representatives to the Nominating Committee

Not less than 150 days prior to the scheduled expiration of any Member's term, and at other times as may be necessary to fill a vacancy on the RO Board, the Corporate Secretary of the RO will ensure that each of the following sectors has a representative to the Nominating Committee and ensure that the makeup of the Nominating Committee reflects regional diversity and is not dominated by any one region.

- [Placeholder for sector definitions]

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

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

If one or more of these sectors does not have a currently serving representative to the Nominating Committee, the Corporate Secretary will designate a person from one of the entities in the sector to serve as a sector organizer to facilitate selection of a representative. Each sector organizer must make reasonable efforts to notify all entities that are qualified for participation in its sector about the initial organizational meeting or teleconference for the sector. These efforts shall include issuing, with assistance from RO staff, a market notice no less than seven calendar days in advance of the meeting or teleconference.

The entities in each sector should make their best efforts to amicably resolve any disagreements about which entities belong within the sector and thus are entitled to participate in the sector's selection of a representative to the Nominating Committee. Any disagreements that cannot be resolved by the entities in a sector may be referred to the management of the RO for resolution. The Chief Executive Officer (or his or her designee) and the General

Counsel will hear from the interested parties and make a decision. Their decision shall be binding on the member entities of the sector.

Within 40 days after the Corporate Secretary designates a sector organizer to facilitate selection of a representative, the sector organizer shall certify the choice of the sector representative and the representative's terms of service to the Corporate Secretary. If a sector organizer is unable to make such a certification because the sector has been unable to reach agreement on its representative, the RO Board will select a representative for the sector. The RO will post the name and contact information of each sector representative on its website.

### 3.3 Selection of Other Representatives to the Nominating Committee

No less than 150 days prior to the expiration of any Member's term, and at other times as may be necessary to fill vacancies on the RO Board, the RO Corporate Secretary shall ask the following bodies to select one representative each to the Nominating Committee:

- The RO Board, and;
- The BOSR

The representative from the RO Board will serve two functions: they will help the Nominating Committee select nominees and serve as a liaison between the Nominating Committee and the RO Board, which will approve or reject the ultimate panel of nominees.

Each of these bodies may determine its own method of selecting a representative to serve on the Nominating Committee, provided that the representative of the RO Board shall not be a Member whose current term will be expiring.

The term of service for the representatives selected by these groups shall be one year.

### 3.4 Operation of the Nominating Committee

The Nominating Committee shall nominate a slate with one nominee for each seat on the RO Board for which the term is scheduled to expire.

The Nominating Committee shall act on the consensus of its voting members. The voting members will be the representatives of the sectors, excluding the member from the RO Board. If the Nominating Committee cannot reach a consensus on a slate of candidates, the Nominating Committee may bring forward a slate for consideration based upon a super-majority vote. A super-majority shall be defined as 70% or more of the voting representatives.

The other member of the Nominating Committee from the RO Board shall not have a vote; however, they are expected to share their views about the candidates and to participate fully in deliberations.

The Nominating Committee should convene no less than 100 days prior to the scheduled

expiration of any Member's term to begin the process of identifying potential candidates for each open seat, or as soon as practicable when other vacancies arise.

There should be no restriction on the number of current WEM Governing Body members that can serve on the new RO Board. If an RO Board Member whose term is scheduled to expire has expressed a desire to be nominated for a new term, the Nominating Committee should determine whether it wants to re-nominate the sitting Member without interviewing other candidates. In making this decision, the Nominating Committee should consider whether the sitting Member has the qualifications to serve in light of the responsibilities associated with overseeing both a Day-Ahead and Real-time market. If the Nominating Committee does not decide to proceed in this manner, then it should first determine which set of diverse qualities would best complement the remaining Members and ask the Executive Search Firm to identify at least two qualified candidates to interview, in addition to the sitting Member. Any current WEM Governing Body member who applies will be interviewed, but they will be expected to go through the Nominating Committee process like other applicants.

With assistance from the Executive Search Firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. This can include allowing for self-nomination by potential candidates and recommendations brought forward from sector representatives by their respective sector participants if the Nominating Committee desires. Optimally, the Committee's selections should ensure that the overall composition of the RO Board reflects a diversity of perspectives that may result from different areas of expertise, geographic background, ethnicity, gender and professional backgrounds, and life experience. Similarly, no one state or sub-region in the West should have excessive representation - meaning Members whose place of residence or work history tends to associate them with a particular Western state. The Committee should strive to ensure that the RO Board includes at least one Member with expertise in Western electric systems and markets. If the Nominating Committee can identify a qualified candidate with a Western background who has as strong overall experience and knowledge as the other candidates, and all other factors being equal, the Committee should prefer the candidate with a Western background.

The deliberations of the Nominating Committee shall be confidential. Nominating Committee members may share the names of candidates with others outside the Committee as part of the process of evaluating candidates. The Nominating Committee should have a common understanding about the extent to which they will share the names of candidates in connection with a particular search and that those being contacted understand they need to maintain confidentiality.

The Nominating Committee should use its best efforts to reach consensus on a slate of nominees no later than 30 days before the expiration of the current Member's terms. If the Nominating Committee concludes that it will be unable to reach consensus on the proposed nominee(s) with sufficient time to allow the Governing Body to approve the nominee(s) before the term of the sitting Member(s) expires, the Nominating Committee may ask the RO Board to consider requesting that the sitting Member(s) to continue service for up to sixty additional days after their term(s) would otherwise expire. If the Committee is having difficulty reaching

consensus, it should consider interviewing additional candidates as one possible step.

Except as otherwise provided in this Procedure, the Nominating Committee may establish its own procedures.

### 3.5 Executive Search Criteria

Not less than 90 days prior to the scheduled expiration of any Member's term and as necessary to fill other vacancies, the RO will engage an independent Executive Search Firm to identify qualified candidates for consideration by the Nominating Committee.

Based on direction from the Nominating Committee, the Executive Search Firm will seek out candidates having one or more of the qualifications listed below, and will propose to the Nominating Committee candidates that complement, to the extent possible, the qualifications of the Members whose terms are not expiring, with the goal that the Governing Body should have broad expertise in the following areas.

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

The Executive Search Firm should also consider candidates with senior executive experience in

public interest organizations provided they otherwise have the relevant background described above.

All potential candidates must possess a proven reputation for excellence in their areas of expertise, and optimally should reflect a diverse background (e.g., ethnicity, gender) and viewpoint.

Candidates must meet the standard of independence defined by FERC in Order 2000 and cannot have a prohibited relationship or prohibited financial interest. A candidate is in a prohibited relationship or holds a prohibited financial interest if they:

- are employed by or provide consulting services to any entity (or person) that would disqualify them from service as a Member of the RO Board, including any entity that is engaged in the generation, transmission, marketing, trading or distribution of electricity within the geographic area of the Western Electric Coordinating Council;
- holds a financial interest that would be prohibited by 18 C.F.R section 35.340)(1)(i); or
- has another actual or perceived conflict of interest that would be prohibited by the Code of Conduct & Ethical Principles and that could not be resolved before the candidate becomes a Member of the RO Board.

The Executive Search Firm may not consider a candidate who has a prohibited relationship or financial interest, unless the candidate commits to promptly end any prohibited relationship after being appointed and before exercising the duties of the office, and to dispose of any prohibited financial interests within six months after appointment.

### 3.6 Approval of Nominees

The individuals submitted by the Nominating Committee shall be subject to approval by the RO Board in open session. If the decision occurs before the end of the expiring terms, the RO Board member(s) whose terms are expiring will be recused from the approval decision.

If the individuals are accepted, the nominees will become Members of the RO Board upon execution of a services agreement with the RO.

If any individual is rejected by the RO Board, the Nominating Committee must re-convene and establish a new alternate nominee(s). After the Nominating Committee submits its alternate nominee(s), the RO Board shall decide, in public session, to approve that alternate nominee(s).

Individual stakeholders may submit letters of recommendation to the RO Board supporting either the entire slate or individual candidates.



## **Selection Procedure for Initial Seating of the RO Board**

### **Introduction**

For the initial selection of the RO Board Members, the RO Board will not exist and will not be able to perform the functions noted in the selection procedure. In addition, there are some other issues that should be considered in the initial RO Board Member selection process. This appendix provides a recommended approach for the initial selection process.

### **Proposed Approach for Initial RO Board Selection**

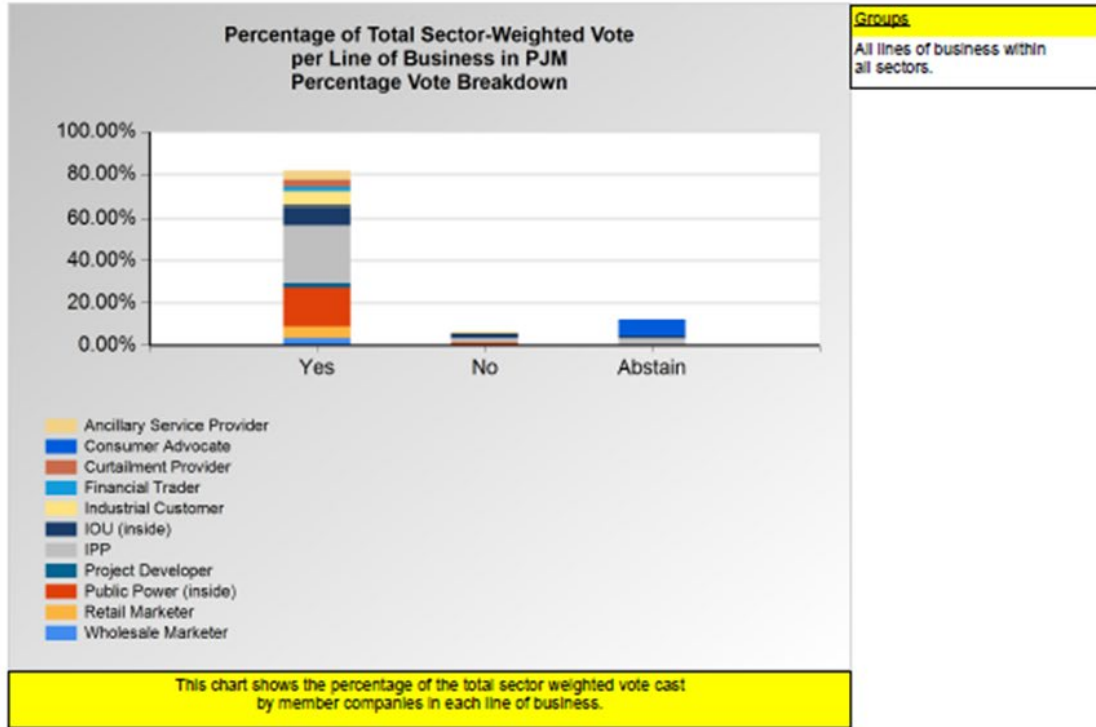
The following items are recommended for the initial selection process:

- a. An RO Formation Committee will be created to coordinate with the CAISO in the detailed creation of the RO. The Formation Committee will consist of up to ten members from the Pathways Launch Committee and a non-quorum of the existing WEIM Governing Body, selected by the WEM Governing Body.
- b. For purposes of the initial RO Board selection, the Formation Committee will provide the functions of the RO Board in the selection process procedure. In addition, the Formation Committee will select one Committee member to serve in the RO Board seat on the Nominating Committee. This may not be a WEM Governing Body Member if that member has submitted his/her name for consideration for the RO Board.
- c. Preparation for the RO Board selection process may be initiated beforehand, but the actual commencement of seating the Nominating Committee, selecting an Executive Search Firm, and initiating the selection process should not commence until CA legislation has been approved.
- d. In selecting the initial RO Board Members, the Nominating Committee should give due consideration to members of the existing WEM Governing Body who are willing to serve on the new RO Board to the extent that they meet the expertise criteria. This would allow for ease of transition since the existing WEM Governing Body members would provide continuity and history to the new RO Board.
- e. In order to ensure a proper rotation of terms on the RO Board, the terms of the initial seats will be randomly assigned by lot as follows:
  - 2-seats: 1-year terms
  - 2-seats: 2-year terms
  - 3-seats: 3-year term

## APPENDIX C: EXAMPLE VOTING CROSS-TABULATION FROM PJM

**PJM Members Committee**  
**MC Meeting Date: April 27, 2022**

Item 01a: Do you support the motion to call the question and end debate?  
(Vote Result: PASSED)

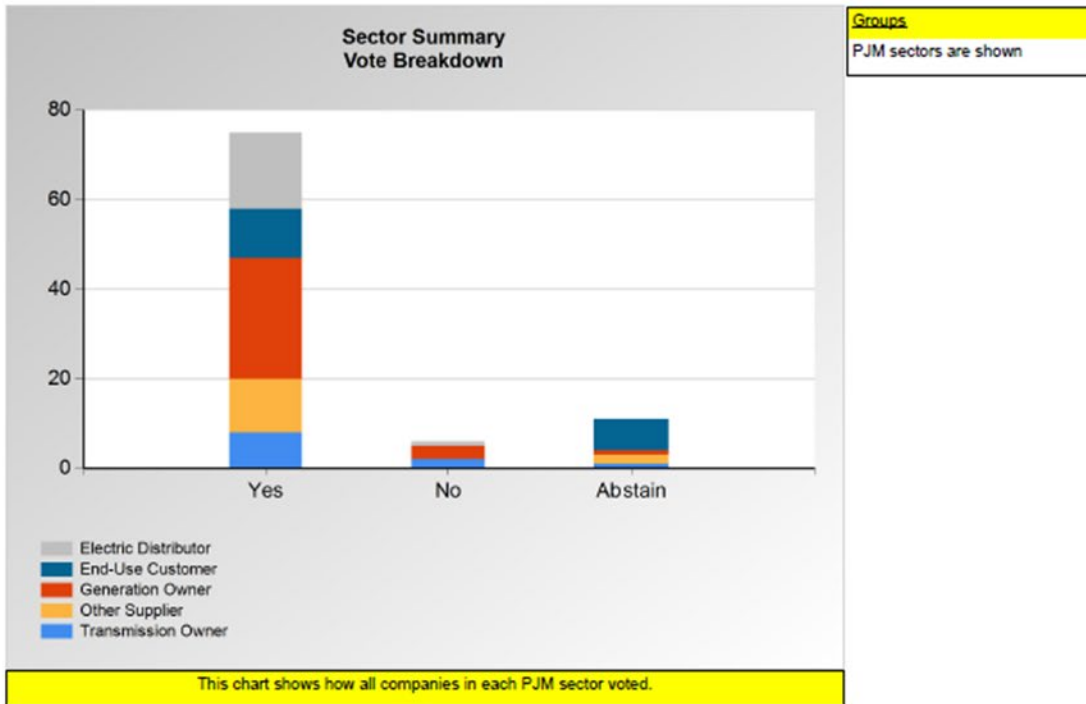


	Yes	No	Abstain
Ancillary Service Provider	0.96%	0.93%	0.00%
Consumer Advocate	0.00%	0.00%	21.88%
Curtailment Provider	0.98%	0.00%	0.00%
Financial Trader	0.59%	0.00%	0.00%
Industrial Customer	18.75%	0.00%	0.00%
IOU (inside)	57.14%	14.29%	7.14%
IPP	5.10%	1.85%	0.72%
Project Developer	0.65%	0.00%	0.00%
Public Power (inside)	4.86%	2.33%	0.00%
Retail Marketer	1.12%	0.00%	0.00%
Wholesale Marketer	0.72%	0.00%	0.00%

\*Refer to the Company Designations table "Line of Business Designation" column to see each company's group designation found on this chart.

**PJM Members Committee  
MC Meeting Date: April 27, 2022**

Item 01a: Do you support the motion to call the question and end debate?  
(Vote Result: PASSED)



**Additional Detail:**

	Eligible	Attended	Did Not Vote	Yes	No	Abstain	Sector Vote In Favor	Sector Weight in Favor
End-Use Customer	32	18	0	11	0	7	100.0%	1.000
Transmission Owner	14	12	1	8	2	1	80.0%	0.800
Generation Owner	108	32	1	27	3	1	90.0%	0.900
Electric Distributor	43	25	7	17	1	0	94.4%	0.944
Other Supplier	307	19	5	12	0	2	100.0%	1.000
Total	504	106	14	75	6	11		4.644

\*Refer to the Company Designations table "Company Sector" column to see each company's group designation found on this chart.

## APPENDIX D: STAKEHOLDER REGISTRATION AND PARTICIPATION AGREEMENT

### REGIONAL ORGANIZATION (RO) STAKEHOLDER REGISTRATION AND PARTICIPATION AGREEMENT

*Please complete this form and email it to {insert contact info}.*

- I. Organizational Information:
  - A. Organization Name:
  - B. Main Office Address:
  - C. Main Office Telephone Number:
  - D. Website:
  - E. Description of Organization (Corporation, Nonprofit, Utility, etc):
  - F. Geographic Area of Operation:
- II. Authorized Representative:
  - A. Primary Contact:
    - 1. Name:
    - 2. Title:
    - 3. Telephone Number:
    - 4. Email Address:
  - B. Secondary Contact:
    - 1. Name:
    - 2. Title:
    - 3. Telephone Number:
    - 4. Email Address:
- III. Sector Participation:

*Include List of Sectors once developed*

#### IV. Status:

Please indicate if this is a new stakeholder registration, a request to update contact information/authorized representative, or a cancellation of an existing registration.

Individual stakeholder organizations are responsible for keeping their registration and contact information up to date.

### What It Means to Be a Recognized Stakeholder

The Western Regional Organization (WRO) is a 501(c)(3) which offers all interested stakeholders the ability to engage in governance and stakeholder initiatives to identify and resolve issues related to market design and operation. Anyone interested in the WRO is considered a stakeholder and may participate in open meetings and submit comments. Recognized members who have completed the Stakeholder Registration and agree to the

Participation Agreement are eligible to formally participate in their relevant sector, cast indicative votes, and act as a representative in the Stakeholder Representatives Committee (SRC) or other working groups or standing committees. Full details on the operation of the stakeholder process and governance structure can be found in the WRO bylaws.

## **Participation Expectations for Recognized Stakeholders**

### Bylaws

Recognized stakeholders who share interest in and support the purposes of WRO may participate in the stakeholder process as long as they abide by WRO bylaws and other policies, rules, and regulations as adopted through the stakeholder process.

### Public Meetings and Anti-Trust

Meetings may not be recorded or transcribed, including the use of any artificial intelligence tools, software, or applications to perform such tasks, without notice to all parties attending and consent from those parties. Members of the media are required to announce their attendance at the beginning of meetings but are not permitted to take part in discussions and should direct questions to WRO Media Relations. Participants must identify themselves and the organization(s) that they are employed by, representing, or participating on behalf of, so all participants are aware of their presence and on whose behalf they are participating.

NERC Anti-Trust Policy: It is policy and practice to obey the antitrust laws and to avoid all conduct that unreasonably restrains competition. This policy requires the avoidance of any conduct that violates, or that might appear to violate, the antitrust laws. Among other things, the antitrust laws forbid any agreement between or among competitors regarding prices, availability of service, product design, and terms of sale, division of markets, allocation of customers or any other activity that unreasonably restrains competition.

FERC Standards of Conduct: Participation in meetings are mixed and includes marketing function employees; please refrain from divulging non-public generation or transmission information.

### Termination and Suspension

A recognized stakeholder may be terminated or suspended for failure to meet the Participation Expectations outlined. The stakeholder will receive written notice from the Stakeholder Regional Committee and will have the opportunity to be heard orally or in writing by the RO Board, not less than five days before the effective date of the suspension or termination.

## APPENDIX E: STAKEHOLDER COMMENT SUMMARY

### **CAISO Issues**

**Structure: Should the RO be an organization that primarily consists of a policy-setting board (Option 2) or an organization that formally offers and bears ultimate responsibility for market services (Option 2.5)?**

There was strong support for Option 2.5. Multiple commenters noted that a policy-setting board does not achieve the level of independent governance that is ultimately desired and would influence market participation. Some commenters favored support for a step-wise approach beginning with Option 2 but moving to 2.5 but emphasized the need for greater independence.

**RO-CAISO relationship: Should the RO's contract with the CAISO be a governance-focused interface agreement (Option 2) or a contract for services from a markets vendor (Option 2.5)?**

There was strong support for a contract for services but some stakeholders were willing to support a governance-focused interface agreement as an intermediary step with the goal of a contract for services from CAISO to achieve greater independence.

**Cost: How important to you or your organization is implementation cost in evaluating Option 2 versus Option 2.5?**

Cost was an important factor to all commenters but many stated that there was a willingness to pay more to achieve greater independence and an acknowledgment that greater independence comes with a higher price tag. Some commenters noted concerns about cost allocation and a desire for a stepwise approach to be able to ramp into greater costs over time in moving from 2.0 to 2.5. The majority of commenters wanted to better understand the cost differential of 2.0 vs 2.5.

**Independence: How valuable is the increment of institutional independence gained in Option 2.5 relative to Option 2?**

The majority of commenters noted that greater independence was the ultimate goal and desired as much independence as possible placing higher value on 2.5. Two commenters noted that understanding the cost would drive their position on the additional independence 2.5 would bring.

**Responsibility: Do you have any feedback on the level of institutional responsibility the RO would bear in Options 2 and 2.5, as outlined in this presentation?**

Entities did not feel strongly on this topic. Some felt that the RO should have responsibility in all areas for which it has authority. Others noted that 2.0 didn't provide enough institutional responsibility to achieve independence, and another commenter advocated for starting with 2.0 and building over time to 2.5.

**Liability: Are there any particular aspects of financial liability borne by the RO in Options 2 and 2.5 that you would like to raise or address?**

Most commenters had no opinion on financial liability, but one noted the time it would take to mount enough reserves for option 2.5 and suggested the practicality of starting with option 2.0 and moving over time to 2.5. Others commented that with the general desire for the greatest independence possible they would support the greater financial liability associated with 2.5.

**Evolution: Does either option offer a durable institutional home to oversee or host services beyond energy markets?**

Commenters were split on this question. Some felt that 2.5 would be durable and desired the ability to go beyond market services and others felt unsure about the durability with one commenter citing neither framework was inherently incompatible with possible evolution of additional services beyond energy markets.

**Given the potential time needed to rework market-related contracts and establish sufficient contingency reserves, among other matters, do you perceive value in a Step 2 approach that would begin with Option 2 and then transition or evolve to 2.5?**

Commenters were concerned that 2.0 didn't achieve enough independence and that starting with 2.0 could stall and potentially jeopardize the eventual move to 2.5. There was some support and an indication of finding value in the transition approach, but it was couched with concern.

**Tariff Analysis**

**Do you agree with the suggested areas where the CAISO and the RO would each have sole authority and the areas where they would have shared authority?**

Most commenters agreed or did not see any issues with the sole and shared authority issues. However, one commenter disagreed citing that any sections that apply to services or obligations provided by the RO should be under the sole authority of the RO. There was also a request for further information on how the decision-making process for Shared Authority would work.

**Do you agree with the suggested principles proposed to determine RO sole authority?**

Most commenters agreed with or had no issues with the suggested principles. However one commenter disagreed citing there should be an "applies to" test for RO authorities, and another noted that the principle proposed for determining RO sole authority appears overly broad and inconsistent with the classifications of tariff sections.

**Do you agree with the suggested principles proposed to determine CAISO sole authority?**

There was general agreement with the principles, with the exception of one commenter disagreeing citing that the CAISO Board should only have sole authority over sections that *only* apply to services taken by CAISO BAA participants.

**Do you agree with the suggested principles proposed to determine overlapping authority?**

General agreement but one commenter noted that it seems to conflict with the proposed scope of RO sole authority. Another commenter disagreed stating it did not see areas where overlapping authority makes sense, recognizing that this leads to the need to reorganize the tariff to provide clarity.

**Please provide feedback on the proposed options for dealing with overlapping authority with suggestions for other possible options.**

Commenters were split on the appropriateness of “porting over” to RO sole authority all sections that apply to RO products, services, terms and conditions- some opposed, some favored this option. Two entities supported reorganizing the tariff to ensure clear delineation of authority. Another entity suggested creating an intent test similar to the “apply to” test could be a practical way to address issues of overlapping authority between the RO and the CAISO.

**RO Formation**

**Type of Organization: do you support the proposed 501(c)(3) organization of the RO?**

There was strong stakeholder support for utilizing a 501(c)(3) structure.

**State of Incorporation: Do you support proposed incorporation of the RO in Delaware?**

There was strong stakeholder support for incorporation in Delaware.

**Principal Place of Business: Do you support co-locating the RO in Folsom with the CAISO as the principal place of business?**

Selecting Folsom, CA as the principal place of business given the efficiencies and benefits of co-locating with CAISO had general support, but some commenters expressed concern about being able to achieve meaningful separation from the CAISO, the optics of independence, ability to effectuate culture change, and the need for additional rationale around the benefits of co-location. Alternative locations suggested were co-locating with other regional organizations in the West, such as the Western Electricity Coordinating Council (WECC) in Salt Lake City or the Western Power Pool (WPP) in Portland. The practicality of proximity to airports was also suggested as a factor to consider.

**RO Governance**

**Where there are issues of joint authority for the CAISO Board and RO Board, should there be a collaborative relationship and joint meetings?**

The majority of commenters agree with the Pathways recommendation that the two boards should develop a collaborative relationship and hold joint meetings on joint authority issues in the tariff. One commenter opposed this recommendation stating the situation is different under the sole authority model and holding joint meetings could give the appearance that the ISO BOG would have undue influence over the RO Board. The opposing commenter also believes that Pathways should not prescribe that the boards hold joint meetings.

**Number of members on the RO Board.**

There was general support for the Pathways recommendation to establish a seven-member board for the new RO. One commenter asked for more information on how the number was determined. One commenter suggested that a larger board would allow for more diversity of opinions in board deliberations and suggested a board size of 9-11 members might be appropriate. Another commenter suggested that the board may need to expand in size as responsibilities expand.



**Should seats on the RO Board be reserved?**

Most stakeholder supported not reserving board seats for specific sectors or interest groups. One commenter recommended reserving one seat for ratepayer interests. Another commenter recommended allowing current WEIM GB members to be afforded seats on the new RO board and their continued service on the board reevaluated as their individual terms expire.

**Should the Transition Plan from the WEM GB to the new RO Board be left to the Formation Committee?**

Based upon the stakeholder comments, it is clear that the Pathways Launch Committee needs to better define the role of, and relationship with, the Formation Committee.

**Are there formation efforts (e.g. type of corporation, tariff language development, bylaws development, board selection process) that should be pursued by the Formation Committee in conjunction with the CAISO in advance of legislation and the amended tariff filed at FERC?**

There was general stakeholder support for the proposal of developing the pre-launch implementation efforts (e.g. - bylaws, tariff language, agreements) while CA legislation is being developed but not actually start the formation efforts (e.g. - nominating committee process/board selection, staffing selection) until the CA legislation is approved and any required tariff language is filed at FERC. Concerns were raised that the CA legislative process should not dictate the bylaws and tariff language and that the development of these documents be done in an open, transparent manner.

**Should startup funding for the RO that will likely be required before any market supported funding is available be given to identifying funding that would not be considered as compromising Board independence (ex: DOE grant funding or ongoing support from the Pathways Initiative 501.c.3 funding via Global Impact)?**

There was either stakeholder support or no comment on the recommendation for startup funding.

**RO Board selection procedure (based on the current WEM GB selection process).**

This question garnered the most stakeholder input for the RO Governance discussion. In general, there was support for the Nominating Committee procedure but with suggested changes. Several commenters addressed the types of sectors that should be included in the Nominating Committee. The draft procedure relied on the current WEIM GB procedure as a template. However, the Stakeholder Process WG is addressing the number and types of sectors. Commenters also discussed the role and the size of the Formation Committee. A comment was made that the Formation Committee members should be selected by the sectors and not necessarily be from the LC. Comments were also made about the restrictions on the existing WEIM GB members on the new board. A comment was made to add expertise to the board selection criteria in the area of “Advanced Energy Technologies”.

**Public Interest****Were the suggested tools from the workshop comprehensive?**

There was general agreement that the suggested tools were reasonable and a good starting point. Stakeholders expressed a desire to better understand how the tools would work together and for a stronger definition of “public interest” (would it include entities outside the footprint?). There was a request to identify if the tools would be housed within the RO or CAISO (or both). Additional tools that were suggested consisted of the following: communications between all stakeholders and the RO board should be subject to ex parte rules, a mechanism for the States Committee to request a rehearing of decisions made by the RO board, RO itself (not just the Market Monitor) should be required to respond to data requests from the BOSR and individual state commissions, creation of an Office of Public Participation, creation of a public interest advisory council that directly advises the RO board, creation of a stakeholder compensation program.

#### **Do you disagree with any of the tools suggested?**

There was no disagreement with any of the proposed tools. It was recommended that a reminder and clarification be included that “any person can file a complaint under Section 206 of the Federal Power Act alleging that an existing rate, term, or condition of service is not just and reasonable or is unduly discriminatory.” There was a desire that public power utilities and consumers served by public power utilities have appropriate representation in these tools, as well as a desire for clarification and rational regarding the tools’ purpose and operation.

#### **Do you agree with the tools shared to protect the public interest within the RO board?**

There was general support for reflecting the public interest in the RO Structure and Board with varying feedback on Board qualifications and structure. Multiple comments highlighted the desire for transparency in the decision making of the RO Board, including adherence to open and public meeting principles. One commenter noted that creating a definition of “public interest” may be challenging across a multi-state RO footprint and recommended allowing each state to define public interest. A question about the RO Board’s role when state laws conflict was posed. A request that potential changes to legislative language would be informative as to how “public interests” are captured and prioritized.

#### **States Committee/BOSR**

There was strong support for maintaining the current BOSR structure and not including voting as proposed in the workshop. One commenter recommended that a States Committee receive funding via a tariff to support independent staffing to serve the Committee’s needs. Support for maintaining current role of public power and PMA liaisons in an advisory role to the BOSR.

#### **Consumer Advocate Engagement**

There was strong support for a 501(c)(3) Consumer Advocate Organization (CAO). Considerations around funding and cost allocation as well as the scope of the organization were noted. A question was posed about how consumer advocates would represent consumer-owned utilities. There was some support for the CAO to be able to obtain data and information from the independent market monitor, but one commenter opposed it. Commentors noted that additional consumer advocate representation was needed in other aspects of the proposal, such as the stakeholder process and RO Board selection process.

### **Independent Market Monitor**

There was strong support for including an independent market monitor and preserving the three elements from the current CAISO structure: Department of Market Monitoring (DMM), Market Surveillance Committee, and Market Expert. There was a request to clarify if there would be a separate RO market monitor in addition to the current CAISO market monitor or if this function would be shared. If shared, then there is a need for clear delineation of roles and responsibilities. Commenters were split on whether the market monitor should be independent from CAISO/Market Operator (internal vs. external). There was a question about who would have access to data from the Market Monitor (RO Board, States Committee, Consumer Advocate Organization). One commenter suggested structuring a Consumer Advocate committee and/or department within the Independent Market Monitor. One commenter suggested an expanded role for the market monitor.

### **Stakeholder Process**

#### **Workshops**

To support the Work Group's efforts, the Launch Committee engaged Gridworks to conduct a series of workshops, with a focus on gathering stakeholder input on options for and considerations regarding the RO's stakeholder engagement activities. As outlined in Gridworks' Final Report on the Pathways Stakeholder Process Workshop Series, published earlier this month,<sup>109</sup> Gridworks' primary tasks involved publication of a research brief comparing and analyzing stakeholder processes used in other organized energy markets and conducting stakeholder workshops designed to elicit feedback and input on the goals, objectives, and design of the RO stakeholder process.<sup>110</sup>

The Gridworks team identified key themes raised by stakeholders during the workshops, as summarized in the Final Report. This input informed this proposal and it also aligned with the observations and experiences of participants in the Stakeholder Process Work Group. With respect to the topics covered during the first workshop, the Work Group observes that stakeholders appeared to find the review of approaches utilized within the Eastern organized markets informative, particularly as touchstones for highly stakeholder-driven and sector-based processes. At the same time, stakeholders also observed that elements of the more market operator-driven processes also offer benefits, particularly in terms of potentially reducing the resource commitments required of stakeholders to participate in initiatives and in enabling independent market design specialists on staff to offer a high degree of expertise and guidance in shaping outcomes. These highly decentralized processes also accommodate participation and comments by nearly any stakeholder.

The second workshop discussed the benefits and drawbacks of various process models, with significant focus on existing CAISO structures, including its recent efforts to introduce more stakeholder participation at the early stages of initiatives through the use of working groups.

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<sup>109</sup> Gridworks, Final Report, Pathways Stakeholder Process Workshop Series (Sept. 2024), available at [https://www.westernenergyboard.org/wp-content/uploads/Final-Report\\_-\\_WWGPI-Stakeholder-Engagement-2024.pdf](https://www.westernenergyboard.org/wp-content/uploads/Final-Report_-_WWGPI-Stakeholder-Engagement-2024.pdf).

<sup>110</sup> Final Report at 3-4.

There is clear interest in more stakeholder input and oversight in forming problem statements and development of solutions, as well as in establishing the structure, timing, and prioritization of initiatives. Stakeholders also recognized that the scope of and timing for a particular initiative should be calibrated to its complexity, with simple initiatives requiring a lower time and resource commitment from the market operator staff and stakeholders, and broader, more conceptual initiatives requiring more time and resources.

There seemed to be limited enthusiasm for completely relinquishing market operator staff involvement in the administration of the stakeholder process. Stakeholders appear to support an evolution of the Western Energy Markets Regional Issues Forum (“RIF”), including building on the initiative prioritization structure the RIF has developed in recent years. Stakeholders also reiterated the importance of ensuring that the RO Board is fully briefed on the range of individual stakeholder perspectives regarding issues, through both a voting process and through detailed written comments.

The third workshop focused on sectors and voting concepts, and stakeholders expressed general support for the use of sectors in effectively organizing stakeholders and helping to create consensus. There is support for a larger number of sectors than what the RIF supports, while recognizing that other characteristics of stakeholders outside of sector delineation, such as business model, load service or supply side obligations, or geography, can be relevant in some instances. Stakeholders offered a range of perspectives on voting, and whether and when voting is used, whether it is binding or informational, and when a formal vote may be beneficial versus polling procedures.

The fourth workshop gathered stakeholder feedback on a Discussion Document that included the Work Group’s first draft proposal of the new stakeholder process based on input during the first three workshops and written comments. Participants appreciated the amount of thought and effort that went into developing the Discussion Document and were overall supportive of the concepts included in the proposal. There were also several areas where stakeholders identified a need for additional refinement and clarification including regional balance in the process, the voting process overall, and the role and identification of sectors. Below is a summary of the feedback received from the Discussion Document.

### **Stakeholder Representatives Committee (SRC)**

There was overall strong support for establishing a Stakeholder Representatives Committee (SRC) which would have an expanded role from what the RIF performs today. Comments encouraged allowing alternates, proxies, conducting open, public meetings, the creation of SRC working groups, as well as creating a guide to memorialize sector practices, organization, membership requirements and expectations. Some entities suggested that balancing SRC representation from a supply/demand and buyer/seller perspective was needed, as well as voting thresholds and when voting related to initiatives would occur. Comments acknowledged that serving as an SRC sector representative would be a significant commitment and asked that additional RO staff or other support be explored to support this work. There was encouragement to reevaluate the process periodically to explore opportunities to refine the structure based on future lived experience.

## **Sectors**

Extensive feedback on sectors was received. Stakeholders commented on classification and number of sectors, number of sector seats, definition of sectors, sector construction and design, balancing entity characteristics, as well as the purpose and rationale for sectors. There was general support for sectors as a construct, but feedback was wide ranging with little alignment. Based on this feedback, the Launch Committee has identified this as an area that needs additional work before a revised proposal is put forward.

## **Initiative Classification**

There was overall strong support for the proposed initiative classification model, with a request for better definition of exigent circumstances and suggestions about how State and Local Public Policy initiatives would be treated. Some commenters requested clarity on timing for the life cycle of different initiatives and the ability to effectively fast-track.

## **Stakeholder Process**

Commentors strongly supported utilizing a Roadmap and Catalog process but offered suggestions on how work groups and initiative sponsors would be created. There were requests that the budget for initiatives be made explicit with a possible mechanism to increase budget to be able to address additional initiatives. Stakeholders had a range of perspectives on the extent and participation of RO and Market Operator staff within the initiative framing, prioritization, and decision making processes. In general, stakeholders expressed that from a resourcing perspective they would be able to effectively participate in the process as proposed, however some smaller entities expressed concern about limited bandwidth.

## **Voting**

Voting received extensive comments as well. There was strong support from commenters for incorporating voting into the process with the majority favoring advisory or indicative voting. The desire for abstentions, focusing on individual entity rather than sector based votes, transparency in votes, preservation of the opportunity for written comments, and that voting be used to foster collaboration and compromise were common themes. Support for a remand process with refinement of the “significant opposition” criteria definition was expressed, as well as the opportunity for more frequent votes at the working group and task force levels. One set of comments proposed a simplified proposal with required voting by the SRC at the final proposal stage and defined actions if opposition occurred. Another set of issues raised were whether the RO staff should have the ability to override a stakeholder vote, if sectors should be allowed to determine how votes are counted, and what constitutes a majority.