



Western EIM Governance Review

*Governance Review Committee
Revised Straw Proposal*

December 14, 2020

Table of Contents

I.	Introduction.....	1
II.	The Governance Review Committee Initiative.....	2
	A. Process Followed to Develop Straw Proposal	2
	B. Principles Adopted to Guide the GRC.....	3
	C. Factors to Consider in Assessing Alternatives.....	4
III.	Discussion and Preliminary Recommendations for Governance Modifications	5
	Issue 1: The Delegation of Authority for Market Rules to the Governing Body, the Decisional Classification Process, and Durability	5
	A. Background.....	5
	B. The Joint Authority Model in General.....	6
	C. Defining the Scope of Joint Authority	9
	D. Other Issues Related to the Delegation of Authority	13
	E. Durability of the Delegation of Authority	21
	Issue 2: The Selection of Governing Body Members	23
	A. Background.....	23
	B. The GRC’s Original Proposal and Proposed Refinements based on Stakeholder Comments	24
	Issue 3: Governing Body Meetings and Engagement with Stakeholders	28
	A. Introduction.....	28
	B. Discussion of Stakeholder Comments and GRC Recommendations	29
	Issue 4: Other Potential Areas for Governing Body Involvement.....	32
	<i>I. Annual Policy Initiatives Roadmap</i>	<i>33</i>
	A. Introduction.....	33
	B. Background: The Straw Proposal and the Process for Developing the Roadmap	33
	C. Summary of Comments	34
	D. GRC Recommendation	34
	<i>II. Governing Body Role with Department of Market Monitoring, Market Surveillance Committee and Governing Body Market Expert.....</i>	<i>35</i>
	A. Introduction.....	35
	B. Background.....	35

C.	Summary of Comments	36
D.	GRC Recommendations.....	38
III.	<i>Possible funding for the Body of State Regulators</i>	39
A.	Introduction.....	39
B.	Background.....	39
C.	Summary of Comments	40
D.	Recommendation	41
Issue 5:	Governing Body Mission Statement.....	41
A.	Introduction.....	41
B.	Background.....	41
C.	Summary of Comments	42
D.	Recommendation	42
Issue 6:	Other Potential Topics for Consideration.....	42
A.	Introduction.....	42
B.	Background.....	42
C.	Summary of Comments	43
D.	Recommendation	43
IV.	Summary of Recommendations.....	44
V.	Next Steps	48
Appendix A:	Overview of Legal Issues Relevant to Governance	49
Appendix B:	ISO Rates and Fees.....	54
Appendix C:	Summary of Multi-State RTO State Committees.....	56
Appendix D:	Glossary of Abbreviations.....	60
Appendix E:	Documents Cited	62

I. Introduction

The Governance Review Committee is an advisory committee charged by the Board of Governors and the Governing Body with developing proposed refinements to the current governance of the EIM. The Board and the Governing Body asked the GRC to lead a public stakeholder process on EIM governance that will culminate in a proposal the GRC will submit to the Board and the Governing Body for their consideration.¹

This Revised Straw Proposal is the third in a series of papers the GRC has prepared to develop the proposal it will ultimately submit to the Governing Body and the Board. We commenced our work with a Scoping Paper, issued in January of this year, seeking stakeholder input on the issues the GRC should address, and where applicable, substantive proposals about what changes should be made. As expected, the stakeholder input on that paper was extensive and robust, with a diverse set of stakeholder groups from throughout the West providing detailed comments on the various topics identified in the paper.² With the benefit of that input, the GRC next prepared and issued an initial Straw Proposal on July 31, 2020 that set forth preliminary recommendations on each major aspect of governance addressed by stakeholders in their comments on the January 29, 2020 Scoping Paper. The July 31, 2020 Straw Proposal recommended both a set of proposed near-term changes to governance under the current market structure (the “EIM-only” scenario) and identified certain further proposed changes that would be considered only if a day-ahead market is added to the current EIM market structure (the “EDAM” scenario), as the Board and Governing Body had directed in the GRC Charter.

Stakeholders were asked to provide further input on each aspect of the proposal, and the GRC is pleased once again to have received a large volume of written comments from a broad cross-section of stakeholders throughout California and the West.³ These comments are both detailed and wide-ranging, and include thoughtful input on every aspect of the July 31, 2020 Straw Proposal. As discussed below, there are some areas that

¹ The Board and EIM Governing Body approved a Charter for the GRC that sets forth its role and scope of work, which is available at <https://www.westerneim.com/Documents/EnergyImbalanceMarketGovernanceReviewCommitteeCharter.pdf>. The members of the GRC are set forth on the Western EIM website at <https://www.westerneim.com/Pages/Governance/GovernanceReviewCommittee.aspx>.

² There were 16 sets of stakeholder comments on the January 29, 2020 Scoping Paper, which are available at <https://www.westerneim.com/Pages/documentsbygroup.aspx?GroupID=D0B1BA2A-63F0-4A29-900F-0AE5561457CE>.

³ There were 19 sets of stakeholder comments on the July 31, 2020 Straw Proposal, which are available at: <https://stakeholdercenter.aiso.com/StakeholderInitiatives/AllComments/47b3dcc6-217f-4f72-9aad-bbb4cab7f30b#org-baa5b64b-d34d-4525-a588-7bb4236f76f4>

show broad consensus among stakeholders, as well as others where stakeholders' viewpoints and recommendations are more varied. But in all cases the comments are, as expected, sufficiently substantive and robust to help crystallize the GRC's collective thinking about how best to improve and refine the proposal.

In this paper, the GRC discusses the comments, explains how they have influenced our collective thinking, and sets forth a set of refinements to the proposal. The GRC will also seek further stakeholder comment on each topic, which we intend to use to develop a final draft proposal that we hope to publish by the end of the first quarter of 2021.

For ease of reference, this paper follows the same organizational structure, with same grouping of topics, as was used for the July 31, 2020 Straw Proposal. The next section describes the process the GRC has followed to develop its proposed recommendations, certain principles we developed to guide our work, and factors we are using to evaluate the various alternatives. Section III addresses each of the major issue areas the GRC identified in its January 29, 2020 Scoping Paper. In this section, we set forth for each topic a summary of the proposal we made in the July 31, 2020 Straw Proposal, followed by a discussion of stakeholder comments and, where applicable, any refinements we have made to our original proposal. For ease of reference, we have also provided a summary of those recommendations in Section IV, followed by an overview of next steps and the procedural schedule in Section V.

As in our last paper, we also include an Appendix for reference purposes. The Appendix includes certain background information that is relevant for our proposal, including several topics that stakeholders have asked us to address. Appendix A is a summary developed by CAISO legal counsel that discusses certain provisions of the California Corporations Code and federal tax law that we have considered in developing the proposals outlined in this paper. This legal background is particularly relevant for our proposals relating to the delegation of authority to the Governing Body and the durability of that delegation. Appendix B provides background information regarding the process used to establish the rates that recover the CAISO's operational costs, including the EIM administrative charge. This information is provided in response to questions on this topic raised by stakeholders in prior comments. Appendix C includes details about the groups at other ISOs and RTOs for state regulators, similar to the BOSR. This information is additional background for the proposal that the BOSR receive funding to support increased involvement in CAISO policy initiatives. Appendices D and E are a glossary of abbreviations and links to the documents cited, respectively.

II. The Governance Review Committee Initiative

A. Process Followed to Develop Straw Proposal

The GRC has used two main avenues to obtain stakeholder input as we work to develop our governance proposal. As discussed above, we have prepared written papers that present proposals and solicit written stakeholder input. We also have held a series of public meetings, by videoconference, where GRC members have presented an overview

of the committee's work and current proposals and where stakeholders have been invited to ask questions and provide further input. Since issuing the July 31, 2020 Straw Proposal, the GRC has had three such general sessions, with one each in August, September and October.

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

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

It is important to note that this set of revised proposals is only an interim step in the GRC's process. Neither the GRC, nor any of its members, has decided what the GRC's final governance proposal should be. The GRC will not take such action until the end of its deliberative process, and will do so at that time by a formal vote, taken in public session, that will not occur until after an opportunity for final public stakeholder comment and a robust discussion in general session covering the totality of the published draft final proposal. This is consistent with the CAISO's Open Meeting Policy, which requires all formal actions take place only in noticed meetings. It will also ensure that the committee has the benefit of all stakeholders' final input on the total package of recommendations before deciding what to forward to the Board and the Governing Body for their further consideration.

In a recent public session, one stakeholder expressed concern about the amount of the discussion leading up to the final proposal that has occurred in executive sessions of the GRC. To address questions raised as to transparency, the GRC has increased the number of its general session meetings and has provided more detailed information about its evolving thinking in those meetings. More generally, we have ensured transparency by holding regular general session meetings to discuss the committee's work, issuing a series of written papers that set forth our evolving thinking, seeking feedback through written comments, and providing briefings at each of the Board of Governors and Governing Body meetings. The GRC has followed CAISO's Open Meeting Policy per its charter. The GRC is comprised of representatives from various sectors across the market footprint with the intention to have all perspectives heard and has used a series of working sessions to sift through the issues to arrive at a potential set of recommendations.

B. Principles Adopted to Guide the GRC

As discussed in the July 31, 2020 Straw Proposal, one of the GRC working groups focused on developing a set of general principles for the GRC to use to guide its work.

The GRC undertook this effort to ensure that the GRC members have a clear and common understanding of what we are attempting to accomplish and how we will perform our work.

These guiding principles, which we presented at the May 5 public meeting, begin with a single overarching guiding principle, followed by a set of more specific principles that provide additional detail.

The overarching principle states that the GRC shall:

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

The more specific principles state that the GRC shall:

- Focus exclusively on issues relating to governance of the EIM and a potential EDAM.
- Seek, where possible, to build upon and refine the existing EIM structure rather than recommending a completely new model.
- Ensure modifications to the governance structure are consistent with the requirements of the CAISO's status as a nonprofit public benefit corporation and any applicable legal requirements.
- Ensure modifications to the governance structure are consistent with the CAISO's Board of Governors' corporate legal obligation to govern, oversee, and manage the affairs of the corporation.
- Ensure that any modifications or enhancements to the Governing Body's role in the current governance structure will promote confidence and support among stakeholders throughout the region in the successful operation of the EIM and potential EDAM.
- Ensure transparency in its process by conducting all meetings in conformance with the CAISO Bylaws and Open Meeting Policy.

There is consensus among that the GRC members that adhering to these high-level principles will help to ensure a successful outcome for our effort.

C. Factors to Consider in Assessing Alternatives

The GRC also identified in the July 31, 2020 Straw Proposal several factors to consider in connection with evaluating the various alternatives before it. These factors are:

- Whether the alternative aligns with the GRC Principles set forth above;

- The level of resources an alternative may require or any complexity it may introduce;
- The level of stakeholder support for the proposal;
- Whether the alternative is needed for EIM only or EIM/EDAM; and
- Any additional legal or regulatory considerations.

Where applicable, the paper discusses how one or more of these factors may have influenced the GRC’s proposed recommendation.

III. Discussion and Preliminary Recommendations for Governance Modifications

Issue 1: The Delegation of Authority for Market Rules to the Governing Body, the Decisional Classification Process, and Durability

A. Background

One central topic for EIM governance is what role the Governing Body should play in approving policy initiatives to change market rules embodied in the Tariff, including how that role is shared with the Board and how its scope is defined. In light of its importance, this is the first issue we address.

We generally refer to this topic as the delegation of authority because it involves the Board of Governors’ delegation of certain authority to the Governing Body. As previously observed, there are two main aspects of the current delegation of authority:

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

The current scope of the Governing Body’s approval authority is limited to any changes to real-time market rules that are EIM-specific, meaning that they apply uniquely or differently to EIM balancing authority areas, or any changes to generally applicable real-time market rules where the primary driver for the change is an issue specific to the EIM balancing authority areas. In addition to its approval authority, the Governing Body also has an advisory input role for all other real-time market rules or rules that generally apply to participation in all CAISO markets.

For matters within the Governing Body’s approval authority, the type of shared authority the Governing Body currently holds is called “primary authority” – which means the matter comes first to the Governing Body for approval and, if approved, then goes on the Board’s “consent agenda” for approval or, if necessary, for further consideration by the

Board.⁴ The Board, by majority vote, may decide to remove a matter from the consent agenda if it decides the matter warrants its further review, in which case its decision whether to approve the matter is also subject to a majority vote.⁵

In the July 31, 2020 Straw Proposal, the GRC proposed changes both to the scope and the type of approval authority. We recommended expanding the scope of issues the GRC would consider, while moving to a “joint authority” model designed to foster a closer and more collaborative relationship between the Board and the Governing Body. The latter change would eliminate the concept of assigning one body the “primary” role for approving certain changes and instead require each body to consider fully any proposals that are within their shared approval authority. We also addressed several related topics regarding how this new model would work, including how any disagreements between the two bodies could be addressed, how any emergency FERC filings would be approved, the process for identifying which policy initiatives fall within the bodies’ joint authority, and the process and requirements for making any changes to the delegation of authority over time.

Stakeholders provided extensive comments on the general concept of joint authority, the scope of authority, and on each of the more detailed proposals identified in the July 31, 2020 Straw Proposal. We discuss those comments below and identify various refinements we are proposing in response to stakeholder input.

B. The Joint Authority Model in General

As explained in our July 31, 2020 Straw Proposal, the joint authority model contemplates that any proposal to amend the tariff in an area covered by joint authority would go to both bodies for discussion and approval before CAISO staff could move forward with a filing at FERC for approval of the proposed tariff change.

Although the current “primary authority” approach also requires covered issues to go to both bodies for approval, the Governing Body in that context has the primary role for considering the matter and the Board typically reviews it only on a consent-agenda basis, without substantive discussion. Under the joint authority approach, the Board and the Governing Body would jointly consider and approve the proposal after a full substantive discussion of its merits.

To avoid the inefficiency of having two separate meetings to consider such proposals, the GRC further recommended that the Board and the Governing Body meet whenever possible in a single joint session to consider matters that are within their joint authority.

⁴ The Governing Body’s scope of approval authority, its advisory role, and the type of shared authority it holds are set forth in more detail in the Charter.

⁵ The Board has not to date exercised its authority to remove any such matters from the consent agenda and has instead approved on a consent agenda basis all matters that have received the Governing Body’s approval.

After a single presentation from CAISO staff and any stakeholder comments, the two bodies would then each vote separately, with a majority vote from each body constituting approval. The Board and Governing Body already have experience with this approach, which the two bodies used to approve the GRC charter and to establish the membership of the GRC. We expect these joint meetings would, like the current Governing Body meetings, occur on a rotating basis in Folsom and in other locations throughout the regional EIM footprint, or via video conference contingent on health and safety protocols.

Most stakeholders express strong support for moving to a joint authority model.⁶ These commenters generally observe that this model, which allows for a jointly held public dialogue with stakeholders, would promote cohesion between the bodies by ensuring they have a common understanding of the issues and any stakeholder concerns. It also would promote, in their view, a free exchange of views among the members of both bodies, which should help to ensure that the two bodies are able to maintain close alignment over time.

The stakeholders supporting joint authority also generally supported the GRC's proposal to align the scope of authority to reflect this shared model. As discussed in more detail below, the scope of joint authority would, in the context of EIM, include aspects of the real-time market rules not within the current scope of primary authority for the Governing Body. Stakeholders argue this makes sense given the close overlap and integration between EIM and the broader real-time market, which is likely to carry over and increase in any future EDAM.

Several commenters express a different view. SCE and the CPUC Public Advocates Office do not support the joint authority model and instead recommend keeping the current primary authority model, together with the current scope of authority in place for EIM.⁷ Both commenters argue that giving the two bodies equal authority over a broader scope of issues is unwarranted because entities outside of the CAISO balancing authority area are able to voluntarily exit the EIM (or future EDAM) market with relative ease, while market participants within the CAISO do not have a comparable option. This ability to exit, they argue, means that there is no need to modify the EIM Governing Body's role, either now or in the context of EDAM.⁸ The PAO also expresses concern

⁶ See AWEA Comments on Issue 1, BOSR Comments on Issue 1, BPA Comments on Issue 1, Chelan Comments on Issue 1, CMUA Comments on Issue 1, Joint EIM Entities Comments on Issue 1, NRU Comments on Issue 1, PG&E Comments on Issue 1, PGP Comments on Issue 1, PIO Comments on Issue 1, PPC Comments on Issue 1, Six Cities Comments on Issue 1.

⁷ See CPUC PAO Comments at pp. 1-2 (Issue 1), SCE Comments on Issue 1.

⁸ Another commenter, the Energy Division of the CPUC, recommends deferring the issue of joint authority until it becomes clear whether EDAM will move forward. CPUC ED Comments at p. 2 (Issue 1).

that the joint authority model may increase costs for the CAISO and requests information about how such incremental costs would be funded.⁹

The GRC continues to believe that a joint authority model would bring substantial benefit and we are inclined to retain this fundamental aspect of our original proposal for EIM. We believe this structure will promote collaboration, help to build consensus for any future changes to the market, and ensure a strong foundation that will help to facilitate the development and success of a future EDAM. Realigning the scope of shared authority for both the Governing Body and the Board is appropriate in light of the strong commitment that stakeholders have demonstrated over the last five years to the success of EIM, and the increasingly integrated nature of the real-time market spanning areas of California that are outside the CAISO balancing authority area and throughout the West.

We understand the concern that SCE and the PAO have raised about differing exit capabilities, but we seek to address that concern through other aspects of our proposal rather than by eliminating the joint authority construct. In the July 31, 2020 Straw Proposal, we proposed that the Board alone have authority to revise or revoke the delegation of authority following a process that allows for advisory input and a notice period. This structure seeks to address, at least in part, the concern about the difference in levels of commitment because it ensures that the Board can make adjustments in the future if circumstances change such that the delegation is no longer warranted.

As discussed below, the GRC is also proposing to add a new provision that would give the Board discretion to rescind or revise the delegation of authority without an extended notice period if a large number of EIM Entities (or future EDAM participants) give the required notice of an intent to withdraw. This would provide additional assurance that the interests of market participants within the CAISO balancing authority area would be protected in the unlikely event that a substantial number of EIM Entities decide to withdraw.

We also believe that providing greater clarity and specificity regarding the scope of joint authority may help to address some concerns regarding the general concept. As discussed below, we are proposing a definition of joint authority for EIM that explicitly exempts from joint authority all real-time market or other rules that apply only to the transmission facilities under the CAISO's operational control and all rules that apply only to the CAISO balancing authority area and relate to reliable operations. This delineation – which would explicitly exempt key topics such as resource adequacy, reliability must-run contracts, the capacity procurement mechanism, and ancillary services – would ensure the Board retains sole authority to approve any changes in these areas.

We are also not proposing at this juncture to expand the scope of shared authority to cover any aspects of the current day-ahead market. In context of a future EDAM, we have observed that joint authority could extend to proposals to change existing day-ahead

⁹ See CPUC PAO Comments at p. 2 (Issue 1).

market rules, but we do not attempt to address the specifics of such a delegation. We instead proposed to defer that issue to a later point in time, when more is known about the proposed EDAM market design.

With respect to the PAO's concern about increased costs, the GRC has not identified any incremental costs associated with moving to a joint authority model. The model does not contemplate an increase in the size of either body, nor in the frequency of their meetings or the amount of CAISO staff resources needed to support either body. As noted above, the proposal contemplates that the two bodies in most cases will meet together, which may actually reduce administrative costs compared to the current model where the two bodies typically hold separate meetings. And while the PAO correctly observes that EIM market participants do not pay the CAISO's GMC charge, they do pay a separate EIM charge that is designed to recover a proportionate share of the CAISO's administrative expenses.¹⁰

C. Defining the Scope of Joint Authority

In the July 31, 2020 Straw Proposal, we discussed the proposed scope for joint authority only at a relatively high level.¹¹ We explained that because the EIM is part of a unified real-time market, it generally would be appropriate for joint authority to apply to proposals that seek to change existing real-time market rules, though we recognized that it would be necessary to make some exceptions to that general rule for certain topics that apply only to the CAISO.¹²

Most commenters support this overall approach, based on the view that the close integration between EIM and the broader real-time market warrants having both bodies involved in proposals to change real-time market rules.¹³ As discussed above there are two commenters, SCE and PAO, who disagree with this view and propose instead to keep the current scope of authority for the EIM Governing Body.¹⁴ And there is one

¹⁰ These fees are called EIM administrative charges. The funds received from these charges reduce the CAISO's revenue requirement, thereby reducing the GMC fees paid by other market participants. A more detailed description of the EIM administrative charges is set forth at the end of this paper, in Appendix B.

¹¹ See July 31, 2020 Straw Proposal at pp. 8-9.

¹² See July 31, 2020 Straw Proposal at fn. 21.

¹³ See AWEA Comments on Issue 1, BOSR Comments on Issue 1, BPA Comments on Issue 1, Chelan Comments on Issue 1, CMUA Comments on Issue 1, Joint EIM Entities Comments on Issue 1, NRU Comments on Issue 1, PGP Comments on Issue 1, PIO Comments on Issue 1, PPC Comments on Issue 1, Six Cities Comments on Issue 1.

¹⁴ See CPUC PAO Comments at pp. 1-2, SCE Comments on Issue 1.

commenter, PG&E, who generally supports realigning the scope of authority but recommends that the dividing line between joint authority and the authority that the Board retains alone should be more clearly spelled out in the next iteration of the GRC's straw proposal.¹⁵

The GRC agrees that providing a more precise definition of what falls within the scope of joint authority is warranted at this time, specifically in the context of the "EIM-only" option.¹⁶ Adding more clarity to this dividing line will help to ensure that all stakeholders have a common understanding of what the GRC is proposing and a full opportunity to comment on it.

Developing a clear and workable rule to identify the scope of joint authority is a challenging task, and we do not believe there is a single "right" answer to this question. The CAISO's operations are many-faceted and its tariff is highly detailed and complex. The tariff is nearly 2,700 pages long in total and includes thousands of interrelated sections and subsections that necessarily must evolve over time as business needs change. To be workable, any definition thus should be sufficiently definite and precise to avoid frequent debates about how it should apply.

Because some degree of precision and predictability is important, vague formulations – such as the concept that joint authority should apply to all tariff rules that may affect or have some impact on the EIM – should be avoided. The CAISO's market operations are inherently interrelated, such that there would be an argument in most instances that a change to a given aspect of the tariff could have some direct or indirect impact on EIM. A rule that requires a case-by-case assessment of the potential impact on EIM thus would devolve into a series of subjective debates regarding whether a particular proposed change to the tariff would be sufficiently impactful to be subject to joint authority.

To provide a more objective test, we believe the definition should look first at whether the proposal would create or modify a tariff rule that applies to the real-time market in general or to the EIM more specifically. This will create a more defined and manageable subset of tariff rules to consider.

This first step, however, should not be the end of the matter. Although the EIM is part of the unified real-time market and there are many rules that apply equally to all participants in the real-time market, there are also tariff rules that apply either only to the EIM balancing authority areas (e.g., accounting rules for GHG imports into California) or only to the CAISO balancing authority area (e.g., resource adequacy rules). The definition of joint authority should address how proposals that fall into each of those categories would be handled.

¹⁵ See PG&E Comments on Issue 1.

¹⁶ We continue to believe that it is premature to attempt to define the scope of joint authority that would apply in the context of EDAM and that any such effort should wait until after the EDAM market design is known.

The GRC proposes that all market rules that apply either to all real-time market participants (including EIM) or that apply only to EIM balancing authority areas should be within the scope of joint authority. This would ensure that the Governing Body has shared approval authority over all market rules that govern participation in EIM.

This leaves for further consideration the “CAISO-only” real-time market rules that do not apply to the other balancing authority areas within the EIM. As discussed below, we propose that certain such rules should be subject to joint authority while others would be subject to approval by the Board alone.

In the July 31, 2020 Straw Proposal, we noted certain CAISO-only topics should continue to be subject to approval by the Board alone, even if there is some aspect of the topic may carry over into the real-time market rules. Although we did not try to state a categorical rule or identify every such topic, we stated that the Board alone should approve any tariff changes in the areas of transmission planning, generator interconnection, or the reliable operation of the CAISO’s balancing authority area, such as reliability must run contracts, the capacity procurement mechanism, or resource adequacy requirements.¹⁷

We continue to believe that these areas should be within the sole purview of the Board. Transmission planning and generator interconnection are matters that apply only to the transmission grid that Participating Transmission Owners have turned over to the CAISO’s operational control. These topics have very little, if any, carry over into the real-time market rules and thus are properly outside the scope of joint authority. Rules relating to the reliable operation of the CAISO balancing authority area have somewhat more overlap with the real-time market. But their impact on EIM is likely to be relatively limited in most instances, and the Board must have the ability to ensure that all necessary steps are taken to ensure the reliable operation of the CAISO balancing authority area. This latter principle is consistent with a fundamental premise of EIM, which is that each balancing area remains responsible for reliability within its own balancing authority area and for compliance with all reliability standards established by FERC, NERC or WECC.¹⁸

With the foregoing concepts in mind, the GRC developed and has been considering two options for how to define the scope of joint authority:

¹⁷ See July 31, 2020 Straw Proposal at fn. 21.

¹⁸ See CAISO Tariff Appendix B.17 (Pro-Forma CAISO-EIM Entity Agreement), §2.1 (“**Scope of Responsibilities**. The Parties are individually responsible for the efficient use and reliable operation of their Balancing Authority Areas consistent with the Reliability Standards established by the Western Electricity Coordinating Council ... and the North American Electric Reliability Corporation ..., and in accordance with their respective tariffs on file with the Federal Energy Regulatory Commission ...”).

Option 1: Joint authority extends over all proposed changes to the market design or market rules that apply to the Energy Imbalance Market or the Real Time Market, except for any such rules that apply either (i) only to the CAISO controlled grid or (ii) only to the CAISO balancing authority area.

Option 2: Joint authority extends over all proposed changes to the market design or market rules that apply to the Energy Imbalance Market or the Real Time Market, except for any such rules that apply either (i) only to the CAISO controlled grid or (ii) only to the CAISO balancing authority area that are related to reliable operations (e.g., rules relating to resource adequacy, reliability must run contracts, the capacity procurement mechanism, or ancillary services).

Both of these options would extend joint authority to the rules that apply to all real-time market participants and to the rules that apply only to the EIM balancing authority areas. Both also would exclude certain CAISO-specific rules, but the exclusion is somewhat broader for Option 1 than Option 2. Option 1 excludes all rules that apply only to CAISO-controlled grid or only to the CAISO balancing authority area. Option 2 contains the same exclusion for CAISO-controlled grid, but limits the exclusion for CAISO BA-only rules to rules that relate to reliable operations. To give a clear sense of the types of CAISO BA-only rules that would be excluded because they are related to reliability, Option 2 also includes an illustrative list of excluded topics that lists many of the topics we identified as Board-only in our July 31, 2020 Straw Proposal.¹⁹

The GRC believes that there are reasonable arguments in support of each of these options, but leans towards Option 2 as the preferable approach.

Option 1 establishes a more bright-line rule that focuses only on the entities to which the market rule would apply. If the market rule would apply to EIM market participants only or to all participants in the real-time market (including EIM market participants), then it would be within the joint authority of both bodies to approve. Because this is a bright-line rule, it would likely be simpler to administer than Option 2, which adds a somewhat more subjective consideration regarding whether a proposal that would apply only to the CAISO balancing authority area is related to reliable operations.

Option 2, however, would include under joint authority certain market-focused proposals unrelated to reliable operations that apply only to the CAISO balancing authority. Because the EIM and the rest of the real-time market are very closely integrated, such proposals could in some cases have significant impacts on EIM, even if the rules themselves do not specifically apply to EIM.

The GRC generally prefers Option 2 because it would give the EIM Governing Body a shared approval role over such market-oriented initiatives that would change real-time

¹⁹ The topics from the July 31, 2020 Straw Proposal that are not included in this list – transmission planning and generator interconnection – would be excluded under either option through the exception for CAISO controlled grid.

market rules unrelated to reliable operations. Because such initiatives could potentially have a significant impact on EIM even if they apply only to the CAISO balancing authority area, we think approval by both bodies would be warranted.

We do have some concern, however, that delineating CAISO reliability functions from CAISO market operations may be challenging. The GRC has offered in Option 2 examples of what we would consider to be topics relating to reliable operations and invite stakeholder comment on additional areas that fall into reliable operations and/or any proposals for how to delineate what constitutes reliable operations. The GRC requests that stakeholders provide the rationale for additions or changes in order to support continued deliberation of this topic by the GRC.

As noted, we recognize that defining the scope of authority is very challenging and there is likely no perfect resolution to this issue. We invite and encourage stakeholders to provide comment on these options and on any alternatives that we should consider. We also encourage stakeholders to consider this issue in concert with the decisional classification dispute resolution process, discussed below, which addresses how any disagreements about the proper classification of an initiative would be resolved.

D. Other Issues Related to the Delegation of Authority

In this section, we address several matters that directly relate to the delegation of authority. We encourage stakeholders to comment on each of these topics and to identify any other such issues that may warrant further discussion.

(i) Process for Resolving Potential Deadlocks

The current delegation of authority model does not include a defined process to address a situation where the Governing Body and the Board do not agree on whether to approve a proposal that is subject to their joint authority. In the July 31, 2020 Straw Proposal, we recommended adding a process for resolving these types of deadlocks. The process we proposed includes the following steps:

- If a proposal addresses a tariff change that is clearly needed, falls within the joint approval authority of both bodies and further, one body votes to approve a proposal but the other does not, an iterative process to attempt to resolve the deadlock would commence.
- First, at the initial public meeting where the two bodies convene to consider the proposal, those Governing Body and/or Board members who do not support the proposal would articulate the concerns that gave rise to their vote. A discussion would then ensue, enabling both bodies to explore the extent of their differences and actively consider potential ways to address those differences. At this meeting, stakeholders also would be encouraged to share their views on potential ways to address the various areas of disagreement.
- Second, with the benefit of this public discussion, the matter would be remanded to CAISO staff, who would commence another round of the public stakeholder process. The stakeholder process would be designed to specifically explore ways in which to address the identified concerns and to establish a revised proposal for

both bodies to consider. Stakeholders would also have an opportunity to review the revised proposal and submit written comments before the revised proposal is presented to both bodies for their joint approval.

- Third, both bodies would once again convene in a public meeting to consider and vote on the revised proposal. If both bodies approve the revised proposal, CAISO staff would be able to move forward with filing that proposal at FERC.
- However, if the two bodies instead continue to disagree, two options would become available. The two bodies could decide to remand the issue back to CAISO staff and commence another round of the stakeholder process. Alternatively, the two bodies could decide to develop and approve two different versions of the proposal – i.e., a “dual filing” – which CAISO staff would then submit to FERC for its consideration.²⁰

In the July 31, 2020 Straw Proposal, we recommended that the Governing Body and Board make at least two attempts to reach agreement before proceeding with a dual filing at FERC. Our reasoning for this was to create a strong incentive for all parties to work together in order to identify a truly collaborative solution. We included the option for a dual filing as a last resort to ensure that there is a path forward on matters where there is broad consensus that some change in rules is needed, but the two bodies are unable to reach consensus. Additionally, we asked stakeholders to provide comments regarding whether a separate dispute resolution process should be developed for proposals addressing tariff changes that are *not* clearly needed.

The stakeholder comments on the GRC’s proposal for dispute resolution were diverse and well-reasoned and generally fall into the following three categories: (1) those stakeholders who would like to see the dispute resolution process extended to those circumstances where a tariff change is *not* clearly needed; (2) those stakeholders who support the GRC’s proposed dispute resolution process with certain modifications; and (3) those stakeholders who either oppose the use of dual FERC filings altogether or who raise concerns with the logistics of proceeding with these types of filings.

First, several commenters generally support the GRC’s proposal and recommend extending it further to those circumstances where a tariff change is not clearly needed and one body favors a change, while the other desires to maintain the status quo.²¹ These stakeholders contemplate following the same initial process for remanding the issue to

²⁰ In other contexts where an ISO/RTO board shares approval authority with another body, FERC has approved processes that allow two alternative proposals to be submitted to FERC for its consideration. *See, e.g., Midwest Independent Transmission System Operator, Inc. et al.*, 143 FERC ¶61,165 (2013); *Southwest Power Pool, Inc.*, 109 FERC ¶61,010 (2004), at paras. 82-95; *ISO New England, Inc. et al.*, 133 FERC ¶61,070 (2010), at paras. 74-75.

²¹ *See* Chelan Comments on Issue 1, Joint EIM Entities Comments on Issue 1, PGP Comments on Issue 1.

CAISO staff in order to develop a revised proposal that both bodies can support. If, however, that process is unsuccessful, then CAISO staff would move forward with a FERC filing that is supported by only one body. In the FERC filing, CAISO staff would inform FERC that only one of the two bodies supports the proposal and further, would include an explanation as to why the other body does not support the proposal.

A second group of commenters did not take a position on extending the GRC's dispute resolution process to those circumstances where a tariff change is not clearly needed, but did support the GRC's proposal, with certain modifications.²² These parties believe that the option of submitting a dual filing at FERC should be avoided if at all possible, but should nonetheless be permitted in those circumstances where a change to the tariff is clearly needed. PIOs further recommend that a provision should be added to the dual filing that would make clear to FERC that each body's alternative stands alone and that FERC should approve one alternative or the other in their entirety, but should not approve a hybrid of the two proposals (resulting in a final proposal that mixes and matches elements of each).²³ Six Cities does not object to the concept of dual filings, but argues that if the Board concludes that a change is necessary and the Governing Body does not identify an alternative that it would support, then the proposal should still be filed at FERC, with the Governing Body retaining the right to note its opposition.²⁴

A third group of commenters either oppose or express concern regarding the concept of dual FERC filings.²⁵ These commenters question whether FERC would be amenable to such filings or, alternatively, flag concerns with the logistics required of these filings (including whether CAISO legal staff would face a conflict of interest in preparing a dual filing).

After taking into account the wide breadth of stakeholder comments that were submitted on this important issue, the GRC has decided to recommend our initial proposal for dispute resolution, with certain modifications.

First, as a threshold issue, the GRC has decided that it is unnecessary to begin the dispute resolution process by making a distinction between those tariff changes that are clearly needed and those that are not. We assume that all proposals addressing tariff changes that are subject to the joint approval of both bodies are important and that any disputes in resolving these proposals should be handled in the same manner.

²² See BOSR Comments on Issue 1, BPA Comments on Issue 1, PIO Comments on Issue 1, Six Cities Comments on Issue 1.

²³ See PIO Comments on Issue 1.

²⁴ See Six Cities Comments on Issue 1.

²⁵ See PG&E Comments on Issue 1, SCE Comments on Issue 1, WAPA Comments on Issue 1.

Second, the first step of the dispute resolution process should always be a remand of the matter to CAISO staff, who will proceed with commencing another round of the stakeholder process, resulting in a revised proposal. The only circumstances in which the remand would *not* occur are those in which both bodies decide by majority vote that the proposal should instead be abandoned.

Third, after the second round of the stakeholder process, if the two bodies are still unable to agree, they would have the option of either instigating another round of the stakeholder process or requesting that CAISO proceed with a dual FERC filing.

Finally, the matter of dual FERC filings deserves additional attention to appropriately address the following issues raised by stakeholder comments: (1) whether CAISO legal staff is conflicted and therefore prohibited from making such filings; (2) what additional protections, if any, should be included in these filings; (3) whether these filings will be accepted by FERC; and (4) whether these filings could violate California and/or federal law.

On the first issue, because as discussed below a majority of the Board *must at least concur* for two alternatives to be filed at FERC, CAISO staff should not have a conflict or any other practical impediment to making one filing that lays out for FERC the two alternatives it is being asked to consider. CAISO staff would simply set forth both options, along with the reasoning upon which each option is based, and FERC would be able to choose between the two alternatives assuming it finds either or both to be just and reasonable.

Regarding the second issue, while the GRC continues to believe that a dual FERC filing should truly be an option of last resort, we agree that where necessary, a dual filing should proceed and include clear direction to FERC on how to interpret these filings. We recommend that these filings include the additional protections suggested by PIOs – specifically, that a provision be added indicating to FERC that each alternative stands alone and that FERC should therefore approve one alternative or the other in their entirety, but should not approve a hybrid of the two proposals (resulting in a proposal that mixes and matches elements of each). As PIOs correctly note, the United States Court of Appeals for the D.C. Circuit recently held that, when considering a utility’s proposal under Section 205 of the Federal Power Act to amend its tariff, FERC must not make material changes to the proposal that would result in an entirely different rate design than the utility proposed.²⁶ Picking and choosing elements from each alternative is inconsistent with this decision and thus, any option involving a dual filing that presents alternatives for FERC’s consideration should make this clear.

On the third issue, it is highly unlikely that FERC would find the dual filing approach unacceptable. To the contrary, FERC has approved a similar concept for ISO New England. This arrangement, which is set forth in the ISO New England Participants

²⁶ *NRG Power Marketing LLC v. FERC*, 862 F3d 108 (D.C. Cir. 2017).

Agreement,²⁷ requires ISO-NE staff to make a single filing that describes both the proposal approved by its Board and an alternative approved by its Participants Committee. The agreement further provides that FERC will not be required to consider whether the then-existing filed rate is unlawful, and may adopt any or all of ISO-NE's market rule proposal or the alternate market rule proposal as it finds, in its discretion, to be just and reasonable and preferable. ISO-NE staff has made such filings on several occasions, and FERC has – unless it failed to find either proposal just and reasonable – responded by selecting one of the two alternatives presented.²⁸

The fourth issue is an important one and will necessarily impact the scope of the dispute resolution process under joint authority. It involves a narrow exception to the applicability of dual filings. In a potential dual filing scenario where the Governing Body has a proposal that it would support but the Board does not support the proposal and further, has no alternative that it would support, CAISO management would be unable to move forward with a dual Section 205 filing at FERC. As noted in our July 31, 2020 Straw Proposal, any proposal that would give the Governing Body *sole* authority to approve a tariff amendment over the objection of the Board would raise serious legal problems with respect to the Board's ability to manage the corporation. As explained in a legal analysis we asked CAISO staff to prepare and that was published in Appendix A to the July 31, 2020 Straw Proposal, the Board must have at least a concurring role in decisions about changes to market rules in order to discharge its responsibilities under California law and federal law relating to its tax-exempt status.²⁹ For reference, we have included a copy of that legal analysis in Appendix A to this revised proposal. Stated another way, to ensure that the Board meets its duty to oversee the corporation, a dispute resolution provision that permits CAISO staff to file at FERC either two alternative proposals or a single proposal that only one body supports cannot be adopted *unless* the Board has previously indicated its support for a proposed tariff change.

Therefore, while a dual filing would *not* be permitted in the scenario where the Governing Body has a proposal that it would support but the Board does not support the proposal and further, has no alternative that it would support, a dual filing would be permitted in the following scenarios:

- The Governing Body has a proposal that it supports and while the Board does not support the proposal, it has an alternative proposal it would support.

²⁷ See ISO New England Participants Agreement, § 11.1.5. This agreement is available on the ISO New England website at the following link: https://www.iso-ne.com/static-assets/documents/2015/10/parts_agree.pdf.

²⁸ See, e.g., *ISO New England Inc. and New England Power Pool*, 130 FERC P 61,105 (2010) and *ISO New England Inc. and New England Power Pool*, 152 FERC ¶ 61,190 (2015).

²⁹ See July 31, 2020 Straw Proposal at Appendix A, p. 47.

- The Board has a proposal that it supports and while the Governing Body does not support the proposal, it has an alternative proposal it would support.
- The Board has a proposal that it supports but the Governing Body does not support the proposal and further, does not have an alternative proposal it would support. (It is worth noting that in this scenario, the “alternative” filing on behalf of the Governing Body could simply be a proposal to maintain the status quo.)

(ii) Short-Term Emergency Filings

The CAISO’s current EIM governance framework includes an “exigent circumstances” provision for matters within the Board and the Governing Body’s shared authority that allows CAISO staff to secure the approval of only one of the two bodies when a temporary amendment to the tariff is urgently needed either to prevent market manipulation or to address an imminent threat to reliability of the grid.³⁰ The provision, which has not to date been used, was included specifically to address a situation where a temporary tariff amendment is urgently needed and there is not sufficient time to convene both bodies and obtain their approval before proceeding with an emergency filing at FERC.

Under the current provision, the body to which CAISO staff must petition for emergency approval depends upon the nature of the tariff change. For a tariff change that is entirely within the Governing Body’s primary authority, CAISO staff can move forward with a FERC filing after receiving the approval of only the Governing Body. For a tariff change that includes some elements that are within the Governing Body’s primary authority and some that are not, CAISO staff can move forward with such an emergency filing after receiving the approval of only the Board. In either case, any such filing must be temporary in nature, with an effective period of no more than 90 days.

In the July 31, 2020 Straw Proposal, we recommended retaining such a provision and asked for comment on how such a provision would work in the joint authority context, where one body does not have primary authority over the other. We observed that there could be various ways to address this issue. The provision could allow the CAISO to approach whichever body can be more readily convened, or there could be a rule where the approval role alternates between the two bodies over time. A third option would allow CAISO staff to move forward with an emergency filing without obtaining either body’s advance approval, provided that the tariff amendment is temporary in nature and meets all other criteria set forth in the current provision.

Several stakeholders offered comment on these options and other possible ways to address this issue.³¹ Some support alternating the approval authority between the two

³⁰ See Charter § 2.2.3.

³¹ See BPA Comments on Issue 1, Chelan Comments on Issue 1, EIM Entities Comments on Issue 1, PGP Comments on Issue 1, PPC Comments on Issue 1, SCE Comments on Issue 1.

bodies over time, while others recommend allowing the CAISO to move forward with a filing in an emergency scenario after receiving the approval of the chairs of both bodies. One commenter, who supports retaining the primary authority concept, recommends simply retaining the current provision.³² Although stakeholders had differing views on which option would be preferable, the comments generally observe that the CAISO should make all efforts to convene both bodies in all circumstances, including when the matter is time sensitive.

The GRC has spent considerable time discussing each of these options, but in doing so has come to question whether an exigent circumstances provision is truly needed. To date, the CAISO has never invoked the current provision and further, has no such provision for matters that are subject to approval only by the Board. Although convening both bodies for an in-person meeting may be challenging in some cases, it should not be particularly challenging to convene a quorum of both bodies by either teleconference or web conference when an urgent matter so requires. In fact, the CAISO's open meeting rules currently contemplate the potential need for emergency meetings and not only permit such meetings to occur but also relax traditional notice requirements, which would allow for the expeditious approval of a FERC filing.³³ Because the open meeting rules appear to adequately address the unlikely scenario envisioned by the current "exigent circumstances" provision, the GRC recommends removing this provision going forward.

(iii) The Decisional Classification Process

Under the current EIM governance, there is a documented process used both to determine the policy initiatives that are subject to the Governing Body's approval and, if necessary, to resolve any disputes regarding those decisional classification determinations.³⁴

This is a public process that begins early in the stakeholder process for each policy initiative. The first step involves CAISO staff making a preliminary decisional classification determination at the earliest possible stage in each stakeholder proceeding and seeking stakeholder comments on the proposed classification. CAISO staff continues to refine that initial recommendation over the course of the stakeholder proceeding on an iterative basis, in response to stakeholder comments on the proposed classification and any changes to the substance of the proposed initiative. CAISO staff also publicly reports at least quarterly to the Governing Body on the status of its ongoing stakeholder proceedings, including on the preliminary decisional classification for each proceeding.

At the conclusion of each stakeholder process, before any proposed tariff amendment is submitted for approval, CAISO staff reports the proposed final classification to the chairs of the Governing Body and the Board, along with any stakeholder objections to the classification that were made in comments on the draft final proposal. This notification is

³² See SCE Comments on Issue 1.

³³ See Open Meeting Policy, §12.3.

³⁴ See Guidance Document at pp. 6-8.

made in a public notice that is posted on the CAISO’s website and includes the date by which any comments on the classification are due back from the two chairs. If neither chair objects to the proposed classification, then it becomes the final classification used to obtain approval for the initiative.

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

In the July 31, 2020 Straw Proposal, we asked stakeholders for any comments on this process, including on whether there should be any changes made to how a tie is broken in a case where the two bodies are meeting as a whole to resolve a dispute. A few stakeholders offered comment on this issue, with several recommending that the tiebreaker vote alternate back and forth between the two chairs,³⁵ one recommending that an odd numbered subset of the two bodies be established to decide,³⁶ and one recommending that the current process be kept where the Board chair breaks any tie.³⁷

The GRC has considered these comments and recommends keeping the process as currently designed. It is a collaborative public process that provides many opportunities for both bodies and all stakeholders to provide their input, and it has successfully produced final classification decisions that are well reasoned and enjoy wide support. In the five years this process has been in place, there has never been a classification decision that has made it to the step where the two bodies must be convened to resolve a decisional classification dispute. Given this positive track record, we do not believe any changes are warranted. In the very unlikely case that the tiebreaker must be used, the Board chair will have the benefit of extensive input from all relevant parties before making any decision and will have a strong incentive to ensure a balanced and credible outcome.

(iv) Timing and Process for Implementing Proposed Changes to the Scope and Type of Authority

As noted, the GRC expects to complete a draft final straw proposal on governance by the first quarter of 2021. Based on the current status of the stakeholder proceedings for developing the EDAM market design, important information about that design will not be

³⁵ See BPA Comments on Issue 1, Chelan Comments on Issue 1, PGP Comments on Issue 1, PIO Comments on Issue 1, PPC Comments on Issue 1.

³⁶ See Joint EIM Entities Comments on Issue 1.

³⁷ See SCE Comments on Issue 1.

known until substantially later than that. In light of that lag in time, we recommend that the Board and Governing Body consider implementing the proposed changes to the delegation of authority contemplated for the current market structure (the “EIM-only” scenario) before EDAM is approved and implemented.

We recommend adopting the governance proposals that are EIM-specific before EDAM is completed for two reasons. First, as discussed above we believe the changes will enhance the EIM as it currently exists for the benefit of the market as a whole and thus should be adopted irrespective of what may happen with EDAM. Second, we believe this would allow stakeholders and CAISO staff to develop experience with the new division of authority and potentially identify and address any unexpected issues before attempting to establish any further scope of authority changes for a future EDAM market.³⁸ We also propose that the Board formalize the process that CAISO management has proposed³⁹ for approval of the market design of EDAM, which would involve bringing the initial proposed market design to both the Board and the Governing Body for their joint review and approval.

E. Durability of the Delegation of Authority

In our initial January 29, 2020 Scoping Paper, the GRC asked for comment on whether there was a need to enhance the durability of the delegation of decisional authority to the Governing Body, either in an EIM-only context or with the addition of an EDAM market. Enhancing the durability of the delegation would mean making it more difficult to change the provisions in the CAISO’s governing documents that establish both the scope and type of delegation the Board has made to the Governing Body.

Currently, the scope and type of delegation are set forth in different documents that have slightly different provisions for how the relevant provisions may be changed. The *scope* of that delegation is set forth primarily in the Charter, which can be modified by a majority vote of the Board after obtaining advisory input from the Governing Body.⁴⁰ The *type* of delegation given to the Governing Body (i.e., “primary authority” or advisory input) is currently set forth primarily in the CAISO’s bylaws, and can be changed either by a vote of at least two-thirds of the members of the Board or by majority vote of both the Governing Body and the Board.⁴¹

³⁸ In this discussion of Issue Six below, the GRC addresses the timing of its proposal more generally and the potential need to revisit proposals relating to EDAM governance once the proposed EDAM market design have been more fully developed.

³⁹ CAISO management proposed joint approval by the Governing Body and Board of the EDAM market design in its Issue Paper pp. 20-21 at <http://www.caiso.com/InitiativeDocuments/IssuePaper-ExtendedDayAheadMarket.pdf>.

⁴⁰ See Charter § 8.

⁴¹ See Bylaws Article IV, Section 1 and Article IX, Section 3.

In response to stakeholder input that enhancing durability would promote confidence in EIM and help pave the way for EDAM, we proposed several measures to accomplish this objective in the July 31, 2020 Straw Proposal. First, we recommended requiring a unanimous vote of the Board for any changes to governance that would change the scope or type of the Governing Body's delegated authority.⁴² We also proposed that no such changes be adopted without first seeking stakeholder input and specifically considering and addressing any advisory input the Governing Body, RIF, or the BOSR may provide. Finally, we proposed a mandatory notice period for implementing any proposed change that is equal in length to any notice period that EIM or EDAM entities may have for withdrawing from the EIM/EDAM market. Thus, for example, since the EIM market design currently includes a 180-day withdrawal notice period for EIM Entities, in the EIM-only context a 180-day notice period likewise would apply before any potential changes to the delegation of authority could take effect. This notice period would not begin to run until after the Board has formally approved the proposed modification. The notice period would apply to all changes to the delegation of authority, unless both the Board and the Governing Body unanimously agree to waive the notice period.

Several commenters suggest that the durability of the delegation of authority should be enhanced further by also requiring a majority the Governing Body to approve the change. As discussed in our July 31, 2020 Straw Proposal, this concept is not viable as a legal or practical matter.⁴³ As explained in the legal analysis attached in the Appendix to that paper (and reproduced in the Appendix to this paper), the Board cannot cede its authority to modify its governance to a third party because this would impair legal duty to oversee the corporation.⁴⁴

While requiring Governing Body approval is not viable, we do think our proposal could be improved by establishing a clear process for attempting to resolve any disagreement between the Board and the Governing Body regarding a potential change to the delegation of authority. To that end, we recommend adding a short additional period for the Board and Governing Body to attempt to work out their differences. Specifically, if

⁴² This would apply to all provisions in governing documents that address the delegation of authority, including the Bylaws, the Charter or any other document. Thus, the provisions discussed above that are currently set forth in the Bylaws and the Charter would need to be amended to be consistent with this proposal.

⁴³ See July 31, 2020 Straw Proposal at p. 18.

⁴⁴ See July 31, 2020 Straw Proposal, Appendix A at p. 47. For the same reason, it would be improper to require FERC to resolve a dispute between the Board and the Governing Body regarding a proposed change to the scope of delegation, as at least one stakeholder recommended. FERC also would not have any meaningful standard to apply in deciding how to resolve such a dispute.

the Board is considering a change and the Governing Body provides advisory input opposing the change, we recommend adding a 45-day period during for the two bodies to discuss the matter further if the Board does not choose to reject the proposal based on the Governing Body's advisory input. During this period, the two bodies would hold at least one public meeting to discuss the proposal and would further work together to attempt to identify a mutually acceptable resolution. If that effort is unsuccessful, then the Board may vote on the proposal and if it is supported unanimously, the notice period for implementing the change would begin to run immediately thereafter.

This proposal seeks to encourage a thorough and robust discussion between the two bodies before moving forward with a unilateral change to the delegation of authority.

One commenter, PG&E, raises a different concern about the need for the Board to be able to more rapidly change the delegation of authority if a large number of EIM Entities give notice that they intend to withdraw from the EIM.⁴⁵

Although we hope that such a scenario never comes to pass, this is certainly a reasonable concern that we agree should be addressed. To that end, we recommend that if EIM Entities representing 85 percent of the highest annual net energy for load⁴⁶ in the participating balancing authority areas outside of the CAISO Balancing Authority Area have given notice of their intent to withdraw, then the CAISO Board would have the discretion, by unanimous vote, to rescind the delegation of authority without waiting for the 180-day notice period or the 45-day negotiation period to elapse. This would ensure that the Board can promptly approve whatever tariff amendments or other changes may be necessary to restore the workability of the market.⁴⁷

We request stakeholder comment on both of the refinements we have proposed regarding the durability of delegation, as well as further comments on our original proposal.

Issue 2: The Selection of Governing Body Members

A. Background

⁴⁵ See PG&E Comments on Issue 1, SCE Comments on Issue 1; SCE raises similar concerns in this area and recommends that the current rules remain in place.

⁴⁶ We propose using net energy for load (NEL) because this is a readily available metric that is defined by NERC and is tracked for all balancing authority areas in the Western Interconnection. See Attachment 1.

⁴⁷ If EDAM goes forward, we expect that some similar provision would be needed to address what happens if a large number of EDAM participants decide to withdraw. It is premature to consider such a provision, given that we are not currently attempting to address the proper scope of the delegation of authority that would occur in that context.

The Governing Body consists of five members,⁴⁸ who are selected by a nominating committee of stakeholders, subject to confirmation by the Governing Body in public session. The nominating committee has eight members, including one representative each from:

- EIM Entities
- Participating Transmission Owners
- Publicly-Owned Utilities
- Suppliers and Marketers of Generation and Energy Service Providers
- The BOSR
- Public Interest and Consumer Advocate Groups
- The Governing Body
- The Board

The first five members on the list above have votes on the committee: the member of the BOSR plus the representatives of the four market participant sectors. Although the remaining members – the final three on the list – participate fully in deliberations, their role is advisory only. The nominating committee “act[s] on the consensus of its voting members.”⁴⁹

Members of the Governing Body serve staggered three-year terms.⁵⁰ In the months before a member’s term is due to expire, the Nominating Committee meets to decide whether to re-nominate the sitting member. If the sitting member does not want to serve again or the Nominating Committee decides for other reasons to proceed with a search, the Committee then works to identify potential candidates, both with the help of an executive search firm and based on suggestions from the Committee members and the sectors they represent.

The Selection Policy directs the Nominating Committee to find “the best qualified candidates available in the United States,” subject to a preference for candidates with experience and background in the western states and an objective of ensuring that the Governing Body as a whole has diversity in terms of geographic representation, expertise, and industry experience.⁵¹

B. The GRC’s Original Proposal and Proposed Refinements based on Stakeholder Comments

⁴⁸ Charter § 1.1.1.

⁴⁹ Selection Policy § 3.4.

⁵⁰ Bylaws Art. IV, Section 3 and Charter § 1.3.

⁵¹ Selection Policy § 3.4.

Based on prior stakeholder input, the GRC recommended three changes in this area in our July 31, 2020 Straw Proposal. The stakeholder comments demonstrate broad support for these changes. As discussed below, we continue to recommend the first two proposals without revision and propose some relatively minor refinements to the third.

(i) The Role of the Public Interest and Consumer Advocates Sector Representative on the Nominating Committee

In the July 31, 2020 Straw Proposal, the GRC recommended amending the Selection Policy so that the representative of public interest groups and consumer advocates (or “PIO” for public interest organizations) becomes a voting member of the nominating committee, rather than an advisory member as is currently the case.

The GRC proposed this change based on the input received on our initial January 29, 2020 Scoping Paper, where a number stakeholders strongly advocated for this change and no commenters expressed opposition. We observed that the PIOs and their constituencies have an important interest in EIM, and elevating the PIO representative to a voting member would recognize that interest.

We also explained that while two other members of the Nominating Committee – the Board and the Governing Body members – also have an advisory role, the reasons why those members are advisory do not apply to the PIO member. The representative of the Board does not have a vote in deference to the goal of ensuring that the Governing Body retains independence from the Board. This supports the fundamental concept of an autonomous Governing Body capable of considering stakeholder interests across the entire regional footprint. The representative of the Governing Body does not need a vote because the Governing Body itself has the final say on candidates.

All of the stakeholders commenting on this proposal support changing the status of the PIO member to a voting member.⁵² We thus reaffirm our prior recommendation in support of this change.

(ii) Adding a 60-Day Holdover Period

The GRC also recommended establishing a 60-day “holdover period,” which would allow the term of a Governing Body member to be extended for up to 60 days when a replacement has not yet been confirmed.

The Nominating Committee begins its work well in advance of a member’s term expiring and, to date, has been able to reach a decision to either renew the sitting member or to

⁵² See AWEA Comments on Issue 2, BOSR Comments on Issue 2, BPA Comments on Issue 2, Chelan Comments on Issue 2, CMUA Comments on Issue 2, CPUC Energy Division Comments at pp. 2-3 (Issue 2), CPUC PAO Comments at pp. 2-3 (Issue 2), Joint EIM Entities Comments on Issue 2, PG&E Comments on Issue 2, PGP Comments on Issue 2, PIO Comments on Issue 2, PPC Comments on Issue 2, SCE Comments on Issue 2, WAPA Comments on Issue 2.

select a new member in time to avoid an unnecessary vacancy. With that said, the Committee must coordinate schedules between the eight members and the candidates, and does not have much room to accommodate any unexpected scheduling conflicts that may arise during the process. Based on the experience of GRC members who have served on the Nominating Committee, we believe that, rather than starting even earlier, the participants would benefit from the potential to have scheduling flexibility if needed to complete the process carefully. The 60-day extension would occur only if: 1) requested by the Nominating Committee, 2) approved by the Governing Body, and 3) agreed to by the sitting member.

The stakeholders who commented on this proposal unanimously support it,⁵³ and the GRC continues to recommend this change.

(iii) Selection Criteria: Enhance Diversity

The GRC also recommended two revisions to the EIM Governing Body Selection Policy that are intended to enhance the role that diversity plays in the selection criteria for the Governing Body.

The Selection Policy currently directs the Nominating Committee to strive for diversity of expertise and geography on the Governing Body as a whole. Specifically, it states, in relevant part, that:

With the assistance of the Executive Search Firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. Optimally, the Committee's selections should strive to ensure that the overall composition of the Governing Body reflects diversity of expertise so that there is not a predominance of Members who specialize in one subject area, such as operations or utility regulation.⁵⁴

In the July 31, 2020 Straw Proposal, we proposed to enhance this by expanding the list of diverse qualities that the Nominating Committee should seek to include gender, ethnicity and perspective. Specifically, we proposed the following edits, shown in underline, to the current language:

With assistance from the Executive Search Firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. Optimally, the Committee's selections should strive to ensure that the overall composition of the Governing Body reflects diversity of expertise, geographic

⁵³ See BOSR Comments on Issue 2, BPA Comments on Issue 2, Chelan Comments on Issue 2, CPUC PAO Comments at pp. 2-3 (Issue 2), Joint EIM Entities Comments on Issue 2, PG&E Comments on Issue 2, PGP Comments on Issue 2, PIO Comments on Issue 2, PPC Comments on Issue 2, SCE Comments on Issue 2.

⁵⁴ Selection Policy, §3.4.

background, ethnicity, gender and perspective, so that there is not a predominance of Members who specialize in one subject area, such as operations or utility regulation, and the body reflect a broad variety of personal backgrounds and life experience.

We also recommended that the Nominating Committee begin its work by seeking an inclusive candidate pool that would optimize the diversity of the Governing Body. Currently the Selection Policy provides that, if the Nominating Committee does not decide to renew the term of a sitting member, it should ask the search firm to identify at least two qualified candidates for the position.⁵⁵ We recommended adding language that would identify and inform the search firm of any relevant diversity the Nominating Committee may think should be emphasized in the candidate pool given the current membership. To that end, we proposed the following additional language, shown in underline, to the current language in the Selection Policy:

If a Governing Body member whose term is scheduled to expire has expressed a desire to be nominated for a new term, the Nominating Committee should determine whether it wants to re-nominate the departing member without interviewing other candidates. 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.⁵⁶

In practice, the Nominating Committee receives many suggestions about potential candidates from its members and their respective sectors. This change would ensure that candidates with any relevant diversity are included in the candidate pool.

In comments, stakeholders generally expressed broad support for these proposed changes.⁵⁷ One commenter, who otherwise supports these changes, raised a question about the use of the word “perspective” in the revision to the first paragraph shown above. The commenter noted that this term seemed ambiguous and that it is unclear what, if any, other types of diversity this word is intended capture beyond the other types specifically enumerated in the revised paragraph.⁵⁸

⁵⁵ See Selection Policy, §3.4.

⁵⁶ July 31, 2020 Straw Proposal at p. 21.

⁵⁷ See BOSR Comments on Issue 2, BPA Comments on Issue 2, Chelan Comments on Issue 2, CPUC PAO Comments at pp. 2-3 (Issue 2), Joint EIM Entity Comments on Issue 2, NRU Comments on Issue 2, PG&E Comments on Issue 2, PGP Comments on Issue 2, PIO Comments on Issue 2, PPC Comments on Issue 2, SCE Comments on Issue 2

⁵⁸ See Six Cities Comments on Issue 2.

The GRC agrees that this term, as used in our proposed revision, is perhaps ambiguous and that is not entirely clear how it relates to the remainder of the list. Upon further reflection, we think that the other types of diversity we identified have the benefit of ensuring a diversity of perspective, which is an important overarching quality for the Governing Committee as a whole. The GRC thus instead proposes the following revisions to the current language in the Selection Policy:

With the assistance of the Executive Search Firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. Optimally, the Committee's selections should strive to ensure that the overall composition of the Governing Body reflects a diversity of perspectives that may result from different areas of expertise, geographic background, ethnicity, gender, personal and professional backgrounds, and life experience. ~~so that there is not a predominance of Members who specialize in one subject area, such as operations or utility regulation.~~

This formulation covers the rest of the types of diversity we added in our prior proposal and seems to better capture the overarching concept of a diversity of perspective. It also avoids the ambiguity that the commenter identified.

We also reaffirm the second proposed change from our July 31, 2020 Straw Proposal that would allow the Nominating Committee to identify and inform the search firm of any relevant diversity the Nominating Committee may think should be emphasized in the candidate pool given the current membership.

Issue 3: Governing Body Meetings and Engagement with Stakeholders

A. Introduction

In the July 31, 2020 Straw Proposal, the GRC discussed at length whether any changes to the current EIM governance structure were warranted to enhance opportunities for stakeholder engagement.⁵⁹ Based on prior stakeholder input, we proposed some modifications to the RIF and recommended that the BOSR be asked to establish non-voting liaison positions to represent PMAs and consumer-owned utilities who participate in the EIM. We did not propose any changes to the existing RIF stakeholder sectors, but asked for stakeholder comment on whether such changes should be made.

As discussed below, there was considerable stakeholder support for both of our recommendations, along with a few suggestions for how the proposals could be further refined. Several stakeholders also recommended changes to the RIF sector definitions.

⁵⁹ The July 31, 2020 Straw Proposal included a summary of the CAISO's current stakeholder engagement as background for any stakeholders who may be new to CAISO proceedings. See July 31, 2020 Straw Proposal at pp. 23-25.

We discuss below some proposed refinements the GRC recommends in response to this stakeholder input.

B. Discussion of Stakeholder Comments and GRC Recommendations

(i) Modifying the Regional Issues Forum to Enhance Opportunities for Stakeholder Engagement

In our July 31, 2020 Straw Proposal, we observed that some enhancement to the existing stakeholder engagement process is warranted to ensure that a growing and increasingly diverse cohort of EIM (and potentially EDAM) stakeholders have a ready means to engage with one another, to better understand and participate in the development of the EIM and EDAM markets, and to directly communicate with the Governing Body and the Board. We noted that the overarching goal of any such enhancements would be to establish a transparent means for stakeholders to come together to share and debate perspectives on market issues in order to advance understanding, identify new or emerging issues, develop alternatives, and collaborate on potential solutions.

To accomplish this goal, we proposed to modify, and enhance, the RIF. The Charter currently states that the RIF generally should not consider matters that are already part of an ongoing CAISO stakeholder process and should instead focus only on broader issues of EIM operations. The GRC recommended eliminating that limitation and replacing it with language that unequivocally allows the RIF to discuss matters that are part of an ongoing stakeholder process. This would allow the body to serve as an additional avenue for stakeholders to collaborate, exchange views and more generally learn about the current and emerging issues facing EIM.

With this proposal, the RIF also would be able to share directly with the Governing Body or CAISO staff any consensus opinions it may be able to develop on matters that are part of an ongoing CAISO stakeholder process.

Stakeholders generally express support for these modifications⁶⁰ or at least do not oppose them.⁶¹ A few of these commenters offer more specific recommendations concerning how the RIF should operate. AWEA recommends that the RIF should not be restricted to offering consensus opinions and instead should be able to offer, if applicable, majority

⁶⁰ See AWEA Comments on Issue 3, BOSR Comments on Issue 3, BPA Comments on Issue 3, Chelan Comments on Issue 3, CMUA Comments on Issue 3, Joint EIM Entities Comments on Issue 3, PGP Comments on Issue 3, PIO Comments on Issue 3, PPC Comments on Issue 3, Public Power Utilities Comments on Issue 3.

⁶¹ See SCE Comments on Issue 3, PG&E Comments on Issue 3. PG&E is neutral on the proposal, but notes that if the RIF is allowed to discuss topics that are the subject of an active stakeholder proceeding, care must be taken to ensure that this discussion does not come to replace the CAISO's existing stakeholder process.

and minority opinions. SCE supports the RIF's current processes and recommends against establishing a formal voting process for the RIF. BPA suggests that RIF should operate as a fully independent body, with its own charter, and should also have authority to develop and propose its own issues and communicate regularly with the Governing Body and the Board.

With the benefit of this input, the GRC reaffirms its previous recommendation to revise the EIM Charter to remove the limitation on discussing issues that are part of an ongoing CAISO stakeholder initiative. Although we agree with BPA that the RIF should also be allowed to develop and propose its own issues, this is already permitted under the current Charter so no changes are required in that area.

On the issues of whether the RIF should have formal voting and whether it should provide only consensus opinions or also majority and minority opinions, we think the best course is to leave such topics to the discretion of the RIF and its members. This will ensure that the RIF has the flexibility to adjust as circumstances may dictate, based on ongoing input from all stakeholders.

We also propose adding to the Charter a provision allowing the RIF Chair to provide a report on RIF activities at each regularly scheduled Governing Body general session meeting. This would simply codify what is already the existing standard practice at Governing Body meetings.

In response to our request for stakeholder comment on the current RIF sector definitions, four stakeholders propose some modifications. Two propose substantially expanding the current number of stakeholder sectors (albeit with different new sectors),⁶² while two others suggest that sectors should more closely align with the sectors used for the Nominating Committee that identifies potential members to serve on the Governing Body.⁶³

The two proposals to expand the number of RIF sectors propose moving to ten total sectors from the current five. The GRC is concerned that such a large expansion could undermine the efficient operation of the RIF. We are also concerned that creating a larger number of more narrow sectors may deter the type of broad collaboration and exchange of views among diverse stakeholders that the RIF is intended to engender. For these reasons, we are not inclined to recommend either version of this proposal.

The recommendation to enhance the alignment between the sector definitions used for the RIF and the Nominating Committee holds some appeal, mostly because it seems like it could avoid confusion engendered by having substantially different definitions in each context.

⁶² See BPA Comments on Issue 3, Joint EIM Entities Comments on Issue 3.

⁶³ See PGP Comments on Issue 3, SCE Comments on Issue 3.

To that end, the GRC proposes the following revised sectors:

1. EIM Entities (as defined in the CAISO tariff, and including EDAM Entities if EDAM goes forward).
2. CAISO Participating Transmission Owners (as defined in the CAISO tariff).
3. Consumer-owned utilities located within an EIM/EDAM balancing authority Area that are not included in another sector.
4. Public interest groups and consumer advocate groups that are actively involved in energy issues within the EIM/EDAM footprint.
5. Independent power producers and marketers who engage in transactions within the EIM/EDAM footprint.
6. Federal power marketing administrations.

This proposal more closely tracks the current Nominating Committee sectors, though it adds a sector specifically for PMAs. The GRC proposes keeping two sector liaisons for the first five sectors, with one liaison for the federal PMA sector. The total number of sector liaisons thus would move from ten to eleven.

The GRC looks forward to receiving stakeholder comment on the proposed revisions to the RIF sectors, as well as on the rest of our proposals relating to the RIF.

(ii) Representation for Federal Power Marketing Agencies and Consumer-Owned Utilities

In the July 31, 2020 Straw Proposal, the GRC observed that consumer-owned utilities and federal PMAs differ from other stakeholders in that these utilities are both market participants and perform regulatory functions on behalf of their customers. In light of their regulatory role, we proposed establishing a way for federal PMAs and consumer-owned utilities to participate in the existing BOSR. Specifically, we recommended that the BOSR be asked to establish *ex officio* liaison positions for PMAs and consumer-owned utilities who participate in the EIM. These liaisons would not vote on any positions taken by the BOSR, but would participate in BOSR meetings and provide the BOSR membership with a PMA/consumer-owned utility perspective. The GRC recommended that the BOSR establish a limited number of such liaison positions and sought stakeholder comment on this issue.

Stakeholders generally expressed broad support for this proposal.

The BOSR supports the concept of *ex officio* liaisons for public power entities and contemplates creating two such positions, with one representing PMAs and the other representing publicly owned utilities that participate in EIM.⁶⁴ The BOSR notes that implementing any such change would require a vote of the BOSR membership to amend the BOSR charter. Although the process cannot be implemented through the current GRC

⁶⁴ See BOSR Comments on Issue 3.

process alone, the BOSR welcomes the continued use of the GRC process to further discuss and develop this proposal.

Most other commenters support the liaison concept,⁶⁵ though there are a range of opinions on how many positions and how they should be allocated. Some of the commenters do not propose a specific number,⁶⁶ while others have proposed either three or four.⁶⁷

We reaffirm our support for establishing public power liaisons to the BOSR. The EIM is continuing to grow, and public power represents a significant and increasing amount of the load served by EIM. Adding liaisons for public power will promote a collaborative dialogue between public power and the BOSR, which will be valuable for the market as a whole. As for the number of liaisons, the GRC recommends adding language to the EIM Charter providing for no more than three such liaisons, with one for a federal PMA and the other two determined by the public power entities participating in the EIM. This number would ensure that both the PMA and consumer-owned utility perspectives are represented and would accommodate the geographic diversity of the latter group. Although the GRC believes that three liaisons would be appropriate, the exact number would need to be determined by the BOSR.

Issue 4: Other Potential Areas for Governing Body Involvement

In this section, the GRC considers other issues, including the role of the Governing Body in the annual policy roadmap, a possible expanded role with respect to the Department of Market Monitoring and the Market Surveillance Committee, and whether the Governing Body should have access to additional market expertise. This section also addresses the question whether the BOSR should receive funding through the CAISO.

⁶⁵ See Chelan Comments on Issue 3, CMUA Comments on Issue 3 Joint EIM Entities Comments on Issue 3, PIO Comments on Issue 3, NRU Comments, PGP Comments on Issue 3, PPC Comments on Issue 3, Public Power Utilities Comments on Issue 3, SCE Comments on Issue 3. Both BPA and WAPA express support for the liaison concept, but recommend that the liaisons have voting role on the BOSR, See BPA Comments on issue 3, WAPA Comments on Issue 3.

⁶⁶ See BPA Comments on Issue 3, Chelan Comments on Issue 3, Joint EIM Entities Comments on Issue 3, PIO Comments on Issue 3, Public Power Utilities Comments on Issue 3, SCE Comments on Issue 3, WAPA Comments on Issue 3.

⁶⁷ See CMUA Comments on Issue 3 (proposing three positions), NRU Comments (proposing four positions), PGP Comments on Issue 3 (proposing a minimum of three positions), PPC Comments on Issue 3 (proposing four positions).

I. Annual Policy Initiatives Roadmap

A. Introduction

The July 31, 2020 Straw Proposal addressed the role of the Governing Body in finalizing the roadmap of policy initiatives, including suggestions that formal approval from the Board and the Governing Body should be required.

B. Background: The Straw Proposal and the Process for Developing the Roadmap

The July 31, 2020 Straw Proposal⁶⁸ explained in detail the process through which CAISO management creates the annual plan and the three-year roadmap of initiatives. It begins with identifying and collecting possible initiatives, including through suggestions from stakeholders. The CAISO then classifies each potential initiative according to whether or not it is discretionary. A potential initiative is discretionary unless it is in progress already, required by a FERC order, or is a previous commitment of CAISO. Drafts of the catalog and proposed classifications are published twice a year for stakeholder comment. Starting from the catalog, management prepares drafts of an annual plan and three-year roadmap that are informed by the CAISO's strategic plan as well as an extensive internal review and a public stakeholder process. This draft receives multiple rounds of comment from stakeholders, feedback from meetings with customers, and input from the RIF, the Governing Body and the Board.

The July 31, 2020 Straw Proposal rejected the idea of requiring a formal approval by either the Board or the Governing Body, reasoning that the current process gives stakeholders and the Governing Body appropriate input into the company's policy direction. Changing the process to require formal approval would mean that any subsequent changes during the course of a year – and these changes happen invariably – could be delayed by the time it takes to notice and hold meetings of the Board and Governing Body. The July 31, 2020 Straw Proposal concluded that management, with the benefit of the robust input it obtains from stakeholders and the Governing Body and Board, is best suited to perform this balancing and ensure that important issues are appropriately prioritized relative to the total set of issues CAISO must address.

The July 31, 2020 Straw Proposal did include one minor change to this process. When management is seeking feedback from stakeholders about drafts of the roadmap, we asked that they make a deliberate effort to explain the reasoning behind its decisions about the relative priority of possible discretionary initiatives.

⁶⁸ July 31, 2020 Straw Proposal pp. 30-32.

C. Summary of Comments

Nine commenters address the roadmap issue. The majority of these⁶⁹ support the recommendation in the July 31, 2020 Straw Proposal.

Three commenters⁷⁰ suggest a new modification to the CAISO's process. Instead of formally approving the entire roadmap, the GRC should consider giving the Governing Body or Board authority to change the roadmap developed through the process described above by adding priority items, or adjusting the relative priority of an item by either increasing or decreasing the priority. Two of the same three commenters⁷¹ also recommend the development of criteria that CAISO would use when selecting discretionary initiatives to include on the roadmap and when "determining which initiatives necessitate priority resources and timing."

D. GRC Recommendation

The comments appear to show widespread support for the July 31, 2020 Straw Proposal. The great majority of stakeholders expressed no concern or objection, and most of those who submitted comments were positive.

Regarding the comments that propose alternatives, we considered them carefully and have decided to stay with the recommendation from the July 31, 2020 Straw Proposal because we believe that the CAISO's current process is the best way to address their concerns. These commenters propose that the Governing Body should have the authority to modify the roadmap by adding priority initiatives or adjusting the priority of individual initiatives it views as important. The current process already has an avenue for such input when management seeks feedback from the Governing Body or Board.

For related reasons, we do not believe it is necessary or wise to adopt more formal criteria for prioritizing initiatives. CAISO management already have decisional criteria. First, they prioritize only the discretionary initiatives, and the number and size of the discretionary initiatives depends on the resources available after the non-discretionary initiatives are accounted for in the roadmap. When there is room for discretionary initiatives, CAISO management then evaluates them based on a high-level assessment of costs and benefits, including implementation costs for both the CAISO and market participants, as informed by the CAISO's strategic plan and input from stakeholders and others. Management selects those initiatives with the highest benefit-to-cost ratio for

⁶⁹ See CMUA Comments on Issue 4, CPUC Energy Division Comments at pp. 3-4 (Issue 4), Joint EIM Entities Comments on Issue 4, PIO Comments on Issue 4, SCE Comments on Issue 4.

⁷⁰ See BPA Comments on Issue 4, Chelan Comments on Issue 4, PPC Comments on Issue 4.

⁷¹ See PGP Comments on Issue 4, Chelan Comments on Issue 4.

which sufficient resources are available. This process necessarily requires judgment, including consideration of how potential initiatives affect or depend on other initiatives and their schedules.

The July 31, 2020 Straw Proposal asked CAISO management to increase the transparency into the reasoning behind how discretionary initiatives are prioritized within the roadmap. We continue to believe that this is best way to address stakeholder concerns about the process and recommend the CAISO to do its best to help stakeholders understand these decisions.

II. Governing Body Role with Department of Market Monitoring, Market Surveillance Committee and Governing Body Market Expert

A. Introduction

The July 31, 2020 Straw Proposal considered the expert market advice that is available to the Governing Body, including whether the Governing Body should have a role in the oversight of DMM or the MSC, and whether it access to additional expertise is warranted. The GRC recommends changing the name to “Governing Body Market Expert” for this position, rather than “Outside Market Expert,” because we think that better describes its role.

B. Background

As explained more fully in the July 31, 2020 Straw Proposal,⁷² it has been a foundation of EIM governance since the outset that the Governing Body has access to all information, facilities and personnel of the CAISO. All personnel, including DMM and MSC, support the work of the Governing Body in the same way they currently support the Board. The Board and the Governing Body receive most of their technical support on market design issues from the CAISO Department of Market and Infrastructure Policy. Two other sources of technical support are the DMM and the MSC.

The DMM is an internal business unit of the CAISO that serves as its “market monitor.” The Executive Director of DMM provides the Governing Body with regular updates on DMM activities and its views on market performance. To the extent DMM takes a position on a decisional item, its comments are provided to the Governing Body. The Governing Body also may request DMM’s input on specific issues.

The MSC is a committee of three outside experts on electricity markets – currently two professors and a consultant – that provides input on market initiatives.⁷³ The MSC is not CAISO’s market monitor and does not perform the core functions of a market monitor. It

⁷² July 31, 2020 Straw Proposal at 33-34.

⁷³ *See generally* Tariff Appendix O § 5.

primarily issues opinions on market design proposals and makes related presentations to the Board and Governing Body, as requested. MSC members are nominated by the CEO and appointed by the Board for staggered three-year terms. The Governing Body may request input from the MSC.

To reassure EIM participants and stakeholders that DMM and MSC are institutionally oriented to the interests of the entire market footprint, the July 31, 2020 Straw Proposal recommended greater involvement for the Governing Body in their oversight. Specifically, a Governing Body member would be invited to attend the executive session meetings of the DMM Oversight Committee and participate in the discussions.⁷⁴ With respect to MSC, the Governing Body would have joint authority to approve its members. Those members would continue to be nominated by the CEO, but would need approval from both the Governing Body and the Board.

In addition, we evaluated the possibility of providing the Governing Body access to additional expertise. We concluded that the cost and complexity associated with additional outside expertise would be worthwhile if CAISO proceeds with EDAM. We wrote:

The final design and initial implementation of EDAM will have long-term implications for the entities considering investment, and pose issues of great complexity. To ensure a careful analysis of these issues and their impact on the full market footprint, the Governing Body should be authorized and provided a sufficient budget for a new [Governing Body Market Expert (GBME)] that it would select. The [GBME] could begin work before any final decision on the EDAM market design, and thereafter analyze implementation and evaluate the impact of market policies. It would rely on CAISO staff only to obtain access to sufficient market data to perform this analysis – work that it would perform on its own. It would not be involved in market monitoring. We believe this arrangement would increase confidence among potential EDAM participants that the full impact of market issues is being assessed.

At the direction of the Governing Body, the [GBME] should receive a multi-year contract designed to attract talented candidates. The term of the contract should be no more than five years so that the need for an [GBME] may be reconsidered on a timely basis and with the benefit of experience with the other changes we are proposing.

Without EDAM, the need for additional outside expertise is not as clear. We would leave this issue to be worked out between the Governing Body and the Board.

C. Summary of Comments

⁷⁴ The GRC recognizes that the DMM Oversight Committee may need to exclude the Governing Body member from discussions of some confidential personnel matters.

Most of the stakeholders who submitted comments on the July 31, 2020 Straw Proposal addressed these issues. And regarding the proposals about oversight of DMM and selection of MSC members, they expressed essentially universal support.

Regarding the proposal to give the Governing Body access to additional market expertise, stakeholders were divided. Some commenters state simply that having an additional market expertise is “critical”⁷⁵ while others convey the same view by focusing on when additional market expertise should be in place – specifically, during the policy development process for EDAM.⁷⁶ These comments take the position that, in order to bolster confidence in EIM and EDAM, the Governing Body should have access to expertise that it can direct.⁷⁷

Other commenters contend that additional market expertise would be wasteful or even detrimental, because it would duplicate the work of MSC, DMM and other CAISO staff without materially advancing the “clash of ideas” among stakeholders that occurs organically through the policy development process.⁷⁸ These stakeholders believe the DMM, MSC and CAISO staff can meet the needs of the Governing Body for expert analysis, and that with respect to the MSC in particular, it is wrong to suggest a bias in favor of California.

The same group of stakeholders also commented on the costs of expert analysis. On the assumption that only the EIM/EDAM balancing authority areas would benefit from an additional market expertise, SCE and PG&E object to the idea that California load would have to share the costs. The CPUC Energy Division and Public Advocates both request information about the additional costs required for the DMM and the MSC to support EIM, including the extended monitoring and costs of sharing data.

⁷⁵ See PGP Comments on Issue 4, Chelan Comments on Issue 4.

⁷⁶ See BPA Comments on Issue 4, PGP Comments on Issue 4, PPC Comments on Issue 4. The Joint EIM Entities and CMUA suggest the possibility that an OME could be in place even sooner in order to address issues that may arise from grid events in August. See Comments of Joint EIM Entities and CMUA on Issue 4. On another issue related to timing, two commenters suggest that that the OME should be considered as a potentially permanent feature of EIM governance, and object that the recommendation to re-evaluate the OME within five years implies wrongly that it should be temporary. These commenters would defer to the Governing Body on the question whether the GBME should continue. See comments of BPA and Chelan on Issue 4.

⁷⁷ See E.g. BPA Comments on Issue 4.

⁷⁸ See CESA Comments on Issue 4, CPUC Energy Division Comments at pp. 3-4 (Issue 4), CPUC PAO Comments at pp. 3-4 (Issue 4), PG&E Comments on Issue 4, SCE Comments on Issue 4.

D. GRC Recommendations

(i) A Governing Body involvement with the DMM and MSC

We have no modifications to the July 31, 2020 Straw Proposal as it relates to oversight of DMM and selection of MSC members. Stakeholders supported these proposals and no significant concerns were expressed. We anticipate that, if implemented, these changes will increase the confidence of regional stakeholders in the DMM and MSC over time by reassuring them that DMM monitors the entire market footprint and that the MSC does not have a California bias.

(ii) If EDAM moves forward, the Governing Body should have access to additional market expertise

We continue to believe that additional market expertise should be available to the Governing Body specifically for EDAM.

SCE and PG&E assume that the additional market expertise would benefit only the EIM/EDAM balancing authority areas, and argue on that basis that the costs should be charged only to the EIM/EDAM Entities.⁷⁹ On a surface level, this view seemed plausible, because it is the entities within current or future EIM or EDAM balancing authority areas that are advocating for the additional market expertise, as opposed to those in the CAISO balancing authority area. After further reflection, though, the GRC is concerned that allocating the costs of a GBME only to EIM/EDAM Entities would be inconsistent with the foundational underpinnings of EIM governance. Among other considerations, members of the Governing Body must be independent of market participants and groups of market participants, so that they are able to act in the best interest of the market as a whole. The idea that the Governing Body's dedicated resource would be funded by one market sector seems in tension with this basic principle.

We also believe that the GBME's role should be aligned with the Governing Body's mission, which is to promote the success of the EIM (or any future EDAM if it occurs) for the benefit of its participants as a whole, including the interests of participants in both the CAISO balancing authority area and EIM (or EDAM) balancing authority areas.⁸⁰ Because this role considers the interests of all market participants, we believe the costs of a GBME should be recovered from all market participants, including those in EIM/EDAM balancing authority areas. This could be done through the CAISO's current cost allocation methodology, which recover from EIM market participants a pro-rata

⁷⁹ See Comments of SCE on Issue 6, PG&E Comments on Issue 4 (arguing that if there is to be additional market expertise, it should be funded on a voluntary basis "and not charged to all load").

⁸⁰ See Charter § 2.1.

share of overhead costs associated with the market operations.⁸¹ This is the same approach that currently applies to similar costs, such as the costs for DMM and MSC.⁸²

Given that the point of the GBME is to support the Governing Body, and that the GBME must serve the Governing Body's mission, we recommend leaving most of the specifics about the retention and specific activities of the GBME to the Governing Body to determine on the basis of its needs. Broadly speaking, we envision that the GBME would serve as an advisor to the EIM/EDAM Governing Body that would provide expertise and in-depth analytical capability relating to organized markets and would help evaluate available market design choices. As previously noted, it would not be involved in market monitoring, as that would improperly duplicate the role of DMM. Beyond that, we are inclined to leave to the Governing Body's discretion specifics about exactly when and how such an entity would be retained, the qualifications for and selection of the person or firm, the length of any contract, and the GBME's specific assignments and activities.

We recommend that the Governing Body should be authorized to retain a GBME in connection with the EDAM policy development process for an initial term of two to five years, based on the assumption that this will help attract more qualified candidates. But we are reluctant to propose more detailed rules that would override the Governing Body's best judgment based on the circumstances they ultimately face.

We retain the recommendation from the Straw Proposal that, if there is no EDAM policy development process, the issue of additional expertise for the Governing Body be worked out between the Governing Body and the Board. If the Governing Body concludes that it needs access to additional expertise in order to evaluate specific issues, we believe that nothing would prevent the Governing Body from proposing an arrangement to the Board along the lines described above.

III. Possible funding for the Body of State Regulators

A. Introduction

The July 31, 2020 Straw Proposal considered the possibility that the BOSR could obtain funding to enable it to participate more effectively in EIM stakeholder processes, and a range of questions related to that possibility.

B. Background

As explained more fully in the July 31, 2020 Straw Proposal,⁸³ the BOSR is a self-governing body composed of one commissioner from each state public utilities

⁸¹ Market participants within the CAISO balancing authority area would pay for their share through the GMC.

⁸² For additional information about this cost allocation, see Appendix B.

⁸³ July 31, 2020 Straw Proposal at p. 38.

commission in which regulated utilities participate in the EIM. BOSR may express any common positions in the CAISO stakeholder processes or to the Governing Body.

The BOSR's participation in CAISO policy initiatives is currently limited; to participate more fully the BOSR would need additional resources. The multi-state RTOs in the Eastern interconnection have committees for representatives of states. A description of these organizations, including the funding they receive, is provided in the table in Appendix C. Annual funding ranges from \$200,000 to more than \$2 million, depending on whether the organization simply funds travel and meetings or has permanent staff.

The July 31, 2020 Straw Proposal agreed with the BOSR and many other commenters that there would be value in funding for the BOSR that would enable it to more extensively participate. We noted that:

State engagement through the BOSR can help to ensure the success of the EIM (and EDAM), because it can help streamline state approval and cost recovery processes. Accordingly, the GRC supports an appropriate mechanism through which the BOSR could obtain the funding necessary for enhanced participation.⁸⁴

Rather than proposing a specific funding mechanism, however, we encouraged stakeholders – specifically state jurisdictional utilities in EIM or EDAM – to work together to address potential funding. Specifically, we observed:

The source of such funding, however, is a thornier issue. The GRC agrees with commenters that a charge through the tariff could be inequitable to some market participants if not specifically assigned to state-jurisdictional entities. While the GRC believes that an appropriate funding source would be the state commission jurisdictional utilities that participate in EIM or EDAM, it is not prepared to propose a specific mechanism, and instead asks stakeholders for proposals. The GRC understands that the utilities subject to the jurisdiction of their state commissions are engaging directly with the BOSR to explore alternative sources of funding. The GRC encourages these efforts.⁸⁵

C. Summary of Comments

A number of parties commented on this topic.⁸⁶ These commenters generally agreed, without objection, that it would be appropriate and beneficial to fund the BOSR. Most

⁸⁴ Id. at p. 39.

⁸⁵ Id.

⁸⁶ See AWEA Comments on Issue 4, BPA Comments on Issue 4, CMUA Comments on Issue 4, Chelan Comments on Issue 4, CPUC Energy Division Comments at pp. 4-5 (Issue 4), Joint EIM Entities Comments on Issue 4, PGP Comments on Issue 4, PG&E

were either were silent on the source of funding, or expressly supported the efforts of state jurisdictional utilities to develop a funding source for BOSR outside of the Tariff. Some expressly opposed any charge through the Tariff.

A broad group of state regulated market participants submitted comments on this issue only. They oppose a funding mechanism through the tariff and explain that they have been working toward alternative contractual arrangements to support the BOSR. They reported that:

The [State Regulated Market Participants] are confident that this arrangement [h]as merit with the full support of each SRMP as well as support from members of BOSR. Accordingly, the SRMPs recommend that the GRC continue to support BOSR funding but should not go so far as to recommend a CAISO-tariff funding mechanism.⁸⁷

D. Recommendation

Stakeholders support funding to facilitate greater participation by the BOSR. The GRC is aware of ongoing discussions between representatives of the BOSR and utilities subject to state jurisdictions that may resolve this issue. The GRC believes the option of an outside agreement provides flexibility for the parties to adjust the agreement over time to meet changing needs. At the time of this writing, no final agreements have been reached or are publicly available.⁸⁸ Accordingly, it would be inappropriate to take further action until the discussions are complete. If an agreement is reached, no action would be required, and this issue would be dropped from our final proposal.

Issue 5: Governing Body Mission Statement

A. Introduction

In its work developing the July 31, 2020 Straw Proposal, in particular developing guiding principles for its own work, the GRC decided to consider the mission of the Governing Body as articulated in the Charter.

B. Background

After quoting the full mission statement,⁸⁹ the GRC concluded that it would not recommend any changes at this time, because it is sound as drafted. We also noted that

Comments on Issue 4, PIOs Comments on Issue 4, PPU Comments on Issue 4, Six Cities Comments on Issue 4, SCE Comments on Issue 4, BOSR Comments on Issue 4.

⁸⁷ See also the comments of PG&E on Issue 4, which provide additional detail about the ongoing discussions.

⁸⁸ See www.westernenergyboard.org/energy-imbalance-market-body-of-state-regulators/

⁸⁹ July 31, 2020 Straw Proposal at p. 40.

changes might be appropriate for EDAM, but because “EDAM is in the early stage of its development, it is challenging to contemplate appropriate modifications until more is known about the market design.”

C. Summary of Comments

Seven stakeholders commented on the mission statement.⁹⁰ Their comments support the current mission statement, and the GRC’s recommendation that this statement be reviewed after the market design for EDAM is developed. Two of the commenters suggested details about what might be included at that point.⁹¹

D. Recommendation

We maintain the recommendation in the July 31, 2020 Straw Proposal that the Governing Body’s mission statement is appropriate at this time, and that the issue should be considered again after the market design or EDAM is substantially complete to determine whether revisions are appropriate in light of that design.

Issue 6: Other Potential Topics for Consideration

A. Introduction

The July 31, 2020 Straw Proposal also addressed two issues about the timing of its proposal.

B. Background

We recommended “a stakeholder-led review of the governance structure no later than five years after any new governance structures have been implemented as a result of this GRC process.” This was “regardless of the timing associated with creating an EDAM and any further governance changes that may be specific to EDAM. Thus, if certain governance changes are established for EIM before the EDAM is created, then the five-year period would run from the time that those initial ‘EIM-only’ changes are implemented.”

We also recommended “maintaining [the] established schedule [for the work of the GRC], in which we plan to submit a draft final proposal on governance to the Governing Body and Board in Q1 2021.” This schedule would require some further opportunity to re-evaluate any EDAM-specific aspects of the proposal once the proposed EDAM market design is better known. To that end, we would recommend that the GRC remain available

⁹⁰ See BPA Comments on Issue 5, Chelan Comments on Issue 5, Joint EIM Entities Comments on Issue 5, PGP Comments on Issue 5, PIO Comments on Issue 5, PPC Comments on Issue 5, and SCE Comments on Issue 5.

⁹¹ See Chelan Comments on Issue 5, PGP Comments on Issue 5.

after submission of its proposal to further consider any EDAM-specific aspects once the CAISO staff has developed a draft final proposal that addresses all of the main elements of the proposed EDAM market design.

C. Summary of Comments

Seven stakeholders⁹² submitted comments on these issues, all of which supported the recommendations.

In addition, AWEA raised a new issue that we address here. They asked the GRC to consider “expanding the authority of the Governing Body to review EIM (EDAM) Entity tariff prior to those tariffs being filed with FERC or the relevant regulator.” AWEA asserts that this would be “important to ensure the market operates under a consistent set of rules, especially as participants with more diverse regulatory oversight structures join the market.”

Finally, PPC joined by BPA, Chelan, and WAPA, requested that the CAISO legal staff explain how certain existing California law could affect EIM governance and regional integration.

D. Recommendation

We stand by our recommendations regarding the timing of the GRC’s work and that, assuming it is adopted, the new governance structure should be re-evaluated within five years. We also maintain the recommendation that there be the opportunity for the GRC to evaluate any EDAM-specific aspects of the proposal once the proposed EDAM market design is better known.

Regarding AWEA’s proposal to authorize the Governing Body to review the OATTs of EIM or EDAM Entities, we considered a range of possibilities and ultimately decided not to propose any related governance changes.

The crux of AWEA’s concern is that the regulatory oversight for BAA transmission tariffs allows variation across the West because the tariffs are regulated by different governmental entities. In addition, FERC, which regulates some of these tariffs, allows variation among them, including on terms that can be important for a regional market such as calculating unaccounted for energy. Such variation can be for good reason, and AWEA is not suggesting otherwise – only that this could have implications for the efficiency of EIM (and EDAM).

⁹² See BPA Comments on Issue 6, Chelan Comments on Issue 6, Joint EIM Entities Comments on Issue 6, PGP Comments on Issue 6, PIO Comments on Issue 6, PPC Comments on Issue 6, SCE Comments on Issue 6.

The GRC does not believe action is necessary because the CAISO policymaking process already offers avenues for AWEA to pursue any specific concerns that may arise.⁹³ When CAISO established EIM, it determined what minimum terms were necessary in the transmission tariffs of EIM Entities, and included these requirements in its own tariff (subject to FERC approval). This process will be repeated if EDAM moves forward. AWEA may also propose a separate policy initiative that could address any particular concerns.⁹⁴

Or the issue could be discussed at the RIF, which has been willing to consider it in the past. This could include, for example, RIF holding a stakeholder discussion that looks at potential inconsistencies with existing EIM/EDAM tariff provisions and consider impacts of inconsistencies to transmission customers.

We believe these options would be more appropriate ways of addressing the issue than proposing to authorize the Governing Body to effectively regulate these tariffs.

Regarding the concerns of PPC and others about how California statutes could affect EIM governance or regional integration, CAISO Legal has expanded Appendix A to respond to these questions.

IV. Summary of Recommendations

For ease of reference, the following is a chart that summarizes the recommendations the GRC has made throughout this paper. Except where noted, the recommendations apply both in the context of EIM and EDAM:

Issue	Recommendation
<p>Delegation of Authority for Market Rules</p>	<ul style="list-style-type: none"> • Scope of joint authority – Governing Body and Board have joint authority over all proposed changes to the market design or market rules that apply to the Energy Imbalance Market or the Real-Time Market, except for any such rules that apply either (i) only to the CAISO controlled grid or (ii) only to the CAISO balancing authority area that are related to reliable operations (e.g., rules relating to resource adequacy, reliability must run contracts, the capacity procurement mechanism, or ancillary services). • This scope of joint authority definition applies for EIM.

⁹³ This also indicates that the issue is more about market design than governance, which would place it outside the GRC’s chartered authority.

⁹⁴ See the discussion of the annual policy roadmap, pp. 33-35

	<ul style="list-style-type: none"> • Any changes for EDAM would be determined after the EDAM market design is known.
	<ul style="list-style-type: none"> • Joint authority meeting process – Governing Body and Board each must approve by a majority vote any proposals within their joint authority. • Approvals would typically occur during joint meetings of the two bodies, which would occur throughout the market footprint (or virtually).
	<ul style="list-style-type: none"> • Process for resolving deadlocks – Maintain the iterative process that involves going back to stakeholders for further policy development if the two bodies do not agree on a proposal and use this remand in all cases unless a majority of both bodies votes in favor of abandoning the proposal. • After doing so, retain last resort option of filing dual proposals with FERC, if a majority of the Board consents to such a filing <ul style="list-style-type: none"> ○ For such filings, the CAISO will prepare one filing that sets forth both alternatives for FERC to choose : <ul style="list-style-type: none"> ▪ The CAISO shall describe both alternatives in detail sufficient to permit reasonable review by FERC. The filing also would make clear that FERC should not mix and match elements of the two alternatives. ▪ FERC will not be required to consider whether the then-existing filed rate is unlawful and shall adopt either the Governing Body’s proposal or the Board’s proposal – whichever it finds to be just and reasonable and preferable.

	<ul style="list-style-type: none"> • Durability of delegation and process for any changes – Changing the scope or type of delegation would require a unanimous vote of the Board with advisory input from Governing Body and input of BOSR and stakeholders. If the Governing Body opposes the change, there would be a 45-day period for the Board and the Governing Body to hold a public meeting and work to resolve the disagreement. If that period expires without resolving the disagreement, any changes also cannot implemented until after a notice period equal to any EIM/EDAM exit notice period. • Board also has ability to withdraw delegation in the case of significant market withdrawal -- If 85% of the net energy for load in the EIM outside of CAISO balancing authority area give notice of their intent to withdraw, the Board may, by a unanimous vote, rescind the joint authority delegation without the notice period that otherwise would apply for such a change.
Selection of Governing Body Members	<ul style="list-style-type: none"> • Make PIO sector a voting member of Nominating Committee.
	<ul style="list-style-type: none"> • Permit a 60-day “holdover period” for Governing Body members. • Modify language for Nominating Committee to emphasize diverse perspectives resulting from a revised list of qualities for consideration including geographic background, ethnicity, gender, personal and professional backgrounds, and life experience.
Stakeholder Engagement Recommendation	<ul style="list-style-type: none"> • Modify the RIF to expand the topics they may address by removing current limitation on RIF addressing issues that are part of an ongoing CAISO stakeholder process.
	<ul style="list-style-type: none"> • Maintain the RIF’s existing independence in developing its own rules and procedures.
	<ul style="list-style-type: none"> • Codify a standing agenda item for the RIF at the meetings of the Governing Body.
	<ul style="list-style-type: none"> • Modify RIF sectors to the following, with two liaisons selected from first five and one liaison for PMA sector: <ul style="list-style-type: none"> ○ EIM Entities (including EDAM Entities if EDAM goes forward) ○ Participating Transmission Owners ○ Public power entities

	<ul style="list-style-type: none"> ○ Public interest groups & consumer advocates ○ Independent power producers & marketers ○ Federal power marketing administrations.
BOSR Funding	<ul style="list-style-type: none"> ● The GRC supports the ongoing discussions between the BOSR and the state-regulated market participants to establish a mutually acceptable source of funding for BOSR.
POU and PMA Representation on BOSR	<ul style="list-style-type: none"> ● Support the inclusion of non-voting PMA and public power liaisons to the BOSR, subject to BOSR approving this through a change to its charter.
	<ul style="list-style-type: none"> ● These liaisons will actively participate in discussions with the BOSR with the goal of communicating public power perspectives to the commissioners.
	<ul style="list-style-type: none"> ● There should be no more than three liaisons: one for a PMA and two determined by participating public power entities considering geographic diversity.
Governing Body Role on MSC and DMM; Market Expert Recommendation	<ul style="list-style-type: none"> ● A member of the Governing Body would be invited to attend meetings of the DMM Oversight Committee. This role would be non-voting.
	<ul style="list-style-type: none"> ● The Governing Body would have joint authority with the Board in the approval of MSC members.
	<ul style="list-style-type: none"> ● In connection with an EDAM policy process, the Governing Body should be able to select a market expert, which will be called the “Governing Body Market Expert.”
	<ul style="list-style-type: none"> ● The market expert’s role should be consistent with the Governing Body’s mission, which is to promote the success of the EIM or EDAM for the benefit of all market participants.
	<ul style="list-style-type: none"> ● The Governing Body would define the specific qualifications and duties of the market expert.
	<ul style="list-style-type: none"> ● The Governing Body would be authorized to hire the market expert for an initial term between two and five years.
	<ul style="list-style-type: none"> ● The GRC recommends leaving it to the Governing Body to hire an expert when they believe it is necessary.
	<ul style="list-style-type: none"> ● The cost of the market expert should be recovered from all market participants. As with other overhead costs, the share paid for by EIM Entities would be recovered

	through the CAISO’s current cost allocation methodology.
Governing Body Mission Statement	<ul style="list-style-type: none"> • No changes recommended to Governing Body mission statement and criteria.
	<ul style="list-style-type: none"> • The GRC proposes re-evaluating this item once the final EDAM market design is available.
Policy Roadmap	<ul style="list-style-type: none"> • Maintain existing recommendation that the CAISO maintain its current process and encourage management to make a deliberate effort to explain the reasoning behind its decisions about the relative priority of possible initiatives.
EIM/EDAM Entity Tariff Consistency	<ul style="list-style-type: none"> • The GRC does not recommend any changes to the Governing Body or Board’s authority or review of the EIM or EDAM entities’ tariffs, as the extent of uniformity of BAA tariffs is more a market design topic than a governance topic.
Other Items	<ul style="list-style-type: none"> • There would be a governance re-evaluation no later than 5 years from adoption of new governance features by the Governing Body and Board.
	<ul style="list-style-type: none"> • Maintain current schedule that targets submitting a draft final proposal by Q1 of 2021.
	<ul style="list-style-type: none"> • The GRC would remain available to re-evaluate any element of governance prior to their adoption of final EDAM market design.

V. Next Steps

On December 18, 2020, the GRC will hold a stakeholder call to discuss this proposal and solicit views from stakeholders. Written comments will be due on January 22. Stakeholder input is critical for developing a robust EIM governance proposal.

In addition to the recommendations posed in Section IV above, commenters may also address the timeline described below for this committee’s work and its relationship to the timeline for EDAM market design or to other processes that are viewed as relevant. The comments template for the EIM Governance Review initiative will be available in the new commenting tool on December 18. A link to access the template will be available on the initiative page at <http://www.caiso.com/StakeholderProcesses/Western-EIM-governance-review>.

Appendix A: Overview of Legal Issues Relevant to Governance

(Prepared by CAISO staff)

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

General Corporate Law Considerations

As the board of directors for the corporation, the CAISO Board of Governors is legally responsible for all corporate activities, which must be under its "ultimate supervision." For CAISO, the primary source of this obligation is Section 5210 of the California Corporations Code, which governs nonprofit, public benefit corporations. It states, in part, that "the activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board." This language, and in particular the phrase "or under the direction," recognizes that corporate boards ordinarily cannot directly exercise every aspect of their corporate powers and thus may delegate responsibility to employees and others in order to operate. But when a board delegates, it remains accountable for corporate activities, and therefore must have ultimate control over them. Section 5210 makes this point expressly, further stating that: "The board may delegate the management of activities of the corporation to any person or persons, management company, or committee however composed, *provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.*"⁹⁵

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

⁹⁵ Italics added. The full text of Corporations Code § 5210 reads:

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

To illustrate, a board may hire a CEO and other officers to manage a business. But the board remains responsible and accountable for what these officers do, including, for example, for the strategy undertaken to meet the corporation's fundamental objectives and for how corporate resources are allocated and deployed. Failure to provide guidance to the officers, monitor what they are doing, and oversee them can result in board members being liable for breach of their fiduciary duties to the corporation, and violation of other legal requirements.⁹⁶ Under Section 5210, completely delegating the Board's oversight responsibility would be the same as not fulfilling it.

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

CAISO's Tax-Exempt Status

As ultimate authority over all corporate actions, a board is responsible for ensuring the corporation complies with applicable laws.⁹⁷ An important set of restrictions arises from the CAISO's tax-exempt status. This exemption benefits market participants through lower costs, by reducing the CAISO's tax obligations and allowing it to use tax-exempt financing. To continue these benefits and avoid substantial penalties and liability, the CAISO must remain in compliance with the requirements of its 501(c) (3) exemption.

The CAISO's particular exempt status depends upon an ongoing ability to show that the CAISO's activities meet its corporate purpose, consistent with California law, and that the Board is supervising these activities. Within the general category of 501(c) (3) organizations – there are different types – the CAISO is a public charity as opposed to a private foundation, and specifically a “supporting organization.” The CAISO qualifies as a supporting organization because its operations and market promote the reliability and the efficiency of the grid in California as required by AB 1890, the 1996 state legislation that led to the incorporation of the CAISO. EIM supports these goals too, as would EDAM. While EIM (and if it is adopted, EDAM) obviously benefit other balancing authority areas as well, the CAISO is able to undertake these activities within the

⁹⁶ See *Stern v. Lucy Webb Hayes National Training School for Deaconesses*, 381 F. Supp. 1003 (D.D.C. 1974):

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

⁹⁷ See, e.g., Cal. Corp. Code § 5140 (a corporation is granted power to act “[s]ubject to . . . compliance with . . . applicable laws”).

parameters of its tax exemption because these markets support the CAISO corporate purpose of enhancing the reliability and efficiency of the grid in California.

The CAISO Board’s authority over the corporation is also essential to demonstrating it is a supporting organization. IRS regulations require that the “supported organization” – in this case, the State of California – must supervise or control the supporting organization. In the case of CAISO, this relationship is established by the fact that its Board is selected by California officials, as required by California law.⁹⁸ An attempt to remove the Board entirely from certain decisions, for example by allowing the Governing Body to direct changes to market rules without some form of review by the Board or by irrevocably preventing the Board from changing any delegation or sharing of authority, could jeopardize the CAISO’s ability to maintain its exempt status.⁹⁹

Conclusion Regarding Corporate Authority

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

Questions and Answers Regarding the Significance of Other California Statutes

In their comments on the July 31, 2020 Straw Proposal, PPC raised several questions about the significance of California Public Utilities Code §345.5. BPA, Chelan, and WAPA requested responses to same concerns. This section explains the significance of this provision for CAISO’s regional integration.

How does CAISO’s governance structure interact with its statutory obligations to the state’s consumers in Pub. Util. Code 345.5?

Section 345.5 of the California Public Utilities Code has led the CAISO to create EIM, EIM governance, and the GRC, and to pursue EDAM. The statutory provisions that are

⁹⁸ See Cal. Pub. Utils. Code § 337, which provides that Board members will be selected by the Governor of California, and also that members may not be “affiliated with any actual or potential” market participant.

⁹⁹ Along the same lines, the CAISO’s outstanding tax-exempt bonds impose restrictions on the use of the CAISO’s main offices for any reasons other than the CAISO’s exempt purpose. Compliance with this requirement could be jeopardized if the Governing Body could, without approval by the Board, direct staff to pursue activities that might be found to fall outside the CAISO’s exempt purposes.

the focus of PPC's comments affect the CAISO most directly through the CAISO's corporate purpose, which is to ensure the efficient and reliable use of the transmission system in California "consistent with" that chapter of the Public Utilities Code. This corporate purpose has led CAISO to pursue as a strategic priority regional integration, including the recent modifications to our governance structure. While these governance features comply with the concrete requirements of the statute, through the Open Meeting Policy and Records Availability Policy, the more general guidance in the statute has affected CAISO governance only indirectly through its corporate purpose, as described above.

What assurance do regional participants have that the CAISO market will continue to provide the widest benefits for all market participants, and not provide an unfair advantage to California consumers?

The most important assurance to regional participants is that undue discrimination against a segment of market participants would violate the Federal Power Act. On this basis, market participants could file protests at FERC of any proposed market rule changes that would treat them unfairly.

Secondarily, there is competitive pressure around Western electricity markets. The Southwest Power Pool has active efforts to persuade Western utilities to join its market rather than CAISO's, and PJM has also made such efforts in recent years. If CAISO were to treat any group of EIM participants unfairly or fail to provide benefits, it would run a significant risk that those participants would leave for these or other competitors, which would undermine the CAISO's market and its ability to fulfill its corporate goals.

What happens when state statutes conflict with obligations under the Federal Power Act? How would the CAISO seek to reconcile any conflict?

FERC has exclusive authority over all transactions in the CAISO market. If a situation arose in which state statute required CAISO to take certain actions regarding the operation of transmission or its market that are inconsistent with its tariff, that statute would be preempted. Any lawsuit against the CAISO or any market participant that sought to enforce such a state law would be removed to federal court and dismissed. A good example, and binding precedent, is *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831 (9th Cir. 2004), which involved a lawsuit against CAISO market participants for violating a state statute (Business & Professions Code § 17200) through their CAISO market transactions. The market participants removed the suit to a federal court, which dismissed it as preempted. The Ninth Circuit affirmed this ruling, holding that federal law preempts any state law that touches upon the substance of CAISO tariff rules. While those market participants still had to face consequences imposed by FERC's Enforcement division, this ruling should assure regional participants that the CAISO's tariff rules may not be changed by state law.

Could the obligation to California consumers induce the Board to revoke or modify the delegation of authority to the Governing Body?

While this is theoretically possible, the circumstances that could lead that to happen are extremely difficult to foresee. The Board has a legal obligation to promote the reliable and efficient use of the grid in California. The EIM strongly supports the Board's legal obligation. The Board would have no legal duty to revoke or modify the delegation of authority unless circumstances have changed in such a substantial way that there is no longer a viable argument that the EIM promotes this objective. Moreover, assuming the GRC's current proposal for increasing the durability of the delegation of authority is adopted, any such change would require a unanimous vote of the Board, advisory input from the Governing Body, a 45-day period for the two bodies to attempt to resolve any differences, and a notice period that is equal to the withdrawal notice period for EIM Entities.

Appendix B: ISO Rates and Fees

Under the CAISO's rate and fee structure, ongoing operational costs are recovered from customers through the grid management charges (GMC) and other fees. The GMC rate structure contains three cost categories: market services, system operations and congestion revenue rights (CRR) services. The market services category is designed to recover costs the CAISO incurs for running the markets. The system operations category is designed to recover costs the CAISO incurs for reliably operating the grid in real time. The CRR services category recovers costs the CAISO incurs for running the CRR markets.

To ensure proper allocation of costs to the GMC, the CAISO conducts a triennial cost of service¹⁰⁰ study to determine the cost allocation of its annual GMC revenue requirement to the cost categories. The triennial study is a tariff requirement as part of current rate structure, and sets forth the cost category percentages used to calculate the annual grid management charges and other rates and fees. Such rates and fees include, but are not limited to, the market services charge, the system operations charge, CRR services charge, EIM market services charge, EIM systems operations charge, reliability coordinator (RC) service charge, and supplemental fees.

EIM Administrative Charges

The CAISO recovers ongoing operational costs from EIM market participants through EIM administrative charges. Through these charges the CAISO seeks to charge EIM participants the same rate as existing customers, but only for their real-time market and real-time dispatch activities specifically related to the Western Energy Imbalance Market. Therefore, EIM entities pay the percentage of GMC associated with real time market and real time dispatch resources.

To determine the EIM administrative charges, the CAISO first allocates the annual GMC revenue requirement to the three GMC service categories using the percentages as identified in the cost of service study, forecasts volumes in these categories to determine the GMC rates, and then applies the real-time cost proportions to the respective rates for (1) EIM market services and (2) EIM system operations. The annual EIM administrative charges for an entity will vary dependent on activity and imbalances.

EIM Market Services Charge

The EIM market services charge is allocated to gross instructed imbalance energy that is the result of the market optimization, excluding instructed imbalance energy that occurs outside of the market optimization.

¹⁰⁰ The draft final 2019 cost of service study is available on the ISO website at <http://www.caiso.com/Documents/DraftFinal2019CostofServiceStudyand2021GridManagementChargeUpdate.pdf>

EIM System Operations Charge

The EIM system operations charge is allocated to gross real time energy flow which is the absolute difference between the metered value and the base schedules.

The 2020 EIM charges as a percentage of the respective GMC charges are published in the ISO's annual Budget and Grid Management Charge Rates document.¹⁰¹

¹⁰¹ The 2020 budget and grid management charge rates book, as well as the resulting GMC and EIM rates, is available at <http://www.caiso.com/Documents/2020Budget-GMCRatesBook-Final.pdf>

Appendix C: Summary of Multi-State RTO State Committees

Entity	Role and Activities	Funding
<p>Organization of MISO States (OMS)</p> <p>Website: http://www.misostates.org/</p> <p>OMS is a non-profit, public benefit corporation, incorporated in Indiana.</p> <p>The board consists of one regulator from each State or Province in the OMS footprint, plus an official from the New Orleans City Council Utilities Regulatory Office.</p>	<p>Advisory and shares Section 205 rights regarding cost allocation for certain new regional transmission projects.</p> <p>Purpose as stated in OMS Articles of Incorporation:</p> <p>“Providing a means for the MISO States to act in concert, when deemed to be in the common interest of their affected publics, on activities, such as (but not limited to) data collection and dissemination, issue analysis, policy formation, advice and consultation, decision-making and advocacy, related to (i) the electricity generation and transmission system serving the MISO States, (ii) MISO’s operations, (iii) related FERC matters, including (but not limited to) FERC’s open access, RTO and market design initiatives, and (iv) the jurisdiction and role of the MISO states to regulate and promote the electric utilities and systems within their respective boundaries.”</p>	<p>Grant for 2019: \$1,539,404 Grant for 2020: \$1,433,839</p> <p>Source: Budgets on website</p> <p>https://www.misostates.org/index.php/about/organization-docs</p>

<p>Regional States Committee (RSC) (Southwest Power Pool)</p> <p>Homepage: http://www.spp.org/organizational-groups/regional-state-committee/</p> <p>RSC is a non-profit corporation incorporated in Arkansas.</p> <p>The board consists of one retail regulatory commissioner each from the agencies located in Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota and Texas.</p>	<p>Advisory, with shared rights under Section 205 to file a proposal over certain issues that were key to establishing SPP.</p> <p>From the SPP bylaws:</p> <p>“The RSC has primary responsibility for determining regional proposals and the transition process in the following areas: (a) whether and to what extent participant funding will be used for transmission enhancements; (b) whether license plate or postage stamp rates will be used for the regional access charge; (c) FTR allocation, where a locational price methodology is used; and (d) The transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers’ existing firm rights. The RSC will also determine the approach for resource adequacy across the entire region. In addition, with respect to transmission planning, the RSC will determine whether transmission upgrades for remote resources will be included in the regional transmission planning process and the role of transmission owners in proposing transmission upgrades in the regional planning process.”</p>	<p>Expenses in 2018: \$222,745</p> <p>Source: Form 990 for Southwest Power Pool Regional State Committee, filed September 30, 2019</p> <p>Available through multiple websites</p>
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<p>New England States Committee on Electricity (NESCOE)</p> <p>(ISO New England)</p> <p>Website: http://nescoe.com/</p> <p>NESCOE is a non-profit corporation with its principal place of business in Massachusetts</p> <p>The board consists of one member from each New England state, appointed by the Governor or each state.</p>	<p>Advisory.</p> <p>From the NESCOE website:</p> <p>“NESCOE represents the collective perspective of the six New England states in regional electricity matters. NESCOE advances the New England states’ common interest in the provision of electricity to consumers at the lowest possible price over the long-term, consistent with maintaining reliable service and environmental quality.</p> <p>NESCOE focuses on two areas: resource adequacy and system planning and expansion.”</p>	<p>Budget for 2019: \$2,395,513 Budget for 2020: \$2,467,379</p> <p>Source: 2018 Annual Report, dated April 2, 2019</p> <p>http://nescoe.com/wp-content/uploads/2019/04/AnnualReport2018.pdf</p>
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<p>Organization of PJM States, Inc. (OPSI)</p> <p>Website: https://opsi.us/</p> <p>OPSI is a non-profit corporation organized in Delaware.</p> <p>The board consists of one retail regulatory commissioner each from the agencies located in Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia.</p>	<p>Advisory.</p> <p>From the OPSI website:</p> <p>“OPSI is an inter-governmental organization of utility regulatory agencies of 14 jurisdictions ... [that] are wholly or partly in the service area of PJM.</p> <p>OPSI’s activities include, but are not limited to, coordinating data/issues analyses and policy formulation related to PJM, its operations, its Independent Market Monitor, and related FERC matters.”</p>	<p>Expenses in 2018: \$669,972</p> <p>Source: Exempt Organization Tax Return for 2018</p> <p>https://opsi.us/wp-content/uploads/2019/10/2018US-XORGANIZATIONOF.PJM-Clnt-V1-1.pdf</p>
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Appendix D: Glossary of Abbreviations

Abbreviation	Description
AWEA	American Wind Energy Association
Board	Board of Governors of the California ISO
BOSR	Body of State Regulators
BPA	Bonneville Power Administration
Chelan	Chelan County Public Utility District
CAISO	California Independent System Operator
CMUA	California Municipal Utilities Association
CPUC	California Public Utilities Commission
CPUC ED	California Public Utilities Commission Energy Division
CPUC PAO	California Public Utilities Commission Public Advocates Office
DMM	Department of Market Monitoring
EDAM	Extended Day-Ahead Market
EIM	Energy Imbalance Market
EIM Entities ¹⁰²	Arizona Public Service Company, Avista Corporation, Balancing Authority of Northern California, Bonneville Power Administration, Idaho Power Company, City of Los Angeles Department of Water and Power, NV Energy, PacifiCorp, Portland General Electric Company, Powerex Corp., Public Service Company of New Mexico, Puget Sound Energy Inc., Salt River Project, Seattle City Light, Tacoma Power, Turlock Irrigation District and Northwestern Energy
Governing Body	EIM Governing Body
GRC	Governance Review Committee
ISO	Independent System Operator
MSC	Market Surveillance Committee
NVE	NV Energy
NRU	Northwest Requirement Utilities
GBME	Governing Body Market Expert
PG&E	Pacific Gas and Electric
PGP	Public Generating Pool
PIO	Public Interest Organization
PPC	Public Power Council
PPU	Public Power Utilities
PMA	Federal Power Marketing Agency
POU	Publicly Owned Utility
RTO	Regional Transmission Organization
SCE	Southern California Edison

¹⁰² This is a list of EIM entities that offered joint comments on the EIM Governance Review Committee January 29 Scoping Paper and the July 31, 2020 Draft Straw Proposal.

Six Cities	Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California
SRMP	State Regulated Market Participants
WAPA	Western Area Power Administration

Appendix E: Documents Cited

Reference	Document
Bylaws	The California ISO corporate bylaws, available at http://www.caiso.com/Documents/ISOCorporateBylaws_amendedandrestated_.pdf
Charter	Charter for Energy Imbalance Market Governance, March 27, 2019 (version 1.3), available at https://www.westerneim.com/Documents/CharterforEnergyImbalanceMarketGovernance.pdf
Guidance Document	Guidance for Handling Policy Initiatives within the Decisional Authority or Advisory Role of the EIM Governing Body, March 27, 2019 (version 1.1), available at https://www.westerneim.com/Documents/GuidanceforHandlingPolicyInitiatives-EIMGoverningBody.pdf
Open Meeting Policy	Open Meeting Policy, December 9, 2019 (version 3.8), available at https://www.caiso.com/Documents/CaliforniaISOOpenMeetingPolicy.pdf
Scoping Paper	EIM Governance Review Committee January 29, 2020 Scoping Paper, available at https://www.westerneim.com/Documents/ScopingPaper-EIMGovernanceReviewCommittee.pdf
Straw Proposal	EIM Governance Review Committee July 31, 2020 Straw Proposal, available at http://www.caiso.com/InitiativeDocuments/StrawProposal-EIMGovernanceReviewCommittee.pdf
Selection Policy	Selection Policy for the EIM Governing Body (as adopted) Version # 1.1, available at https://www.westerneim.com/Documents/SelectionPolicy_EIMGoverningBody.pdf
Tariff	CAISO FERC approved tariff, available at http://www.caiso.com/rules/Pages/Regulatory/Default.aspx