Western EIM Governance Review

Governance Review Committee
Part One Final Proposal

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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 to develop a proposal that the GRC will submit to the Board and the Governing Body for their consideration.[1]

This Part One Draft Final Proposal, the fourth in a series of papers the GRC has prepared, represents the culmination of our work on five of the six broad categories of issues the GRC has been considering. Specifically, we present in this paper the proposals we intend to submit to the Board and the Governing Body on Issues 2-6, and we set forth a process for completing our work on Issue 1, which we believe requires more consideration and public discussion among stakeholders. Once we have completed that work, we intend to submit a separate Part Two Draft Final Proposal that will address the topics covered in Issue 1.

We have decided to use a phased approach so that the Board and Governing Body can consider the approval of Issues 2-6 while we continue our work with stakeholders on Issue 1. As discussed below, there is a high degree of consensus among stakeholders on most aspects of Issues 2-6, and the GRC believes these issues are now ready to be considered by both bodies, which would allow them to be implemented while we continue working on Issue 1. We expect to complete our work on Issue 1 and present a Part Two Draft Final Proposal later this year. At the end of this paper, we set forth our current thinking on the procedural schedule for completing our work in Issue 1, which will include stakeholder workshops and general session discussions on those topics as well as the opportunity for stakeholders to submit written comments.

As with our first two proposals, a broad and diverse set of stakeholders provided extensive comments on the Revised Straw Proposal issued on December 14, 2020.[2] In the December 14, 2020 Revised Straw Proposal, we discussed those comments, explained how they influenced our collective thinking, and set forth additional refinements to our proposal.

For ease of reference, this proposal – the Part One Draft Final Proposal – follows the same organizational structure, with the same grouping of topics, as our prior proposals. The next section describes the process the GRC has followed to develop its proposed

[1] The Board and Governing Body approved a Charter for the GRC that sets forth its role and scope of work, which is available here. The members of the GRC are listed on the Western EIM website here.

[2] There were 17 sets of stakeholder comments on the December 14, 2020 Revised Straw Proposal. The GRC's prior papers and stakeholder comments on each paper are available here.

recommendations, certain principles we developed to guide our work, and factors we have considered when evaluating the various alternatives. Section III addresses each of the major issue areas the GRC has identified in its prior proposals. In this section, we provide an overview of the recommendations we made on each Issue in the December 14, 2020 Revised Straw Proposal, followed by a discussion of stakeholder comments and, where applicable, any refinements we have made to our prior proposal. 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 prior proposals, 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 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 advisory bodies for state utility regulators at other ISOs and RTOs. These details provide valuable background information that helped inform our discussions regarding funding for the BOSR in order to enhance their engagement 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 the GRC's Proposal

The GRC has used two main avenues to obtain stakeholder input for 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 December 14, 2020 Revised Straw Proposal, the GRC has had two such general sessions in December and March.

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 stakeholder input we have received. As with our last proposal, each of the GRC's 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 stakeholder comments provided on each Issue, discuss in depth potential alternatives, and develop preliminary recommendations for consideration by the broader GRC on each of the topics covered in the Part One Draft Final Proposal.

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 draft final proposals set forth in this paper.

It is important to note that the proposals set forth in this Part One Draft Final Proposal do not yet constitute a final proposal of the GRC. The GRC will not take any final action on these proposals until its next general session meeting, at which time it intends to vote in public session on the package of proposals set forth in Issues 2-6 of this paper. At this public meeting, stakeholders will be afforded the opportunity to comment on the package of recommendations for Issues 2-6 before the GRC takes action to forward the proposal to the Board and the Governing Body for their further consideration and potential approval. This is consistent with the CAISO's Open Meeting Policy, which requires that all formal actions take place in publicly noticed meetings.

B. Principles Adopted to Guide the GRC

As discussed in our prior papers, at the outset of our work 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, 2020 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 has identified in prior papers several factors to consider in connection with evaluating the various alternatives before it. These factors are:

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

Where applicable, this proposal discusses how one or more of these factors may have influenced the GRC's proposed recommendations.

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. 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.

The Governing Body's current scope of 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 it currently holds is called "primary authority." Matters falling within the Governing Body's primary authority go first to the Governing Body for approval and, if approved, go to the Board's "consent agenda" for approval or, if necessary, for further consideration by the Board.[3] 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.[4]

In the December 14, 2020 Revised Straw Proposal, the GRC proposed changes both to the scope and the type of approval authority. We recommended expanding the scope of issues the Governing Body 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.

We also addressed four related topics regarding how this new model would work, including:

> (1) A process to resolve potential deadlocks where one body supports a proposal and the other does not;
>
> (2) A process to address potential "decisional classification" disputes between the bodies over whether a proposal falls within joint authority;
>
> (3) Whether to include a process for short-term emergency filings without approval by both bodies; and
>
> (4) Certain "durability" requirements that address the steps the Board must follow to change the delegation of authority.

B. Summary of Comments and the GRC's Proposal for How to Move Forward on Issue 1

There is a diversity of views among stakeholders regarding how best to proceed with the proposals encompassed by Issue 1. We note that the overarching principle guiding the GRC's work directs us to "ensure that any modifications to the governance of the EIM […] provide stakeholders throughout the West with confidence that the governance

[3] 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.

[4] 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.

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." To consider the views and concerns of the stakeholders in this process, we believe additional time to address Issue 1 is warranted. In addition to policy proposals and public meetings, we believe stakeholder workshops may be valuable as a way for stakeholders to engage more directly with one another and with the GRC in an effort to find areas of commonality on the topics of greatest concern.

The GRC thus proposes to establish a separate track of this proceeding for Issue 1 that will allow for further consideration, while moving forward now with a Draft Final Straw Proposal on Issues 2 through 6. The proposed schedule and next steps for this separate track are discussed in more detail in Section V below.

Issue 2: The Selection of Governing Body Members

A. Background

The Governing Body consists of five members[5] 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 the following stakeholder sectors:

- EIM entities;
- Participating transmission owners;
- Publicly-owned utilities;
- Suppliers and marketers of generation and energy service providers;
- The BOSR
- Public interest or consumer advocate groups.
- The Governing Body
- The Board[6]

The first five sectors are voting members of the Nominating Committee – i.e., the sector representative of the BOSR plus the representatives of the four market participant sectors are eligible to vote on candidates for potential appointment to the Governing Body. Although the remaining three sectors participate fully in deliberations, their role is advisory only and they therefore cannot vote. When making final candidate decisions, the Nominating Committee is directed to "act on the consensus of its *voting* members." (Emphasis added.)[7]

[5] Charter § 1.1.1.

[6] Selection Policy § 3.1.

[7] Selection Policy § 3.4.

Members of the Governing Body serve staggered three-year terms.[8] 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 elects not to serve again or the Nominating Committee decides for other reasons to proceed with a candidate 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.[9]

B. GRC Recommendation

Based on prior stakeholder input, the GRC recommended three changes in this area in its December 14, 2020 Revised Straw Proposal. The stakeholder comments demonstrate broad support, and no opposition, for each of these changes. The GRC thus reaffirms its support for its prior recommendations from the December 14, 2020 Revised Straw Proposal. Those changes, along with a discussion of stakeholder input that informed our conclusions, is discussed in more detail below.

(i) The Role of the Public Interest or 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 from the public interest or consumer advocate groups sector becomes a voting member of the Nominating Committee, rather than an advisory member as is currently the case.

The GRC proposed this change following stakeholder comments in response to our initial January 29, 2020 Scoping Paper, where a large number of stakeholders strongly advocated for this change (and no commenters expressed opposition). At that time, we observed that the members of this sector have an important interest in EIM, are routinely engaged in EIM stakeholder processes, and serve on leadership positions within the EIM's governance framework (including positions on the Governance Review Committee, the Nominating Committee and the Regional Issues Forum). Accordingly, we determined that elevating the Public Interest or Consumer Advocate Groups sector to a voting role on the Nominating Committee would appropriately recognize the value this sector provides to the EIM stakeholder community.

[8] Bylaws Art. IV, Section 3 and Charter § 1.3.

[9] Selection Policy § 3.4.

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 public interest or consumer advocate groups sector. 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. Additionally, the representative of the Governing Body does not need a vote because the Governing Body itself has the final say on candidates.[10]

After three rounds of stakeholder comments on this issue, all stakeholders commenting on this proposal either support or do not oppose changing the status of the public interest or consumer advocate groups sector representative on the Nominating Committee from an advisory member to a voting member. We thus reaffirm our prior recommendation in support of this change.

(ii) Adding a 60-Day Holdover Period

The GRC also previously 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's term or to select a new member in time to avoid an unnecessary vacancy. With that said, the Committee must coordinate schedules between the executive search firm, the eight members of the Nominating Committee, and any potential candidates. Additionally, given the time-intensive nature of the candidate search process, which requires coordination with the executive search firm plus candidate vetting with the Nominating Committee and the stakeholder sectors represented on the Nominating Committee, there is little flexibility 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 the search process even earlier, the 60-day holdover period is the most appropriate way to add flexibility to this process. The 60-day holdover 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 have commented on this proposal unanimously support it, and the GRC continues to support this change.

(iii) Selection Criteria: Enhance Diversity

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

[10] Selection Policy § 3.6.

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.[11]

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

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.[12] We recommended adding language that would identify and inform the search firm of any relevant diversity the Nominating Committee believes should be emphasized in the candidate pool given the current composition of the Governing Body. 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 <u>first determine which set of diverse qualities would best complement the remaining members and</u> ask the Executive

[11] Selection Policy §3.4.

[12] *See id*.

> Search Firm to identify at least two qualified candidates to interview, in addition to the sitting member.[13]

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 on the July 31, 2020 Straw Proposal, stakeholders generally expressed broad support for these proposed changes. However, one commenter, who otherwise supports the 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 to capture beyond the other types specifically enumerated in the revised paragraph.[14]

In the December 14, 2020 Revised Straw Proposal, we agreed that this term, as used in the revisions proposed in our July 31, 2020 Straw Proposal, was perhaps ambiguous and that it thus was not entirely clear how it relates to the remainder of the diversity types otherwise listed. We observed that the other types of diversity have the benefit of ensuring a diversity of perspectives, which is an important overarching quality for the Governing Body as a whole. The GRC thus proposed in the December 14, 2021 Revised Straw Proposal 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 revised formulation covers the remainder of diversity types included in our prior proposal and also seems to better capture the overarching concept of diversity of perspectives. Finally, it avoids the ambiguity that the commenter identified.

With this revision, all stakeholders who have commented on this topic support our proposed revisions to the selection criteria for the Governing Body as provided in our December 14, 2020 Revised Straw Proposal. We thus reaffirm our support for those revisions and include them in this Draft Final Proposal.

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[13] July 31, 2020 Straw Proposal, p. 21.

[14] *See* Six Cities July 31, 2020 Straw Proposal comments at point 4.

Issue 3: Governing Body Meetings and Engagement with Stakeholders

This section addresses possible changes to the current EIM governance structure to enhance opportunities for stakeholder engagement.[15]

I. Modifying the Regional Issues Forum to Enhance Opportunities for Stakeholder Engagement

A. Introduction

The GRC has proposed certain modifications to enhance the effectiveness of the RIF. With these enhancements, the RIF's stakeholder sectors will be more closely aligned with those of the Nominating Committee, and the RIF will able to discuss and offer comments on issues related to ongoing stakeholder processes.

B. Background

Our July 31, 2020 Straw Proposal recommended enhancements to the existing stakeholder engagement process to establish a transparent means for stakeholders to come together to share and debate perspectives on market issues in order to advance stakeholder 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 stakeholder process and should instead focus only on broader issues of EIM operations.[16] The GRC recommended removing 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 RIF 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 opinions it may be able to develop on matters that are part of an ongoing stakeholder process. However, the GRC did not take a position on whether, in developing any opinions, the RIF should act through consensus or by voting, but rather chose to defer 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 proposed adding to the Charter a provision that a standing agenda item for each regularly scheduled Governing Body general session meeting will be a report from the RIF Chair about RIF activities. This would codify what is already a standard practice.

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[15] 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, pp. 23-25.

[16] Charter § 6.1.

Regarding the definition of stakeholder sectors for RIF liaisons, the December 14, 2020 Revised Straw Proposal recommended adjusting them to enhance their alignment with the stakeholder sectors represented on the Nominating Committee. This would help to avoid unnecessary confusion resulting from having substantially different sector definitions in each of these stakeholder committees. Specifically, we proposed the following sectors for the RIF:

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 (PMAs).

While these sector definitions more closely track those of the Nominating Committee, there is the added benefit of including a sector specifically for PMAs. This sector would have one liaison, while the GRC proposes keeping two sector liaisons for the other five sectors. The total number of RIF sector liaisons thus would move from ten to eleven.

C. Summary of Comments

Commenters on the December 14, 2020 Revised Straw Proposal either support or do not object to the proposal about authorizing the RIF to discuss issues that are part of an ongoing stakeholder process. SCE added that it is important for stakeholders to continue to participate in the stakeholder process and that this should be encouraged.

Commenters also support the proposal to change the sectors that select RIF liaisons. While supporting these changes, BPA and WAPA also ask that the GRC establish one additional sector for either neighboring balancing authority areas or non-EIM transmission owners.

D. GRC Recommendation

Given unanimous stakeholder support, we stand by our proposal to authorize the RIF to discuss and offer opinions on issues that are part of an ongoing stakeholder process, as discussed above. The proposal acknowledges that such discussions at the RIF may require duplicative efforts from interested stakeholders.[17] As SCE observes, it is important for stakeholders to participate in the RIF, but also to continue participating in

[17] *See* CMUA December 14, 2020 Revised Straw Proposal comments at point 6.

the CAISO's stakeholder process for policy development, which depends heavily on their input.[18]

Regarding the sectors for selecting RIF liaisons, we have considered whether to add a sector for transmission owners outside EIM or for neighboring balancing authority areas. We had removed the neighboring balancing authority areas sector from the Revised Straw Proposal to more closely align the RIF sectors with the Nominating Committee sectors, and also based on a sense that this sector is no longer central to stakeholder discussions now that EIM has expanded to cover the great majority of the U.S. portion of the Western interconnection. We do not mean to diminish the importance of market seams issues, but we also recognize that there are other ways to address such matters without adding an additional stakeholder sector to the RIF. The RIF may invite neighboring system owners and other interested parties outside EIM to participate in RIF discussions as needed – for instance, when it plans to address issues of importance to these parties.

One commenter asked for clarification as to whether a trade association or other designated representative of one or more consumer-owned utilities could serve as a liaison to the RIF for that sector. The GRC recognizes that this practice currently exists in the RIF and that the decision is left to each individual sector. We recommend that this practice be continued. However, we leave the details of representation to the Regional Issues Forum and its Operating Guidelines.

II. The BOSR and Federal Power Marketing Agencies and Consumer-Owned Utilities

A. Introduction

The BOSR is a self-governing, independent body composed of one commissioner from each state public utilities commission in which load-serving regulated utilities participate in the EIM, including the ISO real-time market.[19] Following stakeholder feedback on the January 29, 2020 Scoping Paper, the GRC recommended that the BOSR consider adding non-voting liaison positions on the BOSR in order to offer representation for PMAs and consumer-owned utilities who participate in the EIM.

B. Background

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 the regulatory role that they perform (in addition to being market participants in many

[18] The CAISO develops policy through an iterative process that allows stakeholders to engage and give feedback at each stage – including policy proposals (i.e., issue papers, straw proposals, and final proposals), meetings, and comments. See the Stakeholder Initiatives page on the CAISO website, available here.

[19] *See* Charter § 5.2.

instances), we recommended that the BOSR be asked to establish *ex officio* liaison positions for PMAs and consumer-owned utilities who participate in the EIM. We contemplated that these liaisons would not vote on any positions taken by the BOSR, but rather would participate in BOSR meetings and provide the BOSR membership with the perspective of the PMAs and consumer-owned utilities. The GRC recommended that the BOSR establish a limited number of such liaison positions.

In its comments responding to the Straw Proposal, the BOSR supported the concept of two *ex officio* liaisons for public power entities, with one representing PMAs and the other representing consumer-owned utilities that participate in EIM.[20] The BOSR noted 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 process alone, the BOSR welcomes the continued use of the GRC process to further discuss and develop this proposal.

After evaluating stakeholder comments on the Straw Proposal, our December 14, 2020 Revised Straw Proposal proposed one more such position, for a total of three *ex officio* liaisons to the BOSR – two for representatives of consumer-owned utilities and one for PMAs.

C. Summary of Comments

Commenters support or do not oppose the core concept of asking BOSR to include representatives of consumer-owned utilities and PMAs in their meetings as non-voting liaisons. And, significantly, the BOSR is willing to accommodate the increased number of liaisons.

With that said, a number of commenters made additional requests or observations. Several state that even two representatives of public power may not be sufficient, and others ask, for related reasons, that the GRC not recommend an upper limit to the number of liaisons. The Six Cities assume there will be two representatives of consumer-owned utilities and propose that one of these two seats should be reserved for a utility within the CAISO balancing authority area.[21]

The EIM Entities, who do not oppose our recommendations on this issue in the December 14, 2020 Revised Straw Proposal, emphasize that such details should be subject to the BOSR's ultimate determination[22]. In contrast, BPA and WAPA, while supporting the proposal, indicate that they had hoped for a greater role and ask that this issue be re-evaluated in the future. WAPA states that, apart from any role in the BOSR,

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[20] *See* BOSR July 31, 2020 Straw Proposal comments at point 5.

[21] *See* Six Cities December 14, 2020 Revised Straw Proposal comments at point 7.

[22] *See* EIM Entities December 14, 2020 Revised Straw Proposal comments at point 7.

"it would be appropriate to create of a committee of equal standing with the BOSR that would represent the interests of the federal PMAs and consumer-owned utilities."[23]

D. GRC Recommendation

The GRC stands by its proposal to request that the BOSR include three *ex officio* liaisons – two from consumer-owned utilities and one from PMAs. We believe this will help promote a collaborative dialogue between public power and the BOSR, which should prove valuable for the market as a whole. The BOSR has accepted this proposal, which we believe concludes this issue[24]. We do not plan to adopt any further refinements in our proposal to the Board or the Governing Body.

The remaining requests to adjust or refine this arrangement should be posed instead to the BOSR. While it may be helpful to have some degree of geographic diversity among the liaisons from consumer-owned utilities, the BOSR is best suited to address this topic and establish its own process for incorporating liaisons from consumer-owned utilities and PMAs. This approach, moreover, is consistent with how the BOSR was established and how it currently operates – as an autonomous body with its own rules and procedures.

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 development of the annual policy initiatives 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 of whether the BOSR should receive funding through the CAISO.

I. Annual Policy Initiatives Roadmap

A. Introduction

The GRC has previously addressed the potential role of the Governing Body in finalizing the CAISO's annual policy initiatives roadmap including suggestions from some stakeholders that formal approval from the Board and the Governing Body should be required before the roadmap can be finalized.

B. Background

The July 31, 2020 Straw Proposal[25] explained in detail the process through which CAISO management creates its annual plan and the three-year roadmap that prioritizes stakeholder initiatives. It begins with identifying and collecting possible initiatives,

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[23] *See* BPA December 14, 2020 Revised Straw Proposal comments at point 7, *See* WAPA December 14, 2020 Revised Straw Proposal comments at point 7.

[24] *See* BOSR December 14, 2020 Revised Straw Proposal comments at point 11.

[25] July 31, 2020 Straw Proposal, pp. 30-32.

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

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 CAISO'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 due to 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 December 14, 2020 Revised Straw Proposal addressed two new proposals to potentially modify the process, but it declined to adopt either approach. One proposal would have authorized the Governing Body to modify the roadmap by adding priority initiatives or adjusting the priority of individual initiatives it views as important. The other proposal recommended that CAISO use more formal criteria when prioritizing initiatives. We concluded that the current process already provides an avenue for input from both the Governing Body and the Board and further, that the use of more formal criteria is not necessary at this time.[26]

We also recommended in both of our prior straw proposals one change to the existing process. After management obtains feedback from stakeholders about drafts of the roadmap, we ask that they make a deliberate effort to enhance its explanation of the reasoning behind its decisions regarding the relative priority of possible discretionary initiatives, so that this reasoning is more transparent to stakeholders.

C. Summary of Comments

All stakeholder comments on the Revised Straw Proposal that addressed the issue of the annual policy initiatives roadmap supported or did not object to our recommendations.

D. GRC Recommendation

[26] *See* December 14, 2021 Revised Straw Proposal, pp. 34-35.

Given the support from stakeholders and the lack of objection, we continue to believe that the best approach is as we initially expressed in our July 31, 2020 Straw Proposal and confirmed in our December 14, 2020 Revised Straw Proposal.

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 available to the Governing Body, including whether the Governing Body should have a role in the oversight of DMM or the MSC, and whether access to additional outside market expertise is warranted.

B. Background

As explained more fully in the July 31, 2020 Straw Proposal,[27] 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 the 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 provided by 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.[28] The MSC is not CAISO's market monitor and does not perform the core functions of a market monitor.[29] It 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.

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[27] July 31, 2020 Straw Proposal, pp. 33-34.

[28] *See generally* Tariff Appendix O § 5.

[29] See *id.* and *California Independent System Operator Corp.*, Order on Compliance Filing, 129 FERC ¶ 61,157 (2009), PP 81-82 (observing that the MSC does not perform any of the core functions of a market monitor and directing the ISO to amend Appendix O § 5 accordingly).

To reassure EIM participants and stakeholders that DMM and MSC are institutionally oriented to the interests of the entire market footprint, the GRC has recommended greater involvement for the Governing Body in their oversight. Specifically, in our prior papers we have proposed that a Governing Body member would be invited to attend the executive session meetings of the DMM Oversight Committee and actively participate in those discussions.[30] With respect to MSC, we recommended that the Governing Body have joint authority to approve its members. This means that the MSC's members would continue to be nominated by the CEO of CAISO, but they would also need the approval of both the Governing Body and the Board before they could be formally appointed to the MSC

We also evaluated the possibility of providing the Governing Body access to additional market expertise. At the time, we concluded that making additional expertise available to the Governing Body would be especially critical for market-wide confidence if CAISO proceeds with EDAM. In the July 31 Straw Proposal, 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.

[31]

On the issue of the Governing Body access to additional market expertise prior to any proposed EDAM market design, in the December 14 Revised Straw Proposal we wrote:

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

[31] See August 31, 2020 Revised Straw Proposal, p. 37.

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.[32]

C. Summary of Comments

Most of the stakeholders who submitted comments on the December 14, 2020 Revised Straw Proposal addressed these issues. 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 remain divided to some extent. A number of commenters believe that a GBME should be authorized now, without waiting for the policy development process for EDAM to conclude.[33] These commenters explain that the ability of the Governing Body to access expertise that is under its authority is necessary to bolster confidence in EIM and EDAM and that this expertise can benefit the Governing Body now as the EIM continues to expand, as the EIM's market design continues increasing in complexity, and as the Governing Body prepares to consider potential market design changes necessary for EDAM implementation.

Other commenters contend that additional market expertise would duplicate the work of the MSC, DMM and other CAISO staff.[34] These stakeholders believe the Governing Body's needs for expert analysis can be met by these existing resources. These stakeholders also have concerns and questions about the costs, which they believe should be paid by EIM entities only. 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.

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 the selection of MSC members. Stakeholders supported these proposals and

[32] See December 14, 2020 Revised Straw Proposal, p. 39.

[33] *E.g.,* BPA December 14, 2020 Revised Straw Proposal comments at point 10, EIM Entities December 14, 2020 Revised Straw Proposal comments at point 10, PGP December 14, 2020 Revised Straw Proposal comments at point 10, PIO December 14, 2020 Revised Straw Proposal comments at point 10, PPC December 14, 2020 Revised Straw Proposal comments at point 10.

[34] *See* CPUC PAO December 14, 2020 Revised Straw Proposal comments at point 10, SCE December 14, 2020 Revised Straw Proposal comments at point 10.

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.

(ii) The Governing Body should have access to additional market expertise

The GRC continues to believe that the Governing Body should have access to additional market expertise, and further, recommend that the Governing Body be authorized to retain a firm or a person to serve as the "Governing Body Market Expert." We have revised our views about the timing of this authorization. In the December 14, 2020 Revised Straw Proposal we suggested that a GBME should be available to the Governing Body specifically in the development of EDAM, and if there is no EDAM policy development process, additional expertise could be agreed to between the Governing Body and the Board. The GRC believes that the Governing Body should have access to additional market expertise now and recommends that the authorization and budget provision for additional market expertise not be delayed, so that the Governing Body could have access to the GBME for any needs it may identify. As the CAISO's recent and ongoing stakeholder initiatives demonstrate, the EIM is continuing to evolve in a relatively rapid manner, both as the number of EIM entities expands and new issues and complexities arise. These complex issues exist and will continue to move forward independent of EDAM and warrant establishing the availability of the GBME prior to the completion of the EDAM initiative.

We continue to believe that the retention of, and specific assignments for, the GBME should be left to the discretion of the Governing Body to determine based on its needs. This will include how to retain the person or firm, qualifications, selection, the terms of the contract, the GBME's activities and, ultimately, a re-evaluation of the need after an appropriate time. We note that the Governing Body's public session meetings will be the forum to define how a GBME would support the mission of the Governing Body to advance the interests of market as a whole.

The GRC maintains its recommendation on the approach to cost allocation for the GBME. The comments of SCE and, to some extent, the CPUC Public Advocates Office assume that a GBME would benefit only the EIM balancing authority areas and reason that the costs therefore should be charged to EIM entities only. But this position does not account for the structure of the Governing Body or the role it plays in support of all market participants, regardless of location. As discussed in the December 14, 2020 Revised Straw Proposal, the members of the Governing Body are selected through a stakeholder committee that includes California stakeholders as well as stakeholders from outside California. Moreover, the Governing Body and its members must be independent of market participants and groups of market participants, which would be undermined if a key advisor to the body were funded by one market segment only. This independence requirement is linked tightly with the Governing Body's mission, which is to advance the interest of the entire market, including the interests of participants in both the CAISO

balancing authority area and EIM balancing authority areas.[35] And the breadth of this mission is foundational to the Board's ability to share with the Governing Body part of its authority over Section 205 filings. These foundational principles would be undermined if the Governing Body's dedicated resource were funded by only one sector of the broader market.

The role of a GBME will be aligned with the Governing Body's own mission 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.[36] Accordingly, the costs of a GBME should be recovered from all market participants, including those in EIM balancing authority areas. This would result from applying the CAISO's current cost allocation methodology, which recovers from EIM market participants a pro-rata share of overhead costs associated with the market operations.[37] It is the same approach that currently applies to similar costs, such as the costs for DMM and MSC.[38] The appropriate forum for addressing cost allocation is the triennial cost of service process, which offers opportunity for stakeholder input.[39]

III. Possible funding for the Body of State Regulators

A. Introduction

The GRC has considered whether the BOSR could obtain funding in order to enable it to participate more effectively in EIM stakeholder processes, and a range of related issues.

B. Background

As explained more fully in the July 31, 2020 Straw Proposal,[40] the BOSR is a self-governing body composed of one commissioner from each state public utilities commission in which regulated utilities participate in the EIM. While the BOSR may express any common positions in the CAISO stakeholder processes or to the Governing Body, its 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

[35] See Charter § 2.1.

[36] See Charter § 2.1.

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

[38] For additional information about this cost allocation, see Appendix B.

[39] *See* CAISO Tariff Appendix F, Schedule 1, Part A.

[40] July 31, 2020 Straw Proposal, p. 38.

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 GRC has agreed with the BOSR and many other commenters that there would be value in funding for the BOSR that would enable it to participate more extensively. In the July 31, 2020 Straw Proposal, 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.[41]

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. In the December 14, 2020 Revised Straw Proposal, we noted that there were ongoing discussions between the BOSR and utilities subject to state jurisdictions that may resolve this issue. We stated that if an agreement is reached, no action would be required, and this issue would be dropped from our final proposal.

C. Summary of Comments

The BOSR's comments on the December 14, 2020 Revised Straw Proposal report that it has reached agreement with the state-regulated market participants that will provide funding directly to the BOSR.[42] This funding will enable BOSR to obtain "the technical expertise, staff resources and office space necessary to achieve and maintain a better understanding of the Western EIM; to draft comments; and to provide advice on market design and policy to the Governing Body, the Board, the FERC and other key organizations."

D. GRC Recommendation

The GRC applauds the state-regulated market participants for agreeing to support the increased participation of the BOSR, which we believe will benefit the market as a whole. We do not believe that any further action is required, and therefore do not plan to include any related recommendation to the Board and Governing Body.

Issue 5: Governing Body Mission Statement

A. Introduction

In developing guiding principles for its own work, the GRC decided to consider the mission of the Governing Body as articulated in the Charter.

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[41] *Id.*, p. 39.

[42] See BOSR December 14, 2020 Revised Straw Proposal comments at point 11.

B. Background

In its December 14, 2020 Revised Straw Proposal, the GRC did not recommend any changes to the mission statement at this time, believing it is sound as drafted. We also noted that changes might be appropriate with EDAM and should be considered at that time.

C. Summary of Comments

All of the stakeholders that addressed this issue in their comments support the recommendation that the current mission statement remain in place for the time being.

D. GRC Recommendation

We recommend that the Governing Body's mission statement should remain unchanged, and that the issue should be considered again after the market design of 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 December 14, 2020 Revised Straw Proposal also addressed two issues about the timing of the GRC's proposal. We also addressed a new proposal from AWEA (which has since been renamed American Clean Power) regarding a potential role for the Governing Body in reviewing EIM entities' OATTs to ensure consistency. We briefly summarize those recommendations below, followed by a discussion of further stakeholder comments and conclusions on these issues.

B. Background

In the December 14, 2020 Revised Straw proposal, we recommended that a stakeholder-led review of the EIM governance structure be commenced no later than five years after any new governance structures have been implemented as a result of this GRC process. This deadline would apply 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 we proposed that the five-year period would run from the time that those initial 'EIM-only' changes are implemented.

We also recommended maintaining the GRC's established schedule for its current work, in which we planned to submit a draft final proposal on governance to the Governing Body and Board in Q1 2021. This 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 recommended that the GRC remain available 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.

In response to American Clean Power's proposal regarding consistency among the EIM entities' OATTs, we suggested other avenues that would be more appropriate for addressing this concern. Specifically, we recommended that they address this issue either in the CAISO's stakeholder process relating to the market design for EDAM or in discussions with the RIF.

C. Summary of Comments

Twelve stakeholders submitted comments on these issues, most of which supported the GRC's recommendations.[43]

On the issue of the timing of the GRC's draft final proposal, SCE offered for consideration waiting until after the policy design and development process for EDAM is complete, as this would allow more time to address the scope of joint authority discussed in Issue 1. The CPUC Energy Division similarly suggested that the GRC's proposed schedule for submitting a draft final proposal on all topics may be overly expedited in light of the outstanding concerns expressed on Issue 1.

On the OATT tariff consistency issue, American Clean Power maintains its support for a consistent set of rules across the entirety of the market footprint especially as the EDAM market design process moves forward, recognizes the GRC's decision not to take action on this item, and looks forward to addressing this issue in the other venues identified by the GRC.

D. GRC Recommendation

As mentioned in the introduction, we are revising our previous recommendation regarding the timing of the GRC's work and now propose a phased approach that will allow us to finalize most of our proposals by April, with another phase to follow shortly thereafter. Part One of this phased approach will address Issues 2 through 6, while Part Two will address Issue 1. We propose to hold a vote on Issues 2-6 as set forth in this paper in April and, if adopted by the GRC, those issues would then go to the Board and Governing Body for their consideration and potential approval. We would hold further stakeholder proceedings on Issue 1, as discussed in more detail in Section V below. This phasing allows more time for stakeholders to discuss and build more consensus on the topics addressed in Issue 1, which we believe is warranted given the complexity of those issues and the current diversity of views among stakeholders.

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[43] *See* BPA December 14, 2020 Revised Straw Proposal comments at point 13, Chelan December 14, 2020 Revised Straw Proposal comments at point 13, EIM Entities December 14, 2020 Revised Straw Proposal comments at point 13, PGP December 14, 2020 Revised Straw Proposal comments at point 13, PIO December 14, 2020 Revised Straw Proposal comments at point 13, PPU December 14, 2020 Revised Straw Proposal comments at point 13, Six Cities December 14, 2020 Revised Straw Proposal comments at point 13, WAPA December 14, 2020 Revised Straw Proposal comments at point 13, BOSR December 14, 2020 Revised Straw Proposal comments at point 13.

Assuming that the Board and Governing Body approve and implement our Part One recommendations, we maintain our recommendation that a governance re-evaluation be commenced no later than 5 years from the time that these changes are adopted. This will ensure a timely review of the governance changes covered by Part One (i.e., Issues 2 through 6), assuming those proposals are adopted by the Board and the Governing Body. At the same time, we will continue to work with stakeholders on resolving and finalizing Part Two (i.e., Issue 1) by the end of the year. We also reaffirm our prior recommendation that there be an opportunity for the GRC to evaluate any aspects of the proposal once the proposed EDAM market design is better known.

The GRC also reaffirms its prior recommendation that it does not believe action is necessary to authorize the Governing Body to review the OATTs of EIM or EDAM entities because both the CAISO policymaking process and the RIF already offer forums to pursue any specific concerns that may arise.[44]

IV. Summary of Recommendations

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

Issue	Recommendation
Delegation of Authority for Market Rules	• Deferred to a second part of this proceeding to finalize the GRC's proposal before the end of 2021.
Selection of Governing Body Members	• Make the Public Interest or Consumer Advocate Groups sector a voting member of Nominating Committee. • 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.

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

Issue	Recommendation
Stakeholder Engagement Recommendation	• 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. • Maintain the RIF's existing independence in developing its own rules and procedures. • Codify a standing agenda item for the RIF at the meetings of the Governing Body. • Modify RIF sectors to the following, with two liaisons selected from first five and one liaison for PMA sector: o EIM entities (including EDAM entities if EDAM goes forward) o Participating Transmission Owners o Consumer-owned utilities o Public interest groups & consumer advocates o Independent power producers & marketers o Federal power marketing administrations
BOSR Funding	No recommendation, because this issue has been resolved through a funding agreement outside the CAISO market.
POU and PMA Representation on BOSR	• Support the inclusion of non-voting PMA and public power liaisons to the BOSR. • These liaisons will actively participate in discussions with the BOSR with the goal of communicating public power perspectives to the commissioners. • Support for three liaisons: one for a PMA and two representing participating public power entities. This would be subject to BOSR approval, and public power stakeholders would establish their own process for selecting the liaisons.
Governing Body Role on MSC and DMM; Market Expert Recommendation	• A member of the Governing Body would be invited to attend meetings of the DMM Oversight Committee. This role would be non-voting. • The Governing Body would have joint authority with the Board in the approval of MSC members. • The Governing Body is authorized to retain a market expert, called the "Governing Body Market Expert." • 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.

Issue	Recommendation
Governing Body Role on MSC and DMM; Market Expert Recommendation	• The retention of, and specific assignments for, the market expert should be left to the discretion of the Governing Body to determine based on its needs. This will include how to retain the person or firm, qualifications, selection, the terms of the contract, the expert's activities and, ultimately, a re-evaluation of the need after an appropriate time. • 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 Policy Roadmap	• No changes recommended to Governing Body mission statement and criteria. • The CAISO should maintain its current process. Management should make a deliberate effort to explain the reasoning behind its decisions about the relative priority of possible initiatives.
Other Items	• There would be a governance re-evaluation no later than 5 years from adoption of new governance features by the Governing Body and Board. • Submit the GRC's Part One Final Proposal to the Board and Governing Body by Q2 of 2021. Work to complete the GRC's Phase 2 Final Proposal later in 2021. • The GRC would remain available to re-evaluate governance prior to adoption of final EDAM market design.

V. Next Steps

The GRC has scheduled a general session meeting for April 26, 2021, at which it will take final stakeholder comment on this proposal and vote on whether to approve and submit this Part One Draft Final Proposal to the Board and Governing Body for their consideration. If approved by the GRC, we anticipate that it then will be submitted and presented to the Board and the Governing Body for their consideration during a special joint session meeting likely to be held in May 2021.

After our April meeting, the GRC would hold a general session stakeholder call to discuss and begin framing the process to develop our Part Two proposal. We currently contemplate that this process will include, at minimum, stakeholder workshops in where stakeholders will have the opportunity to provide written comment and will culminate in the publication of the Part Two Draft Final Proposal as early as practical, but no later than Q4 of 2021.

The GRC would then vote on whether to approve and submit the Draft Final Proposal Part Two to the Board and Governing Body for consideration.

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.*"[45]

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.

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[45] 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.[46] 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.[47] 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

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[46] *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.

[47] *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.[48] 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.[49]

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

[48] *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.

[49] 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 service[50] 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.

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.

[50] The draft final 2019 cost of service study is available on the ISO website here.

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.[51]

[51] The 2020 budget and grid management charge rates book, as well as the resulting GMC and EIM rates, is available here.

Appendix C: Summary of Multi-State RTO State Committees

Entity	Role and Activities	Funding
Organization of MISO States (OMS) Website: http://www.misostates.org/ OMS is a non-profit, public benefit corporation, incorporated in Indiana. 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.	Advisory and shares Section 205 rights regarding cost allocation for certain new regional transmission projects. Purpose as stated in OMS Articles of Incorporation: "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."	Grant for 2019: $1,539,404 Grant for 2020: $1,433,839 Source: Budgets on website https://www.misostates.org/index.php/about/organization-docs

Entity	Role and Activities	Funding
Regional States Committee (RSC) (Southwest Power Pool) Homepage: http://www.spp.org/organizational-groups/regional-state-committee/ RSC is a non-profit corporation incorporated in Arkansas. 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.	Advisory, with shared rights under Section 205 to file a proposal over certain issues that were key to establishing SPP. From the SPP bylaws: "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."	Expenses in 2018: $222,745 Source: Form 990 for Southwest Power Pool Regional State Committee, filed September 30, 2019 Available through multiple websites

Entity	Role and Activities	Funding
New England States Committee on Electricity (NESCOE) (ISO New England) Website: http://nescoe.com/ NESCOE is a non-profit corporation with its principal place of business in Massachusetts The board consists of one member from each New England state, appointed by the Governor or each state.	Advisory. From the NESCOE website: "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. NESCOE focuses on two areas: resource adequacy and system planning and expansion."	Budget for 2019: $2,395,513 Budget for 2020: $2,467,379 Source: 2018 Annual Report, dated April 2, 2019 http://nescoe.com/wp-content/uploads/2019/04/AnnualReport2018.pdf

Entity	Role and Activities	Funding
Organization of PJM States, Inc. (OPSI) Website: https://opsi.us/ OPSI is a non-profit corporation organized in Delaware. 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.	Advisory. From the OPSI website: "OPSI is an inter-governmental organization of utility regulatory agencies of 14 jurisdictions … [that] are wholly or partly in the service area of PJM. 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."	Expenses in 2018: $669,972 Source: Exempt Organization Tax Return for 2018 https://opsi.us/wp-content/uploads/2019/10/2018US-XORGANIZATIONOF.PJM-Clnt-V1-1.pdf

Appendix D: Glossary of Abbreviations

Abbreviation	Description
AWEA	American Wind Energy Association
ACP	American Clean Power (formerly known as AWEA)
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[52]	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

[52] 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 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
Revised Straw Proposal	EIM Governance Review Committee December 14, 2021 Revised Straw Proposal, available at http://www.caiso.com/InitiativeDocuments/Revised_Straw%20Proposal_Western_EIM_Governance_Review.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