Empowering Our Clean Energy Future

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PINOLE | PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

Executive Committee Meeting
Wednesday, May 1, 2024
12:00 P.M.

Public comments may be made in person or remotely via the details below.

1125 Tamalpais Avenue, San Rafael, CA 94901 (MCE)
2300 Clayton Road, Suite 1150, Concord, CA 94920 (MCE)

Remote Meeting Participation for Members of the Public
Video Conference: https://t.ly/DnY7U
Phone: Dial (669) 900-9128, Meeting ID 861 2234 3784, Passcode 415565

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1. Roll Call/Quorum

2. Board Announcements (Discussion)

3. Public Open Time (Discussion)

4. Report from Chief Executive Officer (Discussion)

5. Consent Calendar (Discussion/Action)
   - C.1 Approval of 4.3.24 Meeting Minutes
   - C.2 Proposed First Agreement with Alternative Energy Systems Consulting, Inc.
   - C.3 Proposed Fourth Agreement with EV.Energy Corp.

6. Overview of Community Power Coalition (Discussion)

7. Pathways Initiative for Western Affordability and Renewables (Discussion)

8. Review Draft 5.16.24 Board Agenda (Discussion)

9. Committee & Staff Matters (Discussion)

10. Adjourn

The Executive Committee may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3674 or ada-coordinator@mcecleanenergy.org at least 72 hours before the meeting start time to ensure arrangements are made.

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MCE EXECUTIVE COMMITTEE MEETING MINUTES

Wednesday, April 3, 2024
12:00 P.M.

Present:	Sally Wilkinson, City of Belvedere Eli Beckman, Town of Corte Madera Cindy Darling, City of Walnut Creek, joined at 12:04 pm David Fong, Town of Danville Gabriel Quinto, City of El Cerrito Max Perrey, City of Mill Valley Eduardo Martinez, City of Richmond Maika Llorens Gulati, City of San Rafael Devin Murphy, City of Pinole
Absent:	Maika Llorens Gulati, City of San Rafael Shanelle Scales-Preston, City of Pittsburg Holli Thier, Town of Tiburon
Staff & Others:	Jesica Brooks, Board Clerk and Executive Assistant to the COO Shuvo Chowdhury, Vice President of Technology and Analytics Alice Havenar-Daughton, VP of Customer Programs Vicken Kasarjian, Chief Operating Officer Jonnie Kipyator, Power Analytics Senior Manager Tanya Lomas, Internal Operations Assistant Alexandra McGee, Director of Strategic Initiatives Catalina Murphy, General Counsel Ashley Muth, Internal Operations Assistant Justine Parmelee, Director of Internal Operations Daniel Settlemyer, Internal Operations Coordinator Sabrinna Soldavini, Manager of Policy, Markets Dawn Weisz, Chief Executive Officer

1. Roll Call
   Chair Perrey called the regular Executive Committee meeting to order at 12:01 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)
   There were no comments.

3. Public Open Time (Discussion)
   Chair Perrey opened the public comment period and there were no comments.

4. Report from Chief Executive Officer (Discussion)

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CEO Dawn Weisz, introduced this item and addressed questions from Committee members.

5. Consent Calendar (Discussion/Action)

C.1 Approval of 3.6.24 Meeting Minutes

Chair Perrey opened the public comment period and there were no comments.

Action: It was M/S/C (Beckman/Martinez) to **approve Consent Calendar item C.1.** Motion carried by unanimous roll call vote. (Absent: Directors Gulati, Scales-Preston, and Thier).

6. Virtual Power Plant Ten Year Vision (Discussion)

Vicken Kasarjian, Chief Operating Officer, Alexandra McGee, Director of Strategic Initiatives, Shuvo Chowdhury, Vice President of Technology and Analytics, and Alice Havenar-Daughton, VP of Customer Programs, presented this item and addressed questions from Committee members.

Chair Perrey opened the public comment period and comments were made by members of the public Dan Segedin and Ken Strong.

Action: No action required.

7. Achieving MCE's Mission by Addressing Risk (Discussion)

Vicken Kasarjian, Chief Operating Officer, Alexandra McGee, Director of Strategic Initiatives, Jonnie Kipyator, Power Analytics Senior Manager, and Sabrinna Soldavini, Manager of Policy, Markets, presented this item and addressed questions from Committee members.

Chair Perrey opened the public comment period and there were no comments.

Action: No action required.

8. Committee & Staff Matters (Discussion)

Comments were made by Chair Perrey.

9. Adjournment

Chair Perrey adjourned the meeting at 2:31 p.m. to the next scheduled Executive Committee Meeting on May 1, 2024.

____

Max Perrey, Chair

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Attest:

____

Dawn Weisz, Secretary

May 1, 2024

TO: MCE Executive Committee

FROM: Jenn Kreutzer, Senior Customer Programs Manager
Alex Valenti, Manager of Customer Programs

RE: Proposed First Agreement with Alternative Energy Systems Consulting, Inc. (Agenda Item #05_C.2)

ATTACHMENT: First Agreement with Alternative Energy Systems Consulting, Inc.

Dear Executive Committee Members:

Summary:
The proposed First Agreement with Alternative Energy Systems Consulting, Inc. ("AESC") would support the implementation of MCE's Flex Market Programs which include the Commercial Efficiency Market, Residential Efficiency Market and MCE's Peak Flex Market Program (referred to collectively as "Programs").

The Programs help pay for energy efficiency and demand reduction based on measured energy impacts. The Programs compensate aggregators for delivering energy savings projects. An aggregator can be an installation contractor, consultant, or other organization that is involved in the implementation of a project that leads to energy efficiency or demand reduction.

The Commercial and Residential Efficiency Markets have secured funding from the California Public Utilities Commission ("CPUC") to provide customers with energy efficiency services from 2024 through 2027. The Peak Flex Market Program would be funded from MCE's Program Development Fund to support 2024 summer grid reliability efforts with incentives for peak demand reduction during demand response events.

If approved, the agreement would allow the Programs to continue to be supported by a broad network of aggregators that are paid for verifiable impacts and grid benefits that deliver value to MCE in the form of cost-effective energy efficiency savings and/or

reducing demand during critical hours when the grid is most constrained.

Per CPUC direction, MCE released a competitive solicitation for an implementer to run the Programs in fall 2023. After the evaluation of four bidders, AESC was selected as the winning respondent to run the Programs. AESC's bid was chosen based on their experience in running a similar program, expertise in program design and implementation, demonstrated ability to build and maintain a robust aggregator network, and ability to meet the reporting and technical needs of the Programs.

If the proposed agreement is approved, it would position the Programs to start recruitment in advance of the summer season -- maximizing grid benefits and value to customers. The services encompassed in the proposed First Agreement with AESC include aggregator recruitment and management, customer eligibility screening, measurement and verification, and overall management of the Programs throughout the contract term (May 2024 – December 2026). Most of the costs associated with this proposed agreement are grounded in performance-based principles and scale with successful delivery of the Programs.

Staff recommend approving the proposed First Agreement with AESC in the amount of $6,614,519. This amount does not include the aggregator incentive payments of up to $13,324,573 associated with the Residential and Commercial Efficiency Markets which would also be CPUC funded and held in a separate, secured account that would be managed by MCE for AESC to pay aggregators.

Fiscal Impacts:

Expenditures for the proposed First Agreement with AESC would be from two sources: $6,239,519 from MCE's energy efficiency CPUC funds for the Commercial and Residential Efficiency Markets and $375,000 from MCE's Program Development Fund for the Peak Flex Market Program.

Recommendation:

Approve the proposed First Agreement with AESC in the amount of $6,614,519. This amount does not include the aggregator incentive payments associated with the Residential and Commercial Efficiency Markets which would also be CPUC funded and held in a separate, secured account that would be managed by MCE for AESC to draw from.

May 1, 2024

TO: MCE Executive Committee

FROM: Melanie Biesecker, Customer Programs Manager

RE: Proposed Fourth Agreement with EV.Energy Corp. (Agenda Item #05_C.3)

ATTACHMENT: Fourth Agreement with EV.Energy Corp.

Dear Executive Committee Members:

Summary:
The proposed Fourth Agreement with EV.Energy Corp. ("Agreement") would provide MCE with the ability to continue scaling up residential electric vehicle (EV) smart charging and prioritize program deployment in disadvantaged communities (DAC). Smart charging helps MCE customers save money, reduce grid emissions, and shift & shape EV load away from the 4-9 p.m. peak when electricity costs are high.

Background

Launched in fall 2021, MCE Sync is a smart phone app managed by EV.Energy Corp. that automates home EV charging to use the least expensive and cleanest energy on the grid.

The EV market continues to grow, and MCE strives to influence charging behavior and optimize the load from EV charging, maximizing benefits for MCE customers, MCE, and the grid as a whole. On average, 80% of EV charging happens at home with every EV adding around 50% to a resident's overall electricity usage. As more MCE customers adopt EVs, the necessity of smart EV charging will be even more critical.

MCE Sync participants are shifting approximately 90% of their EV charging load away from the peak demand period of 4-9 p.m., resulting in average bill savings of $16.42/month. Customers who participated in the MCE Sync-scheduled low carbon events that occurred between June 2023 and March 2024 reduced grid emissions even further, by 34%, by charging their EVs during peak solar hours.

The Proposed Agreement

The proposed Agreement includes a goal to increase enrollment to 6,000 EVs by March 31, 2025. There are currently 3,000+ enrolled EVs. The proposed Agreement would continue EV.Energy Corp.'s management of MCE Sync, while expanding the scope to maximize customer retention and participation in the MCE Sync program, through:

- Enhanced multichannel marketing, outreach, and education, such as in-app and email notifications for low carbon events;
- Continuous improvements and future enhancements to the MCE Sync app, including Peak Flex Market signals for EV charging during the summer months, time-of-use/carbon-intensity signals during other months, and event-based signals as directed by MCE;
- The collaborative design and implementation of a Dynamic Rewards Tier to test the impacts of dynamic signals and rewards, part of EV.Energy Corp.'s greater Responsive, Easy Charging Products with Dynamic Signals (REDWDS) grant funding from the California Energy Commission;
- Implementing Customer Relationship Management (CRM) Application Programming Interfaces (APIs) to provide a more efficient method for participant verification within the MCE Sync app and to track program participation and customer tickets within MCE's CRM system; and
- Home charger rebates for compatible chargers, as well as additional vehicle and charger integrations to remove barriers and enable more customers to participate.

Fiscal Impacts:

Expenditures for the proposed Fourth Agreement of $906,400 would be from the Local Program Development Fund.

Recommendation:

Approve the proposed Fourth Agreement with EV.Energy Corp.

MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT
FOURTH AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND EV.ENERGY CORP.

THIS FOURTH AGREEMENT ("Agreement") is made and entered into on by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and EV.ENERGY CORP., a Delaware corporation with principal address at: 2100 Geng Road, Suite 210, Palo Alto, CA 94303, United States (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

RECITALS:

WHEREAS, MCE desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

WHEREAS, Contractor desires to provide the Services to MCE;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SCOPE OF SERVICES:
Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include cloud-based and/or SaaS solutions provided as part of the Services and any other work performed by Contractor pursuant to this Agreement.

2. FEES AND PAYMENT SCHEDULE; INVOICING:
The fees and payment schedule for furnishing Services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement ("Term"). Contractor shall provide MCE with Contractor's Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days.

3. MAXIMUM COST TO MCE:
In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **$906,400**.

4. TERM OF AGREEMENT:
This Agreement shall commence on **June 1, 2024** ("Effective Date") and shall terminate on **March 31, 2025**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor represents, warrants and covenants that (a) it is a corporation duly organized, validly existing and in good standing under the laws of the State of **Delaware**, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

5.2. COMPLIANCE WITH APPLICABLE LAW. At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")

5.3. LICENSING. At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

5.4. NONDISCRIMINATORY EMPLOYMENT. Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.

5.5. PERFORMANCE ASSURANCE. Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

5.6. SAFETY. At all times during the performance of the Services and as applicable to the Services, Contractor represents, warrants and covenants that it shall:

a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;
d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;
e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time;
f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.

5.7. BACKGROUND CHECKS.

a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") having or requiring access to MCE's Confidential Information and Personal Data ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to perform the Services.
b) INTENTIONALLY OMITTED
c) To the maximum extent permitted by applicable law, Contractor shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.
d) INTENTIONALLY OMITTED

5.8. INTENTIONALLY OMITTED.

5.9. QUALITY ASSURANCE PROCEDURES. Contractor shall comply with the following requirements (the "Quality Assurance Procedures"): (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

5.10. ASSIGNMENT OF PERSONNEL. The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

5.11. INTENTIONALLY OMITTED.

6. <u>INSURANCE</u>:

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Contractor shall provide MCE 30 days' notice in writing of any cancellation or reduction of coverage. Insurance coverages shall be payable on a per occurrence basis only.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

6.1. GENERAL LIABILITY. The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **two million dollars ($2,000,000) with a four million dollar ($4,000,000)** aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

6.2. AUTO LIABILITY. Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit ($1,000,000).

6.3. WORKERS' COMPENSATION. The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of Services.

6.4. INTENTIONALLY OMITTED

6.5. PRIVACY AND CYBERSECURITY LIABILITY. Contractor shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least $1,000,000 US per occurrence.

7. <u>FINANCIAL STATEMENTS:</u>

If the parties enter into a second agreement, Contractor shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles.

8. <u>SUBCONTRACTING</u>:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in Exhibit A. "Subcontractor" shall mean a third-party to whom Contractor delegates specific deliverables listed in Exhibit A. If Contractor hires a Subcontractor under this Agreement as applicable to the services the Subcontractor provides, Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.

8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.

8.3. Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.

8.4. Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.

8.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

10.1. DEFINITION OF "MCE DATA". "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors. MCE Data also includes any data created as a result of MCE's use of the Contractor's Services.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **April 24, 2023**.

10.2. DEFINITION OF "PERSONAL INFORMATION". "Personal Information" includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks. Contractor shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

10.3. MCE DATA SECURITY MEASURES. Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **April 24, 2023**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Contractor to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

10.4. CONTRACTOR DATA SECURITY MEASURES. Additionally, Contractor shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and MCE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

10.5. RETURN OF MCE DATA. Promptly after this Agreement terminates unless the parties enter into a second agreement, (i) Contractor shall securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) each

Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any), provided that Contractor's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

10.6. OWNERSHIP AND USE RIGHTS.

a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data.

b) **Intellectual Property.**

1. Work Product. Unless otherwise expressly agreed to in writing by the Parties and subject to 10.6(b)(2) below, any and all deliverables, materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party for MCE under this Agreement ("Work Product"), including finished and unfinished inventions, processes, templates, documents, drawings, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, and including any intellectual property therein, shall be owned by MCE. Work Product shall not include any modifications to any part of the Contractor's intellectual property, software, algorithm, vehicle/charger application programming interfaces ("APIs"), or mobile app. MCE shall have the exclusive right to use the Work Product in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Work Product to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Work Product prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Work Product if otherwise agreed to in writing by MCE. The Work Product shall be owned by MCE upon its creation. Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Work Product.
2. Contractor's Pre-Existing Materials. To the extent the Work Product includes Contractor's Pre-Existing Materials, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes a non-exclusive, worldwide, unlimited, fully paid, right to access and use and sublicense others to use the Pre-Existing Materials for its and their business purposes during the Term of this Agreement. MCE will not resell, modify, decompile, disassemble, or reverse engineer the Pre-Existing Materials except as otherwise expressly authorized under this Agreement or permitted by Law; MCE will not remove any proprietary marks or confidentiality notices appearing on the Pre-Existing Materials. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Work Product must be expressly disclosed to MCE prior to performing any Services under this Agreement. For the avoidance of doubt, "Contractor's Pre-Existing Materials" means Contractor's pre-existing intellectual property and materials developed prior to and/or independently of this Agreement, and includes Contractor's cloud-based software solutions, mobile application and designs, and APIs used by Contractor in the performance of Services.

c) The intellectual property of the software, algorithm, vehicle and charger APIs, and mobile app provided by the Contractor (other than open-source software and third-party software) is, and shall remain, the property of the Contractor, and the Contractor reserves the right to grant a license to use its software to any other party or parties. MCE acquires no rights in or to the Contractor's software and accompanying documentation other than those expressly granted by this Agreement except MCE shall own any data or results from MCE's use of the software. MCE shall not permit any third parties (apart from its employees, including fellows and/or interns, and customers) to access the Contractor's software and/or Services without its prior written consent.

d) **APIs.** MCE acknowledges that the Contractor's Services are partly dependent on open-source software and third-party APIs made available from electric vehicle and charger manufacturers. MCE acknowledges that this open-source software is provided 'as is' and the Contractor makes no representation or warranty that third-party APIs will be continuously available throughout the term of this Agreement.

10.7. EQUITABLE RELIEF. Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data or Personal Information, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

11. FORCE MAJEURE:

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority (including "shelter-in-place" orders), civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

12. <u>TERMINATION</u>:

12.1. If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.

12.2. Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.

12.3. In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancelation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Work Product (as defined in Section 10.6(b)) prepared for MCE before the effective date of such termination.

12.4. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

12.5. The Contractor may terminate this Agreement with immediate effect if MCE fails to make payment within 30 calendar days' written notice of arrears which have accumulated to a value greater than or equal to $20,000 worth of previously-raised and overdue invoices.

12.6. Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.

12.7. Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1 above) and Work Product to MCE.

12.8. Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.

12.9. Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24 and Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

13. <u>ASSIGNMENT</u>:

The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

14. <u>AMENDMENT; NO WAIVER</u>:

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

15. DISPUTES:
Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

16. JURISDICTION AND VENUE:
This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

17. INDEMNIFICATION:
To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement, including the failure to pay Participants (defined below in Exhibit A) the Participant's expected incentive amounts, or Applicable Law., or Applicable Law; c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party; d) breach of any third party intellectual property rights; e) breach of applicable laws; or f) breach of privacy, security or confidentiality obligations. Except for claims arising from Contractor's breach of confidentiality with MCE Data, Contractor's liability to MCE shall not exceed the maximum value of this Agreement listed in Section 3.

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:
MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to MCE's Joint Powers Agreement, MCE is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

19. INVOICES; NOTICES:
This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org

All other notices shall be given to MCE at the following location:

Contract Manager:	Monique McCool
MCE Address:	1125 Tamalpais Avenue San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 949-6049

Notices shall be given to Contractor at the following address:

Contractor:	Nick Wooley

Address:	2100 Geng Road, Suite 210, Palo Alto, CA 94303, United States
Email Address:	nick.woolley@ev.energy
Telephone No.:	+44 7940 712031

20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:
This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

	☒	***Check applicable Exhibits***	**CONTRACTOR'S INITIALS**	**MCE'S INITIALS**
EXHIBIT A.	**X**	**Scope of Services**		
EXHIBIT B.	**X**	**Fees and Payment**		
EXHIBIT C.	**X**	**Service Levels**		
EXHIBIT D.	**X**	**MCE CRM Access Protocols**		

21. SEVERABILITY:
Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

22. INDEPENDENT CONTRACTOR:
Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

23. TIME:
Time is of the essence in this Agreement and each and all of its provisions.

24. THIRD PARTY BENEFICIARIES:
The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

25. FURTHER ACTIONS:
The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

26. PREPARATION OF AGREEMENT:
This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

27. DIVERSITY SURVEY:
Pursuant to Senate Bill 255 which amends Section 366.2 of the California Public Utilities Code, MCE is required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises ("WMDVLGBTBE"). Consistent with these requirements, Contractor agrees to provide information to MCE regarding Contractor's status as a WMDVLGBTBE and any engagement of WMDVLGBTBEs in its provision of Services under this Agreement. Concurrently with the execution of this Agreement, Contractor agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: https://form.asana.com/?k=jSGYk4x3sf2dHfSzywc2fg&d=163567039999692 (the "Diversity Survey"). Because MCE is required to submit annual reports and/or because the Diversity Survey may be updated or revised during the term of this Agreement, Contractor agrees to complete and deliver the Diversity Survey, an updated or revised version of the Diversity Survey or a similar survey at

the reasonable request of MCE and to otherwise reasonably cooperate with MCE to provide the information described above. Contractor shall provide all such information in the timeframe reasonably requested by MCE.

28. COUNTERPARTS:
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY MARIN CLEAN ENERGY:	**CONTRACTOR:**
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:
By: Chairperson	
Date:	

MODIFICATIONS TO STANDARD SHORT FORM

☒ **Standard Short Form Content Has Been Modified**

List sections affected: ***1, 5.5, 5.6, 5.7, 5.8, 5.9, 5.11, 6, 7, 8, 10.1, 10.5, 10.6, 11, 12.5, and 17.***

Approved by MCE Counsel: ____Date: _______________

EXHIBIT A
SCOPE OF SERVICES

Contractor shall provide the following Services under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Contractor will continue to scale the MCE Sync Program ("MCE Sync" or "Program"), by providing the following tasks:

- TASK 1 - Managed EV Charging and Program Management;
- TASK 2 - Marketing and MCE Sync App Participant Enrollment; and
- TASK 3 - Enhancements to the MCE Sync App and Program.

Definitions

- "Participant" - a unique MCE Sync user account.
- "Eligible New Participant" - a Participant that has successfully connected an eligible EV or charger to Contractor's platform, completed at least one charging session, and has been verified as an MCE customer.
- "Eligible Participant" - a Participant that has already received the One-Time Enrollment Incentive and is enrolled in either the Standard Rewards Tier or the Dynamic Rewards Tier.
- "Participant EV" - a compatible EV (or non-compatible EV paired with a compatible charger) connected to Contractor's platform.
- "Active Vehicle" - a Participant EV that has completed at least one charging session within the previous 180 days.
- "Event" - low carbon or other market/demand response events as agreed upon by Contractor and MCE.
- "Standard Rewards Tier" - the legacy MCE Sync rewards tier which includes the following benefits: 1) smart charging feature that charges Participants' EVs according to their MCE electricity rate, 2) a $50 One-Time Enrollment Incentive and 3) $10 monthly Participation Incentives.
- "Dynamic Rewards Tier" - a new MCE Sync rewards tier that Participants may opt in to that allows Eligible Participants access to an enhanced smart charging experience by scheduling Eligible Participants' EV charging and paying out Participation Incentives according to dynamic signals. This is part of Contractor's participation in the California Energy Commission's ChargeWise Program; duration expected to be approximately 6 months.
- "One-Time Enrollment Incentive" - a $50 incentive paid following the first calendar month in which a Participant is deemed an Eligible New Participant.
- "Participation Incentives"
    - Participation Incentives for the Standard Rewards Tier include $10 monthly incentives paid out to Eligible Participants whose EVs are plugged in and who allow Contractor to optimize EV charging during at least 2 Events per calendar month.
    - Participation Incentives for the Dynamic Rewards Tier include $40 max monthly incentives which is calculated based on the pricing associated with the dynamic reward plan signal and the Participants' enrolled electricity rate. Approximately 225 Participant enrollment expected of the total 450 expected enrollment in the Chargewise program.
- "Chargewise" - a managed charging pilot program spearheaded by Contractor via a grant awarded to Contractor by the California Energy Commission. MCE's involvement with the Chargewise program includes: collaborating and providing match funding for the development, implementation, and testing of dynamic signals and rewards with 225 Dynamic Rewards Tier Eligible Participants against a control group of 225 Standard Rewards Tier Eligible Participants; providing enrollment and Participation Incentives; and helping fund acquisition of compatible smart chargers to expand access to Participants who do not have compatible equipment to participate.

For Task 1 - Managed EV Charging and Program Management, Contractor will:

1. Enroll Participants who, through enrollment, will be provided managed EV charging and be eligible for either the Standard Rewards Tier or Dynamic Rewards Tier.
2. Aim to enroll Participants in the Peak Flex market;
3. Verify that new Participants are MCE customers, calculate and administer One-Time Enrollment Incentives to Eligible New Participants and ongoing Participation Incentives to Eligible Participants through payment platforms including but not limited to PayPal;
4. In accordance with any service level-requirements as required by MCE, provide, track and analyze front-line customer service, complaint handling, issue resolution, and technical assistance for Participants, and maintain the Frequently Asked Questions (FAQs) and website for Participant engagement;
5. Provide Participation Incentives, as directed by MCE.
6. Help fund potential Chargewise Participants' acquisition of the chargers necessary to participate in the MCE Sync and Chargewise programs where MCE will be responsible for $162.50 of the total cost of the charger for Participants that do not have compatible equipment to participate..
7. Run, maintain, and continuously improve the Contractor platform, ensuring compliance with applicable cybersecurity and data privacy laws;

8. Continuously improve the Contractor charging algorithm, building on monthly results and learnings to further improve performance;
9. Provide MCE with access to Contractor's back-end portal, with visual and downloadable data on the following: Participant enrollment, total EV load and load shifting performance, past and forecasted energy consumption, carbon intensity, charging locations, Participant charging behavior, Low Carbon Fuel Standard credit data, and Demand Response event participation;
10. Deliver twice-monthly check-ins and deliver monthly Results & Impacts report to MCE. The Results & Impacts report will be delivered to MCE no later than the 5th business day of each month for reporting of the month prior;
11. As part of the Dynamic Rewards Tier, provide enhanced data reporting, such as analyzing load shapes on a quarterly basis to understand the impacts on price and carbon, evaluate customer responsiveness to different treatment methods between time-of-use and dynamic rewards compensation, and surveying users to understand consumer attitudes and receptivity to the dynamic reward plan signal program type;
12. Develop and implement three new APIs:
    a) Participation API: an API that can connect to Salesforce to push basic Program participation information (name, email, car make and model, incentive payouts and dates, dollar and carbon savings, etc.) to the MCE Salesforce instance 1-2x per day at a scheduled time;
    b) Customer Success Ticket API: an API that connects Contractor's Freshdesk instance with Salesforce to make customer ticket information visible in the MCE Salesforce instance to aid the MCE team in assessing common problems and potential solutions from a messaging perspective. Data can be pushed to the MCE Salesforce platform 1-2x per day; and
    c) Customer Verification API: Contractor will integrate with an MCE-built customer verification API. The integration fee will cover changes to the MCE Sync app that will support the new customer verification process;
13. Work with MCE to maximize Participant retention and participation in the Program through e.g., ongoing education about the Program's benefit to Participants, to the power grid, and to society; periodic scheduled in-app and email outreach and engagements, as may be identified by MCE and Contractor staff; and continuous improvements and feature enhancements to the MCE Sync app; and
14. Include Peak Flex Market signals for EV charging during the summer months (June-September), time-of- use/carbon-intensity signals during other months, and Event-based signals as directed by MCE.

For Task 2 - Marketing and MCE Sync App Participant Enrollment, Contractor will work with MCE to:

1. Develop annual marketing plans that include quarterly marketing audits;
2. Execute a multi-channel marketing, outreach and enrollment plan with the aim of enrolling a total of 6,000 Participant EVs by March 31, 2025; and maintaining 65% compatible EVs with smart charging enabled;
3. Through Contractor's pilot Chargewise program, develop and deploy a recruitment plan to enroll 225 drivers in the Dynamic Rewards Tier and 225 drivers in the existing Standard Rewards Tier;
4. Conduct market research to design, test, and modify the Dynamic Rewards Tier (this includes reviewing existing data and performance of dynamic signal integrated programs, conducting user perception testing through surveys of Participants and presenting findings with MCE throughout Dynamic Reward Tier signal development);
5. Conduct market research in concert with MCE and other CCA partners to develop a Program outreach and design strategy to attract and serve EV owners in Disadvantaged Communities (DACs);
6. Develop marketing plans focused on increased enrollment amongst MCE "Priority Communities", including but not limited to DAC, seniors 65+, non-English speaking, and persons with disabilities;
7. Maintain a marketing campaign tracker, including campaign performance metrics across email, digital ads, and other Contractor-driven marketing activities;
8. Develop marketing collateral to recruit Participants for the summer reliability season, identifying optimal Participant profiles, and on-boarding Participants; and
9. Work with MCE's Marketing Team lead to deliver marketing campaigns.
10. All materials developed by Contractor will be the property of MCE for continued marketing efforts of MCE and MCE Sync.
11. All Task 2 deliverables are subject to MCE's Public Affairs Team's review and final written approval.

For Task 3 - Enhancements to the MCE Sync App and Program, Contractor will:

1. Provide front-end and back-end enhancements to the MCE Sync software platform and re-publishing to public app stores; and
2. Implement additional vehicle and charger integrations to the MCE Sync software platform to enable a wider audience to participate in the Program.

MCE's Responsibilities: MCE understands that the success of the MCE Sync Program depends on MCE's ability to fulfill its commitments and coordinate with external parties, namely:

1. Provide Contractor with API access to MCE's CRM tool to automatically verify Participants upon app sign up and support Peak Flex market enrollment. In the absence of an API connection, a list of all known EV customers and their contact

information will be provided. Additionally, MCE will provide access or a monthly list of new EV tariff customers, as well as timely input and sign-off on marketing materials to support recruitment efforts.

2. Provide Contractor with routine and detailed Google Analytics reporting, or provide direct access to a Google Analytics dashboard for the MCE Sync webpage.
3. Offer:
    a) $50 One-Time Enrollment Incentive to Eligible New Participants;
    b) $10/month Participation Incentives for Eligible Participants enrolled in Standard Rewards Tier;
    c) Up to $40/month Participation Incentives for Eligible Participants enrolled in Dynamic Rewards Tier ChargeWise program;
    d) $162.50 per charger for potential Chargewise Participants' acquisition of the chargers necessary to participate in the Dynamic Reward Tier ChargeWise program.
4. Provide Contractor with the needed data/API feeds for the Peak Flex market and any other desired grid/market feeds as available.
5. To the fullest extent practicable, work to ensure that MCE's partners provide Contractor with the needed data/API feeds for the Peak Flex market and any other desired grid/market feeds.
6. Maintain its Apple App Store and Google Play Store marketplaces and provide Contractor with all resources and approvals necessary to host the MCE Sync app and issue app updates on its behalf.
7. Provide Contractor with timely requirements, feedback and sign-off on MCE Sync updates.
8. Provide Contractor with updated MCE tariff prices and structures, when made available by MCE.

Eligible EVs and Home Chargers: EVs and home chargers eligible for MCE Sync as of Effective Date include:

- BMW i3, i4, i5 iX, 3 series, 5 series, 7 series, X3, X5
- Tesla Models S/X/Y/3
- Volkswagen e-Golf
- Chevy Bolt EUV/Bolt/Volt (Requires additional OEM subscription plan, paid for by Participant)
- Ford Mach-E Mustang/F-150 Lightning
- Toyota RAV4 Prime (Requires additional OEM subscription plan, paid for by Participant)
- ChargePoint Home/ Home Flex chargers
- SmartenIt SmartElek charging cable (Contractor compatible version)
- Wallbox EV Home Chargers
- Additional EVs and Home Chargers can be added to this list as they become eligible.

Assumptions and Understandings:

1. Contractor will integrate additional EVs and home chargers, as identified by MCE, into the MCE Sync software when Contractor informs MCE that additional integration is possible.
2. Contractor may participate and be the recipient of Peak Flex payments as an aggregator in MCE's Peak Flex market.
3. All marketing work provided by Contractor is subject to MCE Public Affairs Team’s review and written approval.
4. Both Parties shall comply at all times during the Term with the following MCE service level agreement (“SLA”) that provides MCE’s expectations for customer interactions by Contractor:
    a) Contractor shall keep a 99% platform uptime.
    b) Contractor and all subcontractors responding to, or engaging directly with, MCE customers shall respond to direct customer inquiries no later than within 3 business days after the inquiry is received. Unless otherwise agreed to, Contractor and subcontractors are to provide one option for customer contact (email). Unless otherwise agreed to, the Contractor shall provide MCE with a process to document customer issues, escalations, and resolutions.
    c) MCE to review and approve the Marketing, Education & Outreach Plan.
    d) MCE to review and approve all branded customer facing materials (digital and physical content) before Contractor and/or subcontractor uses and distributes them.
    e) Contractor to provide to MCE monthly reports which will include lead generation, outreach status, Customer Information updates and any customer complaints, feedback, and escalations
5. Contractor shall comply with Contractor's standard service levels (included as Exhibit C) including 99% platform uptime and response to inbound Participant support queries within 3 business days.
6. MCE acknowledges that Contractor’s connectivity to the above pieces of hardware is dependent on Original Equipment Manufacturer server uptime, Participant's home WiFi connectivity and Participant’s subscription to any required vehicle telematics data plans.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For Services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

Task 1: Managed EV Charging and Program Management Monthly Costs; Not to Exceed $780,900

1. $470,290 Estimated Cost: Managed EV charging, front-line Participant support, back-end Participant verification, Participant incentive calculation, regular platform updates, Program management and monthly data/performance reporting:
    a) Standard Rewards Tier
        - Up to 1,000 active vehicles (total $18,375/month)
        - Each additional tranche of 500 active vehicles (an additional $1,970/month)
    b) Dynamic Rewards Tier
        - Charge management and optimization ($7,500/month for approximately 6 months)
        - Data analytics ($2,500/month for approximately 6 months)
2. $248,110 Estimated Cost: Financial incentive administration to Eligible Participants participating in Events:
    a) Invoiced to MCE at cost each month (including 5% processing fees).
3. $25,000 Estimated Cost: Of the greater $350 cost of chargers for Participants agreeing to participate in the Dynamic Reward Tier ChargeWise program but that do not have the equipment necessary to participate, MCE will be providing $162.50 and Contractor will be responsible for the remainder of the total cost. While the final number of chargers will depend on Participant need, approximately 153 chargers are expected to be provided.
4. $37,500 Estimated Cost: Development and implementation of Participation, Customer Success Ticket, and Customer Verification APIs ($12,500 per API, 3 APIs total)

Task 2: Marketing and MCE Sync App Participant Enrollment, Not to Exceed $125,500

1. Marketing planning, execution, and Participant recruitment services ($10,500/month)
    a) Marketing services to be provided throughout the Term.
    b) Contractor to cover design and labor costs for digital campaigns.
    c) MCE to cover all other marketing costs, including but not limited to print, postage, and advertising placement expenses, including digital ad campaigns.
2. Dynamic Rewards Tier: customer value proposition development and deployment ($12,500)
3. Dynamic signal DAC engagement design and implementation ($8,000)

Task 3: Enhancements to the MCE Sync App and Program, No Additional Cost to MCE

Upon written approval of MCE, funds may shift between the Tasks to accomplish the scope of Services outlined in Exhibit A. Contractor will provide an itemized invoice to MCE Customer Programs staff with information on the deliverables it has completed in the previous calendar month.

Contractor shall bill monthly. In no event shall the total cost to MCE for the Services provided herein exceed the **maximum sum of $906,400** for the term of the Agreement.

EXHIBIT C
SERVICE LEVELS

a) Availability Service Level.

1) Definitions.

(a) "Maintenance Window" shall mean the total minutes in the reporting month represented by the mutually agreed day(s) and time(s) during which Service Provider shall maintain the Services.

(b) "Scheduled Downtime" shall mean the total minutes in the reporting months represented by the Maintenance Window.

(c) "Scheduled Uptime" shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

2) Service Level Standard. Services will be available to Authorized Users for normal use 99% of the Scheduled Uptime.

b) Technical Support Problem Response and Resolution Service Level.

1) Service Level Standard. The Service Provider will respond to two categories of problems associated with delivery of the Services:

i) Problems that shall be investigated and resolved within 3 working days if the problem prevents >25% of Authorized Users from accessing the Services to charge their vehicle as required; and

ii) Problems that shall be investigated and resolved within 15 working days if >25% of Authorized Users are able to access the Services to charge their vehicle as required but are unable to access a specific functionality delivered by the Service Provider.

EXHIBIT D
MCE CRM ACCESS PROTOCOLS

Contractor shall implement the following security measures as part of the Agreement according to program needs up to the time/fees allowed under the Agreement in order to gain access to MCE's Customer Relationship Management software ("MCE CRM"), whether through direct portal access or via application programming interface ("API") integration.

To access MCE CRM, Contractor must first agree to and comply with the following protocols, including, if applicable, those related to API integration:

1. MCE CRM access is subject to the NDA between the Parties dated April 24, 2023..

2. MCE CRM login information, passwords, and any information retrieved from MCE CRM shall be treated as Confidential Information.
    - Confidential Information shall have the same meaning as defined in the MCE NDA between the Parties dated April 24, 2023.
    - No Contractor employee is to give, tell, or hint at their login information or password to another person under any circumstance.
    - MCE CRM passwords are required to be changed every 90 days at least.
    - MCE encourages strong passwords (such as minimum character length, and use of special characters) that are not reused for other logins.
    - MCE CRM shall only be accessed from an Internet Protocol (IP) address in the United States.
        - Any suspicious or unauthorized IP access may be blocked without notice by MCE.
        - Contractor agrees that MCE is not liable for any interruption or restriction of access to the CRM resulting from the blocking of suspicious or unauthorized IP addresses.
    - MCE reserves the right to use approved public IP addresses to control and limit access to MCE's systems.

3. MCE CRM access shall be provided through MCE's selected Single Sign-On (SSO) provider, Okta, Inc. or another MCE-designated SSO provider.

4. Direct MCE CRM Portal Access Restrictions.
    - Direct MCE CRM portal access shall only be provided to those employees of Contractor who have a "need to access" such information in the course of their duties with respect to Contractor's Services ("Designated Employees").
        - Designated Employees who access MCE CRM shall only update or view fields related to the tasks assigned.
        - Contractor shall maintain a list of Designated Employees that have been authorized to access MCE CRM.
            - The list shall be updated and verified by Contractor quarterly and provided to MCE upon request.
            - In the event of an employment status change for a Designated Employee who had been granted access to MCE CRM, Contractor shall provide the following information to MCE:
                - Name and email of pertinent Contractor employee.
                - Notification to MCE within 3 days of employment status change.
    - Designated Employees who access MCE CRM shall first review and agree to be bound by these MCE CRM Access Protocols.
    - Designated Employees' use of MCE CRM is restricted to that which is necessary to provide the Services described in Exhibit A.
    - Designated Employees shall not copy, download, record or reproduce in any way any data existing within MCE CRM.
        - Any customer data that is utilized or uploaded must be removed from Designated Employees' computers and Contractor's systems within 24 hours of upload or utilization.

5. API Integration Restrictions
    - Contractor shall only use an MCE-authorized API to the extent its use is necessary for the completion of contracted work as included in Exhibit A.
    - Contractor shall use industry best standards and significant access control in a closed API system. This includes, but is not limited to:
        - Only employees of Contractor who have a "need to access" such information in the course of their duties with respect to Contractor's Services ("Designated Employees") will be allowed to access information available through the API.
            - For an employee to become a Designated Employee, they must first successfully pass a background screening, which may include a screening of the individual's educational background, employment history, valid driver's license, and court record.
            - If a Designated Employee leaves Contractor's employment or if a Designated Employee's position changes such that they no longer need API access, Contractor will close the employee's access within 24 hours and provide the following information to MCE:
                - Name and email of pertinent employee.
                - Notification to MCE within 3 days of employment status change.
        - Contractor must keep MCE informed of the names, positions, and data access levels of all Designated Employees with a Designated Employee List which shall be updated and verified by Contractor quarterly and provided to MCE upon request.
        - Designated Employees are prohibited from copying, downloading, recording, or reproducing any MCE data except through the approved API integration.

6. Contractor having any interaction with an MCE customer shall do the following:
    - Contractor shall comply at all times during the Term with any MCE-provided MCE co-branding and/or customer engagement protocol that provides MCE’s expectations for customer interactions by Contractor. Failure of Contractor to comply at all times with this section will constitute a material breach pursuant to Agreement section 12 and may result in the discontinuation of work with MCE at MCE’s request.
    - Contractor and any approved subcontractors responding to, or engaging directly with, MCE customers shall respond to direct customer inquiries within 3 business days after the inquiry is received. Unless otherwise agreed to, Contractor and subcontractors are to provide two options for customer contact (email and phone). Contractor shall provide MCE with a process to document any customer issues, escalations and resolutions.

WEST-WIDE GOVERNANCE PATHWAYS INITIATIVE

Phase 1 Straw Proposal

April 10, 2024

Table of Contents

I. INTRODUCTION

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

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

Many of the stakeholder comments on the Evaluation Framework Paper recommended a staged or stepwise approach to increase the independence of Western market governance.[4] In

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

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

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

4 Balancing Authority of Northern California (BANC), California Community Choice Association, Joint Commenters (Western Resource Advocates (WRA), Northwest Energy Coalition (NWEC), Renewable Northwest (RNW), Environmental Defense Fund (EDF), Union of Concerned Scientists (UCS), Western Grid Group (WGG) and Sustainable FERC Project (S-FERC), Northwest & Intermountain Power Producers Coalition, NV Energy, PacifiCorp, Portland General Electric, Public Generating Pool, Seattle City Light, Southern California Edison Company, and

support of this stepwise recommendation, stakeholders pointed to the complexity of achieving the regulators' ultimate vision, the time the overall effort would likely take, and the value of demonstrating an early commitment to more independent governance of Western markets. Consistent with these observations, the Launch Committee is proposing a stepwise approach with three incremental steps in market evolution:

> **Step 1: Early success.** This step demonstrates early commitment to the regulators' vision through substantive changes within the scope of existing law, while continuing to develop more ambitious pathways to independent governance.
>
> **Step 2: Durable, independent governance of markets and other potential services.** This step aims to implement the regulators' vision of a regional energy market with a large and inclusive footprint, maximizing independence while leveraging the existing market infrastructure to minimize costs. Step 2 is designed to be able to evolve and accommodate the addition of new, voluntary services as the framework matures.
>
> **Step 3: Toward an RTO.** As Step 2 matures, the Launch Committee contemplates further evolution toward services of an RTO for balancing authorities (BA) and other market participants to join voluntarily. Proposing a particular design for these subsequent incremental stages goes beyond the scope of the Launch Committee's work, but Steps 1 and 2 have been developed with a clear line of sight to those potential voluntary future services beyond the energy markets. The Launch Committee refers to this later evolution of additional services, inclusive of a full suite of RTO services, as Step 3.

Since January 2024, the Launch Committee has researched and analyzed the complex elements required to effectuate both Steps 1 and 2 and offers in this straw proposal an initial vision of market governance evolution.[5] The Step 1 proposal in this paper includes several design elements and a summarized approach to implement the proposed changes. The Step 2 proposal, which necessarily is more complex, advances a higher-level vision and seeks stakeholder comments for further refinement. Legal analysis received from Perkins Coie[6] and

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Western Freedom. Comments are posted here: https://www.westernenergyboard.org/commentsonevaluationcriteria/.

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

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

technical support from the CAISO have helped inform the Launch Committee's efforts and direction.

The purpose of this paper is to present the Launch Committee's proposal for both Steps 1 and 2 and reasons for narrowing the focus to a stepwise approach that utilizes the preferred options.

Section II, addressing Step 1:

(1) Describes changes to the status quo required to take an early incremental step toward regional independent governance (Option 0);[7]
(2) Considers those changes in the context of the evaluation criteria developed by the Launch Committee and informed by stakeholder feedback;
(3) Discusses the related legal analysis; and
(4) Provides a scope of remaining work to implement the Step 1 solution.

Section III, addressing Step 2:

(1) Recommends the general structure and key elements of a durable pathway to achieve regional independent governance over EDAM and WEIM;
(2) Notes in broad strokes how enabling legislation in California would substantially reduce the legal risk associated with the considered options and likely enable this pathway to be comprehensive and foundationally sound;
(3) Describes open issues and variations within the general recommended structure (Option 2 or Option 2.5 (a variation of Option 3)) that require more investigation and stakeholder feedback; and
(4) Describes plausible future pathways for services beyond the energy markets, without recommending any particular one.

Section IV, explains why, in light of the straw proposal to implement Option 0 in Step 1 and to consider Option 2 or Option 2.5 in Step 2, the Launch Committee proposes to defer further consideration of Options 1, 3, and 4 at this time.

Section V, explains the next process steps planned by the Launch Committee and includes specific requests for feedback from stakeholders drawn from topics throughout the straw proposal. The Launch Committee is seeking stakeholder feedback by May 8, 2024, on this straw proposal.

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

Several appendices offer the reader addition resources to further understand the Launch Committee's work. In particular, Appendix H evaluates each of the options according to the criteria established by the Launch Committee.

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

[8] An updated and complete list of Evaluation Criteria is included in Appendix G.

II. Step 1 Proposal

A. Introduction

Step 1 would substantively move the existing governance of the CAISO's Western Energy Imbalance Market (WEIM) and Extended Day-Ahead Market (EDAM) toward greater independence from the CAISO Board of Governors (BoG). These changes should be familiar to stakeholders who have followed the evolution of CAISO governance. Step 1 aims to promote broader participation in WEIM/EDAM markets through three key changes made on a timely basis: 1) Elevate WEIM Governing Body (GB) decision-making from "Joint Authority" to "Primary Authority", 2) Modify the current dispute resolution process to include a "dual filing", and 3) Incorporate public interest safeguards for participating states in the WEIM GB. These changes would:

- Give the WEIM GB "Primary Authority" over the market-related matters currently within the scope of its "Joint Authority" with the CAISO BoG, channeling any disagreement by the CAISO BoG into the existing dispute resolution process defined in Section 2.2.2 of the Charter for Energy Imbalance Market Governance (WEIM Charter);
- Modify the current process for resolving disputes between the WEIM GB and the CAISO BoG to conclude, except in time-critical exigent circumstances, with the CAISO making a "dual filing" of both bodies' proposals, with no stated preference, for the Federal Energy Regulatory Commission (FERC) to render a decision; and
- Incorporate changes to the WEIM Charter responsibilities to account for consumer and state interests in its decision-making process. This step also contemplates a continued advisory role for a Body of State Regulators (BOSR) in WEIM GB and CAISO BoG decision-making, and an active role in representing state interests, when necessary, in any "dual filing" before FERC.

As described in more detail below, the Step 1 governance transition would be triggered when a set of geographically diverse non-CAISO WEIM Entities equal to or greater than 70% of the CAISO balancing authority area (BAA) annual load for 2022 have executed EDAM implementation agreements. Assuming all the entities who have expressed an intent to join EDAM as of April 10, 2024, execute implementation agreements, only one additional utility representing at least 10,000 GWh of load and located in the Southwest would be required to trigger the Step 1 governance transition.

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

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

B. Step 1 Key Elements[9]

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

Existing Scope of WEIM GB Authority**.** Article IV, Section 1 of the CAISO Bylaws delegates to the WEIM GB "Joint Authority" with the CAISO BoG to approve or reject certain proposed tariff amendments as specified in the WEIM Charter.[10] Charter Section 2.2.1 specifies that the WEIM GB has Joint Authority for tariff rules that are "*applicable to* the WEIM/EDAM Entity balancing authority areas, WEIM/EDAM Entities, or other market participants within the WEIM/EDAM Entity balancing authority areas, in their capacity as participants in WEIM/EDAM."[11] As cited here, the scope of Joint Authority was recently expanded to include day-ahead market and other related rules that are applicable to EDAM Entities.[12]

Joint Authority excludes, however, "any proposals to change or establish tariff rule(s) applicable only to the CAISO balancing authority area or to the CAISO-controlled grid," which are reserved for CAISO Sole Authority (Charter Section 2.2.1).[13] The WEIM GB also has "Advisory Authority"

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9 See Appendix B for a Step 1 schematic.

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

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

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

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

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

for tariff rule changes that would apply to the real-time and day-ahead markets but are not within the scope of its Joint Authority. Section 2.2.3 of the Charter provides procedures to resolve disputes over the classification of a decision made pursuant to the CAISO BoG approved process and the "apply to" test.

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

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

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

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

Existing Dispute Resolution Process. CAISO Bylaws Section 1(b) provides that the BoG "shall not approve the addition, deletion or modification of a part of the Tariff" within Joint Authority unless the proposal has first been submitted to the WEIM GB as required by the procedures in the Charter.[14] In the case of a dispute, Section 2.2.2 of the Charter delineates a multi-step dispute resolution procedure. If the dispute resolution procedures are exhausted without agreement, however, the CAISO BoG may authorize a FERC filing to seek approval of its proposed tariff rule under certain limited circumstances. The WEIM GB rights in this circumstance are limited to an opportunity to provide a "written opinion or statement on the proposed tariff" that may be included in the CAISO filing.

Modified Dispute Resolution Process. Step 1 would leave unchanged the procedure for submission of a tariff change approved by both the WEIM GB and the CAISO BoG (under the

[14] Amended and Restated Bylaws of the California Independent System Operator Corporation, as amended through March 20, 2024, available at: https://www.caiso.com/Documents/AttachmentA-Bylaws-AsAdoptedNovember32021proposedredline.pdf

Primary Authority approach described above) and the general dispute resolution procedures delineated in Charter Section 2.2.2. The pivotal change would require the CAISO, in the event that dispute resolution procedures do not resolve the dispute and either body votes in favor of a proposal that the other opposes, to make a "dual filing" with FERC pursuant to its Section 205 rights.[15] The dual filing would present both the CAISO BoG proposed tariff and the WEIM GB proposed tariff as "co-equal" proposals, with no preference for either proposal indicated in the filing. This requirement for co-equal filings would also apply in circumstances where either the CAISO BoG or the WEIM GB believes a tariff change is necessary, but the other body does not.

One exception to the dual filing requirement remains. The CAISO BoG may still authorize a filing with FERC, including a statement or opinion by the WEIM GB, when a change is a *time-critical* exigent circumstance to preserve reliability or market integrity. The WEIM GB may, following a time-critical exigent circumstance filing and FERC resolution, still trigger the dispute resolution process to consider a durable solution.

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

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

Existing Safeguards. Today state law and the WEIM Charter work together to serve the public interest. California Public Utilities Code §345.5 articulates California-specific public interest factors and related directives that must be addressed in the CAISO's management of the

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

transmission grid and "related energy markets." The CAISO BoG has been clear that this statutory framing is not interpreted as a fiduciary requirement to prefer California consumers in decision-making, and the BoG has repeatedly recognized the inter-dependent nature of all market participants and consumers served by the market.[16] The WEIM Charter also includes several responsibilities aimed at controlling costs and mitigating market power for the benefit of consumers, as well as maintaining compliance with applicable legal requirements including "environmental regulations and states' renewable energy goals."

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

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

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

4) Trigger for Step 1 Implementation

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

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16 In addition, the CAISO Bylaws were amended on March 20, 2024, to include the addition of Article II, section 3: "Administration of Markets. Consistent with its status as a nonprofit public benefit corporation, and to enhance the efficient use and reliable operation of ISO Controlled Grid, the Corporation will weigh the interests of all stakeholders within the footprint of the markets that it administers, including the Corporation's balancing authority areas and WEIM balancing authority areas."

- The trigger requires the execution of implementation agreements by a set of geographically diverse non-CAISO WEIM Entities equal to or greater than 70% of the CAISO BAA annual load for 2022..[17]
- The incremental load additions beyond PacifiCorp, BANC, and Los Angeles Department of Water and Power (LADWP) must be geographically diverse, including at least one new participant from the Southwest and one from the Northwest, and will exclude California participants.

With Portland General Electric (PGE) announcing its intent on March 21, 2024, to join EDAM, the trigger requirement translates to additional participation by at least one Southwest BA representing at least 10,000 GWh of load to meet both the load and the geographical diversity requirements.[18] This assumes that all the entities who express an intent to join EDAM execute implementation agreements.

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

C. Legal Analysis of the Step 1 Proposal

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

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[17] Using 2022 WECC Annual Load Data, the CAISO BAA represented 224,800 GWh. At the time of publication, the entities that have announced their intention to join EDAM include PacifiCorp, BANC, LADWP, and Portland General Electric. The combined loads of these entities total 64% of the non-CAISO WEIM load, and the addition of NV Energy's load would bring the total to 70%, triggering Step 1.

[18] PGE announced its intent to join EDAM on March 21, 2024.

III. Step 2 Proposal

A. Introduction

Step 2 would accomplish the primary goal articulated by the July letter from the states by creating a durable governance structure with a fully independent board that has Sole Authority to determine the market rules for EDAM and WEIM, building incrementally on the movement toward greater independence in Step 1. Step 2 would also offer a governance structure that could bring additional optional services under its purview that are beyond the energy markets, such as reliability coordination, transmission functions, and balancing authority consolidation.

Step 2 necessarily has more open issues than Step 1, but the Launch Committee believes the general structure proposed here, including the variations under consideration that stakeholders are invited to comment on, offers a viable way to achieve the vision of the Pathways Initiative.

Step 2 involves four key elements:

- Create a Regional Organization (RO) that is a new nonprofit corporation separate from the current CAISO, as a successor organization to the WEIM GB.
- Pass enabling legislation to narrow the corporate scope of the CAISO and allow a complete transfer of some of its existing management responsibilities, while preserving the CAISO's balancing authority responsibility.
- Transition decision-making over WEIM/EDAM matters from the "Primary Authority" of the WEIM GB in Step 1 to the RO's "Sole Authority" within the same integrated tariff, while possibly continuing some form of shared authority for a limited number of tariff provisions.
- In collaboration with interested market participants and stakeholders in the West, create various new pathways for West-wide services beyond WEIM/EDAM using the RO as a governing entity and potentially a host entity for those services.

Step 2 is intended to be the realization, beginning with energy markets, of the regulators' vision. It aims to balance the need for independent governance with the need to minimize costs, by leveraging the CAISO's considerable infrastructure and experience, and retain the growing benefits of the WEIM. This approach is not the only way to accomplish the regulators' vision, however it is likely the most efficient way to maximize consumer benefits. The remainder of this section describes the key elements of Step 2 as proposed by the Launch Committee, as well as several open issues and decision points that require more investigation and stakeholder feedback.

With respect to the Pathways options outlined in the Evaluation Framework Paper, the general approach proposed here encompasses both Option 2 and a variation of Option 3 (referred to as

"Option 2.5") that maintains a single integrated tariff. For the reader's reference, Appendix A contains an updated comparison table of these original options (this table is also in the accompanying legal analysis). Appendix F has schematics of the structures described below and the difference between the two leading options.

We address the reasons for narrowing Step 2 to Options 2 and 2.5 in Section IV below. Both options are designed to deliver the four key changes above that are described in detail below. They also share several characteristics. Both contemplate:

- A new non-profit corporation;
- "Sole Authority" over market design and decision-making;
- Some limited degree of corporate reservations by the CAISO to match the scope of its residual authority, if any;
- An option to have public utility status under the Federal Power Act, giving the RO sole Section 205 filing rights;
- CAISO responsibility for the ministerial administration of an integrated tariff;
- CAISO responsibility for market operations, subject to the RO's sole governance authority; and
- A contract determining the relationship between the CAISO and RO.

The Options differ in four important respects.

- First, Option 2.5 contemplates the complete, or nearly complete, transfer of sole governance authority along with elements of institutional authority and responsibility; Option 2 contemplates a narrower transfer of governance authority alone over decision-making on tariff amendments and tariff implementation.

- Second, with the broader transfer of authority in Option 2.5, broader responsibilities are likely to follow, including, for example, compliance and penalty risk, with potential increased costs to be borne by the RO and thus the market.

- Third, with the broader transfer of responsibility and authority in Option 2.5, it may be possible to further limit the CAISO's corporate reservations.

- Fourth, the nature of the contracts between the CAISO and the RO will differ; the Option 2 contract would be crafted to delineate the market governance versus operating authority of the RO and CAISO, while the Option 2.5 contract would be developed as a pure contract for services in which the CAISO operates only as a vendor.[19]

Each of these differences and other details involves a complex mix of business and legal considerations, which are generally discussed below and require further evaluation. And there are many variables affecting how the relationship between the CAISO and the RO may be structured. The key takeaway is that the more the RO seeks to create its own autonomous capabilities to provide services to participants, the higher degree of costs, responsibilities, liabilities, and obligations must be assumed by the RO. One purpose of this section is to highlight that fundamental trade-off.

B. Key Step 2 Elements

This section will describe each of the four key elements in turn. The discussion reflects the Launch Committee's work since last fall to gather information and evaluate the implications of different approaches. Stakeholders are asked to provide feedback on how the described tradeoffs might be weighed against each other as the Launch Committee considers its final recommended design option for Step 2. The third element below highlights the tradeoffs and differences between Options 2 and 2.5, a key open issue before the Launch Committee.

1) ***Key Element:*** **Creation of a Regional Organization as a new legal entity that is a nonprofit corporation separate from the CAISO.**

Step 2 begins by forming a new legal entity, referred to here as the RO, that is a standalone nonprofit corporation separate from the CAISO. The RO's formation allows governance of the energy markets (EDAM and WEIM) to change from the model of a chartered entity underneath the CAISO umbrella that has delegated authority from the BoG. It allows the authority to determine market rules to be vested in a separate corporation with a separate board.

Step 2 would move beyond the augmented authority ("Primary Authority") of the WEIM GB in Step 1 to "Sole Authority" to determine the vast majority of WEIM/EDAM matters. The boundaries and meaning of this authority are described in more detail below.

The new RO would serve as a successor organization to the WEIM GB and would draw on many elements of the WEIM GB as a starting point, including the WEIM Charter as modified in Step 1.[20] The general nominating process for the WEIM GB, relying on a sector-based stakeholder nominating committee, may be a sound basis for selecting the RO's board, but the Launch Committee anticipates the need for some potential refinements and improvements, such as

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[19] Conceptually, under Option 2 the RO has governance authority over the *CAISO's* regional energy market. In contrast, under Option 2.5, the CAISO is the contractual operator of the *RO's* regional energy market. Under both Options, the CAISO operates the markets and the RO governs the market rules.

[20] The WEIM Charter would need further modification to serve as the basis of articles of incorporation or bylaws for the RO.

expanding sector participation on the Nominating Committee. The Launch Committee also anticipates that more than five board seats (the current number of seats on both the CAISO BoG and the WEIM GB) may be needed to reflect the diverse interests of a West-wide footprint.

The Launch Committee envisions that the RO would begin with a relatively modest size, consisting of a board of directors and a small initial dedicated staff and legal counsel (internal or external). The board itself would meet FERC's standards for independent governance of an RTO, including the absence of any financial conflicts of interest related to the energy markets and market participants. The board would also meet the broader criterion of the Launch Committee related to a governance structure independent of any single state, participant, or class of participants. In addition, the RO may need to be capable of serving as a public utility under the Federal Power Act, in the event the RO directly files its own tariffs at FERC or determines the content of filings by the CAISO as a public utility within the meaning of the Federal Power Act.[21] We also anticipate that the RO would become qualified to be a registered entity with the Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC), in the event that the RO directly assumes the role of being the functional entity for one or more NERC-defined functions required to ensure reliable operation of the bulk electric system.

Some elements of creating the RO and the overall Step 2 proposal can be implemented sooner than others, and this may argue for beginning implementation prior to consideration of further legislation in California. And regardless of further legislative change in California, the creation of an RO with the attributes described here may prove attractive on its own merits as a locus for future regional market initiatives. For example, even in the absence of legislation, the RO could assume the same Primary Authority delegated to the WEIM GB in Step 1 but in a more arms-length form.[22] Similarly, the structure would allow, for example, the RO to become the host of the NERC-defined Reliability Coordination function without any change in state law, either offering such a service directly to Western entities or contracting through the CAISO. Finally, the formation of the RO with the capacity to be a public utility is a necessary precursor to filing any future tariffs at FERC under the Federal Power Act. The RO described here would be a way to build that institutional capacity for future regional initiatives. In that sense, it is a vehicle for more services beyond WEIM/EDAM. Additionally, if legislation proves slow to emerge the RO could begin exploring structures that would allow BAAs outside California to move forward together on various initiatives while maximizing opportunities for continued co-optimization with the California balancing authority area, if necessary.

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[21] Qualifying as a public utility is not limited to direct ownership or operation of physical facilities subject to the jurisdiction of FERC, it also encompasses entities responsible for tariffs or contracts that affect wholesale electric rates (sometimes termed "paper facilities"). See accompanying Perkins Coie legal analysis.

[22] See the analysis of Option 1 in the accompanying legal analysis, subject to continued exigent circumstances authority remaining with the CAISO BoG.

RO Funding

As a starting point, the Launch Committee anticipates that the current funding mechanism for the WEIM GB could be the basis for supporting the RO in its simplest form. Additional requirements for financing, liability protection, and auditability are closely tied to the ultimate scope of responsibilities of the RO and so are addressed in detail under the "contractual relationship" subsection below.

Role of states

The WEIM BOSR, or a similar successor organization, would continue to have a significant role in reviewing and opining on policy proposals and actions of the RO to protect all affected consumers. This is a critical role that the Launch Committee wishes to underscore. We are evaluating further how to empower participating states with this role, including with respect to our eighth evaluation criterion ("Respect for state authority to set procurement, environmental, reliability and other public interest policies"), and we encourage stakeholder feedback on this topic.

Role of stakeholders

With the launch of the RO, the Launch Committee recognizes the opportunity to re-evaluate how stakeholders engage with and help shape WEIM/EDAM rules. Recent experiences in the West with greater stakeholder involvement in regional decision-making indicate a strong desire from some sectors for consideration of new meaningful ways for stakeholders to shape the rules and implementation practices of regional energy markets and other programs. These recent experiences include stakeholder-driven initiatives and committees piloted by the CAISO (e.g., the Gas Resource Management Working Group), the Program Review Committee of the Western Resource Adequacy Program, and the Markets+ Participant Executive Committee of Southwest Power Pool's Markets+ offering.

The Launch Committee continues to evaluate how best to structure the stakeholder process for providing input into the RO's consideration of market rules and any other matters under its authority. We expect the RO to be responsible for overseeing the stakeholder process associated with developing regional market rules. This topic, which is the target of the Launch Committee's request for U.S. Department of Energy funding, may also require a thorough evaluation by the RO board itself as one its early and central tasks.

In the meantime, the Launch Committee may make a recommendation for a robust RO-specific stakeholder process that would expand upon or adjust the existing stakeholder processes of the CAISO and other examples such as those listed above. We expect this to be addressed in a future workshop process. We look forward to stakeholder feedback on this important topic, both on the desired outcome and the appropriate timing of the effort.

Transition from Western EIM Governing Body

The role that the current WEIM GB might play in any transition to an RO requires further evaluation. The Launch Committee has not considered in detail how this might work. Clearly, the WEIM GB could provide a bridge to the new structure and provide continuity on substantive market issues as well as relationships with stakeholders, but these details remain to be considered. The Launch Committee anticipates that some transitional period would be required. Solutions may emerge as the scope of the RO comes into clearer focus, and a nominating committee for the new RO Board may also be situated best to address the transitional issues.

Other open issues

The Launch Committee does not make a recommendation about the appropriate form of a non-profit corporation for the RO (for example, a 501(c)(3) versus a 501(c)(4)), the state where it should be incorporated, the state where it should primarily conduct its business, nor the jurisdiction where litigation involving the RO should be adjudicated. These topics require additional legal counsel and deliberation. We do offer several high-level observations.

- *Nonprofit status*: Tax factors play an important role in incorporation decisions and state rules regarding these matters can affect the cost of any debt. Tax counsel would be required to evaluate this topic to develop a recommendation. In addition, restrictions on certain nonprofit activities and the extent to which a public interest focus is supported may be factors in determining the appropriate form of nonprofit.
- *State of incorporation:* Locations across the West would be under consideration, but the Launch Committee also notes that there may be some value in selecting another location that offers general incorporation advantages, such as the state of Delaware.
- *Place of business:* Maintaining a close familiarity with the CAISO's present business, including market operations and personnel, does suggest value in maintaining physical proximity to the CAISO headquarters for at least some RO staff, but this by itself need not suggest a principal place of business.

2) *Key Element:* Passage of enabling state legislation to allow a complete delegation or transfer of some of the CAISO's existing management responsibilities to the RO (not to include the CAISO's Balancing Authority function).

There are functions that the RO could perform without state legislation. As noted above, there may be value in establishing the RO to be ready to provide desired services and to continue the trajectory toward greater autonomy of governance. Legal counsel has opined, however, that enabling legislation in California is likely necessary to bring about a complete handover of authority over the WEIM/EDAM rules. Such legislation would remove a material risk of violating the California Corporations Code and Public Utilities Code that apply to the CAISO today.[23]

The Launch Committee recognizes a strong abiding interest among California decisionmakers and stakeholders to preserve the management of the BA function as a corporate duty of the CAISO, similar to the status of BA autonomy outside of the CAISO. Preserving the CAISO's BA responsibility, subject to the ongoing oversight of the BoG, would be a meaningful way to separate out a core reliability-related function of the CAISO and keep it within the purview of California elected officials and policymakers, regardless of the final structure of Step 2 and the pathways to services beyond the energy markets. This approach would address an issue noted in our Evaluation Framework Paper about creating greater parity, as it were, between the ability of both the CAISO and non-CAISO BAs to elect to join and be subject to services overseen or directly offered by the RO. Given that the BA is the primary unit of participation in the WEIM and EDAM, our proposal ensures that control of this reliability-related function does not get swept up by, or somehow drafted onto, a transfer of other management responsibilities from the CAISO BoG to the RO.

The Launch Committee underscores that the approach outlined here—targeted legislation that preserves the CAISO's responsibility for its BA function—is fundamentally different than prior policy or legislative proposals on the topic of reforming CAISO governance. Rather than asking the California State Legislature to regionalize the CAISO as an institution, this legislation would enable the CAISO BA to participate in a market managed by another entity. In our view, this new approach would accommodate walling off the corporate responsibility for BA management from further regionalization of market and related services, which greatly enhances the chance of success. Doing so would somewhat complicate but still maintain the value proposition of potentially regionalizing more services through the RO at a future date. This last topic is explored in more detail under the fourth element of Step 2 below.

3) ***Key Element:* Transition to "Sole Authority" of the RO over WEIM/EDAM within the same integrated tariff.**

In the Launch Committee's view, the single most important measure of independent authority over the energy markets is the exclusive and unilateral authority ("Sole Authority") to decide the content of section 205 filings at FERC. "Sole Authority" is not the only way to measure the independence of the RO from the CAISO, and it is necessarily bounded by several factors, as this section will describe. But it is the guiding objective of the Launch Committee in proposing Step 2.

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[23] The Perkins Coie legal analysis that accompanies this straw proposal describes this likelihood and the legal risks involved. As the evaluation notes, there are various ways to mitigate the risk of the RO's "Sole Authority" violating current state law, but these mitigation options generally erode the independence of the RO and make its authority effectively no greater than "Primary Authority" under Step 1.

Step 2 would move governance of the energy markets beyond the WEIM GB's meaningfully greater independence in Step 1, relative to the status quo, to a more complete form of autonomy in Step 2. The tradeoffs described in this section for how precisely to structure this form of independent governance, including the relationship between the CAISO and the RO, should not obscure the essential point that in all cases the RO would hold sole decision-making authority over the vast majority of the tariff provisions that apply to EDAM and WEIM, and to market participants in EDAM and WEIM in that capacity.

Summary of transition

Upon the incorporation of the RO, establishment of its capability to assume responsibilities described in this section, and the passage of enabling legislation in California, the CAISO BoG and WEIM GB would be empowered to transfer certain responsibilities from the two entities to the RO. In this process, the WEIM GB would be dissolved as a chartered entity under the CAISO umbrella. The CAISO and the RO would enter into a contractual agreement that in the narrowest form would be a governance agreement (Option 2) and in its broadest form would be a contract for services in which the CAISO would become a vendor to the RO (Option 2.5). Under the latter arrangement, the RO would become the outward facing entity offering energy market services to Western market participants. This important distinction between the form of contractual agreement between the CAISO and RO is explored more below. It is the primary open issue before the Launch Committee.

The agreement executed between the RO and the CAISO would detail, among other things, the duties of the CAISO as the market operator and remedies to ensure unbiased operation of the markets. Over the course of the governance transition in Step 2, the CAISO would continue to seamlessly operate the energy markets over which the RO now has exclusive and unilateral authority, thereby avoiding disruption to the existing markets, participants in them, and consumers affected by them. Avoiding such a disruption is a critical consideration for the Launch Committee.

To complete the transition to Sole Authority, the CAISO's bylaws and tariff would be modified to memorialize the relationship between the CAISO and the RO, including the delegation or allocation of unilateral and exclusive 205 rights, as defined in the agreement executed between the two entities. The CAISO would file the modified tariff at FERC.

Scope of authority

The scope of Sole Authority would be based, as a starting point, on the same decisional classification that already identifies the scope of the Primary Authority in Step 1 using the WEIM/EDAM "apply to" test. But the Launch Committee has identified at least two potential exceptions to simply using the same test. Both exceptions suggest the potential need for some ongoing shared authority for the RO (rather than "Sole Authority") over a narrowly limited scope of topics.

First, Joint Authority today[24] and Primary Authority as proposed in Step 1 encompass proposals to change or establish rules that apply partially—but not solely—to the CAISO BAA or the CAISO-controlled grid, to the extent such proposals apply to WEIM/EDAM participants (and BAAs) in their capacity as WEIM/EDAM participants. If using the present "apply to" test results in severing the CAISO BoG's decision-making authority over such provisions by making all of them subject to the RO's sole authority at the outset of Step 2, this would be an inappropriate outcome, even with the change in law outlined above. The CAISO would still ostensibly have management responsibility over its own BAA and controlled grid, but it would have lost the authority to determine how to manage them by virtue of the transfer of authority over WEIM/EDAM rules. The CAISO's ongoing responsibility for its BA function in particular, which the Launch Committee intends to mirror the responsibility WEIM/EDAM Entities have for their own BAAs, may require keeping some proposals under "Primary Authority" (or some other form of shared authority with the CAISO BoG) that are closely related to the CAISO BAA.

Second, there are certain generic provisions of the tariff (for example, Section 13: dispute resolution) that apply equally to market participants under WEIM/EDAM and participants in other CAISO services, including the participating transmission owners under the Transmission Control Agreement. The "apply to" test may already allow any change to these provisions to separate out and isolate their effect on WEIM/EDAM. For example, the provisions could be divided within the tariff in the course of modifying them, splitting approval between the BoG alone for what applies outside WEIM/EDAM and the RO alone for what applies to WEIM/EDAM. But these provisions deserve further review as well.

In general, the intent and expectation of the Launch Committee is that the vast majority of the tariff rules covered by Joint Authority today would be covered by RO Sole Authority in Step 2. Making a more definitive recommendation that precisely defines the two areas of potential exceptions above requires a detailed analysis of the tariff, which has over 1,500 subsection headings and appendices at merely two subsection levels below the main numbered sections. The Launch Committee has begun this analysis and anticipates that completing it will require additional stakeholder feedback.

Because the "apply to" test today is a functional one—a strength of the test that the Governance Review Committee rightly emphasized in recommending its use—there is no master list of current tariff provisions that are necessarily under its scope. Instead,

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[24] On March 20, 2024, the CAISO BoG unanimously adopted a motion to amend the CAISO Bylaws and the Charter for EIM Governance to implement the previously approved final proposal of the Governance Review Committee to expand the scope of joint authority to encompass EDAM and refine the "apply to" test. This BoG implementation decision had awaited conclusive acceptance by FERC of the EDAM tariff. This subsection of the Charter, as adopted by the BoG on March 20, is shown in Appendix C.

identification of the decisional authority arises when market changes are proposed that would lead to a tariff change. Thus, this important question about the scope of, and exceptions to, "Sole Authority" in Step 2 requires more analytical work.

Finally, the Launch Committee notes that the CAISO implements some tariff provisions that are a direct outgrowth of requirements established by California state agencies and that apply solely to market participants within California. We expect these to fall cleanly outside of the scope of the "Sole Authority" proposed here, just as they do today. This includes, for example, resource adequacy provisions in the tariff (e.g., sections 41: Procurement of Reliability Must-Run Resources, and 43A: Capacity Procurement Mechanism).

Other limitations on Sole Authority

The "Sole Authority" at the heart of Step 2 still has important boundaries, aside from the potential topical exceptions to its scope described above. Namely, since the CAISO would remain the market operator in both narrow and expansive versions of the agreement executed with the RO, the RO could not establish market rules that unilaterally expose the CAISO as a corporation to excessive risks that endanger the corporation itself. For example, adopting a market rule that would require the CAISO to dramatically increase its financial bonds or jeopardize its credit rating would not be permissible. Similarly, adopting a market rule that required the CAISO to violate the laws of physics in market operations would not be permissible. The Launch Committee anticipates that these types of unilateral RO actions would be delimited in the agreement between the RO and the CAISO. They pertain to corporate risk rather than policy judgments about the energy market rules and their implementation.

The Launch Committee has attempted to identify scenarios in Step 2 under which the CAISO BoG should have an ongoing corporate responsibility in emergency situations to make unilateral decisions either in lieu of the RO board or over the objections of the RO board. Apart from the corporate jeopardy limitation identified above, the Launch Committee does not at this time anticipate Step 2 carrying over the "exigent circumstances" exceptions that govern Joint Authority today and would affect Primary Authority in Step 1. The Launch Committee seeks feedback from stakeholders on scenarios under which some form of a "panic button" in Step 2 might be appropriate or necessary (apart from the corporate jeopardy identified above), under which the integrity of the WEIM/EDAM operations could be maintained in emergency situations without the express approval of the RO board.

Single integrated tariff

The RO's Sole Authority in Step 2 to determine WEIM/EDAM rules could be carried out either in a single integrated tariff or in a separate new tariff filed at FERC (either by the RO directly or by the CAISO on the RO's behalf). The single integrated tariff is the model used today under WEIM and EDAM, with some decision-making authority held by the WEIM GB within the single tariff.

The same model would be used in Step 1 as well. Extending that model to Step 2, at least at the outset, would represent a further incremental evolution, as opposed to the RO filing an effectively new tariff at FERC.

The Launch Committee has deliberated about the merits and drawbacks of these two alternatives. We propose that for purposes of administrative integrity, continuity with Step 1 (including the effectiveness of the functional “apply to” test to date), and cost savings, the CAISO would remain the tariff administrator of a single integrated tariff at least at the outset of Step 2. The CAISO would carry out the ministerial act of making filings on behalf of the RO pursuant to the RO’s sole decision-making authority.

This governance structure of sole 205 rights held by separate parties in the same tariff represents an extension of a well-established precedent of exclusive and unilateral (i.e., sole) 205 rights held by transmission owners over transmission revenue requirements and associated issues in RTO/ISO tariffs. This includes, in a variety of forms, the ISO-New England, MISO, NYISO, and PJM tariffs. It also bears similarities to a variety of voluntary delegations by RTO/ISOs to non-public utilities (committees of either stakeholders or state regulators) to determine the content of the RTO/ISO section 205 filings. The proposed structure here is novel with respect to the breadth of anticipated tariff provisions that would be affected and in their potential dynamic growth over time. This novelty represents slightly higher FERC regulatory risk than having separate tariffs, but it is likely feasible under existing FERC policy and precedent, particularly if the delineation is clear between the areas of sole RO authority, sole CAISO authority, and shared authority. Our analysis here draws on the Perkins Coie legal analysis that accompanies this straw proposal, which describes these precedents and risks in more detail.

The following factors support maintaining a single integrated tariff for the energy markets overseen by the RO:

1) Lower administrative start-up costs, including:
    a. Continued use of some version of the “apply to” test as a well-understood functional test that would facilitate migration of decision-making authority to the RO; and
    b. Avoidance of practical challenges of separating out tariff provisions into a new tariff, given the interrelated nature of the existing tariff; and
    c. Avoidance of direct costs associated with the RO filing a separate new tariff;
2) A potentially shorter implementation timeframe to achieve full decision-making independence;
3) Seamless continuity for WEIM/EDAM governance from Joint Authority today to Primary Authority in Step 1 to Sole Authority in Step 2;

4) Continuity of existing contracts executed between the CAISO and market participants and vendors (including some agreements with more than two parties);

5) Avoidance of the regulatory and market risk of filing a new tariff while the markets are already operating; and

6) Reliance on previous interpretations of the current tariff and associated business practices, increasing predictability and lowering risks for market participants.

Conversely, several factors may argue for creating a separate tariff:

1) Greater perceived or real independence from the CAISO by having an entirely separate tariff;

2) Lower regulatory risk of FERC finding impermissible a single integrated tariff with divisions of sole 205 rights and shared rights between different parties;

3) A slight regulatory risk of FERC accepting a filed change in the integrated tariff that thereby renders another part of the tariff, administered by the other governing entity, unjust or unreasonable; and

4) A potentially stronger starting point for the RO to gain decision-making authority over other additional services or to offer such services directly without being constrained by an integrated tariff.

On balance, the Launch Committee finds that the factors in support of maintaining a single integrated tariff—at least for WEIM/EDAM, but not necessarily for other, future services—are strong enough to recommend this structure at least at the outset of Step 2. Should stakeholders or the RO board later reconsider this approach and determine that a separated tariff offers compelling advantages, then that option would remain available. More fundamentally, the Launch Committee has concluded that the Sole Authority itself over provisions in an integrated tariff is the root of the RO's independence, rather than whether it is exercised in an integrated tariff or a separate tariff.

Form of contractual relationship

Step 2 as recommended here could be addressed by both "Option 2" as described in the Evaluation Framework Paper and "Option 2.5" as described in the accompanying legal analysis to this straw proposal. The Launch Committee has tentatively concluded that Option 2 is an attractive and feasible pathway for securing independent governance of the energy markets, and it is probably the fastest and least-cost pathway to that end. By its nature, it remains a more integrated and incremental approach, closer to the status quo in structure than more disaggregated approaches to governance reform. This incrementalism may have intrinsic political, regulatory, and commercial value, but it does cut against more thoroughgoing institutional independence that stakeholders may value.

At this juncture, the Launch Committee puts forward its tentative conclusion about Option 2 more as an observation than a recommendation. The competing alternative pathway that has all of the same features outlined throughout this section is "Option 2.5," which makes a bigger break with the status quo by transferring all market responsibilities to the RO and positioning the CAISO as a vendor under contract to the RO to operate EDAM and WEIM. The RO itself would be the outward-facing entity offering EDAM and WEIM to market participants (albeit as a contracted service via the CAISO), and by virtue of this plenary authority would become subject to a variety of audits, compliance requirements, and financial liability. We refer to this option "2.5" because it resembles Option 3—a contract-for-services model with a separate tariff—but maintains a single integrated tariff as in Option 2, with the CAISO as the ongoing tariff administrator. Indeed, Option 2.5 may be considered a variation of Option 3, but for clarity we have given it a different name.[25]

Much turns on the form of the contractual relationship between the CAISO and the RO. In general, there is no scenario in which the RO holds all of the authority over market services but none of the responsibility or liability. Authority and responsibility (including liability) generally go hand in hand. To the extent the RO is structured to be more than a narrow decision-making body over market rules, the more the RO must assume institutional and liability features of the CAISO itself (or any market operator).

Except for any legislative change that may be needed to allow the CAISO to turn over market oversight to a third party, the Launch Committee has not identified any general legal barriers to the CAISO offering services in Step 2 in a vendor mode under a contract. As discussed above, the CAISO would need to protect itself from exposure to excessive risks as a corporation as a result of any contractual agreement, regardless of the counterparty (for example, a counterparty forcing the CAISO to issue large bonds or complete infeasible tasks). Where the challenges of a more expansive contractual agreement (such as Option 2.5) arise are not in the general proposition but with more specific issues. We have identified three in particular: financial liability, staffing, and existing contracts. We address each issue in turn.

Contractual issue #1: Financial liability

Like any RTO/ISO, the CAISO has a variety of ways to cover its financial exposure as a market operator and provider of other services. In 2022, the CAISO's annual operating expenses were $247 million. The CAISO recovers its costs (operating, debt service, capital expenditures, and

[25] We note that in all three options (2, 2.5, and 3) the Launch Committee envisions the CAISO continuing to retain the physical assets necessary to operate the energy markets. Option 2.5 does not involve a divestiture or transfer of assets. Rather, it involves a service contract that details how those assets would be deployed by the CAISO on behalf of the RO.

maintenance of operating reserves) by assessing various charges to market participants, in particular a Grid Management Charge (GMC)[26] and other fees (e.g., participation fees for WEIM, Reliability Coordinator services, and generator interconnection studies). Under the tariff, the CAISO maintains an operating reserve as part of its revenue requirement, which is 15% of the current year's operating and maintenance budget (so on the order of $30-40 million), a debt service reserve, which is 25% of the debt service to be paid during the year, and a capital reserve whose amount depends on future anticipated capital expenditures.

The CAISO's corporate status allows it to issue debt, including public (municipal) debt through qualified conduit issuers. For example, the CAISO incurred its current bond obligations in 2021 when it sold (through an issuer) $174 million of revenue bonds, of which $165 million was outstanding at the end of 2022. The GMC and other sources of CAISO revenue, plus other financial protections in the CAISO tariff, are the basis on which bondholders have confidence that they will be repaid.

The CAISO requires market participants to post collateral (or maintain an equivalent line of credit) that is equal to their estimated liability, according to the credit standards specified in the tariff. This means that the CAISO does not bear the risk of loss if a market participant defaults on payment. Such losses do not come off the CAISO's balance sheet. In addition, perhaps the most significant protection for both the CAISO and for bondholders is that the CAISO has a lien on market revenue—it has a priority claim against market-related receipts to protect itself further against, for example, parties in default of payment. This lien is more significant because of how high the coverage ratio is between the GMC and total market settlement collections—well above 20:1 in recent years (for example, in 2019, total CAISO market settlement collections were $4.7 billion compared to a $200 million GMC).

In addition to the financial security provided through the lien on market revenues, the CAISO has provisions in its tariff that potentially allow it to spread the cost of a substantial regulatory penalty to market participants in certain cases. Such regulatory penalties may be imposed, for example, by WECC, NERC, FERC, or the Commodity Futures Trading Commission. If such a fine or any other regulatory penalty is imposed on the CAISO and there is no means or basis for a one-time allocation to market participants, the CAISO maintains substantial operating reserves that are available to pay the penalty.

Given these various protective features, the Launch Committee understands that the CAISO does not maintain insurance to cover the risks of market participant defaults, losses in the energy markets, or regulatory compliance. Like most similar corporations, the CAISO does

[26] The GMC is the principal charge assessed to wholesale market customers by the CAISO to recover its costs.

maintain broad insurance coverage for various other risks (for example, common protection such as errors and omissions, directors and officers, cybersecurity, property, and automobile).[27]

Finally, to ensure compliance with bond covenants and various regulatory and auditing requirements, the CAISO maintains substantial corporate compliance and internal audit teams who focus solely on these functions and who interface with other staff with compliance responsibilities that are embedded in business units throughout the corporation.

The Launch Committee lays out in detail how the CAISO protects itself financially to make clear some of the capitalization and other liability protections that the RO might be expected to take on under a more expansive contract-for-services model (i.e., Option 2.5). The features described above are not prohibitive *per se*, but they do require a more robust organization and a higher cost to implement. This may be understood as the incremental cost of greater institutional independence.

The Launch Committee notes that because the coverage ratio of market settlements versus the GMC is so high, and a lien on that revenue is a powerful financial protection for any market operator, an approach of providing the RO some access to a similar lien authority might provide a relatively lower cost solution. This might be done through the CAISO contractually or the creation of a second lien. This topic requires more investigation, given the potential effect of raising the cost of debt on affected bonds.

Contractual issue #2: Staffing

In addition to the financial liability protections described above, the cost of making the RO a more expansive institution that would be the formal outward-facing provider of EDAM and WEIM services (with actual operations under contract to the CAISO) depends on the size of the staff dedicated to the RO. As a starting point, the Launch Committee envisions a relatively skeletal organization that may scale up over time. The staff size would probably need to scale up more immediately under Option 2.5.

The Launch Committee has begun exploring how to have sufficient RO independence in the form of dedicated staff, while avoiding both a significant incremental cost and a complete disaggregation of staff familiar with the CAISO's various operations and internal structure. On the most independent and expensive end of the spectrum might be a fully parallel group of dozens of policy, legal, and technical staff dedicated solely to the RO. On the opposite end of the spectrum might be a few dedicated staff (for example, an executive director, administrative specialist, and chief counsel), with all other personnel remaining as they currently are within

[27] Information in this subsection is drawn from the CAISO's 2022 Audited Financial Statements, available at: http://www.caiso.com/Documents/CAISO2022AuditedFS.pdf; and the "2021 Official Statement" in connection with the issuance of California Statewide Communities Development Authority 2021 Series bonds, available at: http://www.caiso.com/Documents/2021-Official-Statement.pdf.

the CAISO. Among other considerations, the Launch Committee is aware of the challenges of a potential co-employer dynamic that could complicate liability exposure and chains of command, depending on how staff responsive to the RO is embedded within the CAISO. Clarity about potential information firewalls is another important consideration.

We provide several reference points here to inform stakeholders and elicit reactions.

- *Current CAISO staffing:* Most of the CAISO's operating costs (over two-thirds) are for compensating staff, consultants, and outside attorneys. The CAISO's draft 2024 budget includes 759 total positions at the corporation, of whom 597 are in operational services and 162 in corporate services. Within corporate services, the general counsel's office is budgeted for 38 positions, and the Stakeholder Engagement and Customer Experience division for 29 positions. Within operational services, the Market Design and Analysis division is budgeted for 59 positions.

  The allocation of costs in 2024 on a functional basis indicates that $31 million is budgeted for developing markets and infrastructure (12% of the O&M budget), and $97 million to operate the markets and the grid (38% of the O&M budget). From a broader perspective, the CAISO's most recent triennial cost-of-service study indicates that about 45% of the corporation's annual revenue requirement is related to market services ($108 million) and about an equal amount to system operations ($107 million). These general numbers don't map precisely onto what the RO might do, but they do provide an idea of the scale of staff and costs for more expansive versions of offering marketing services.[28]

- *NEPOOL example:* One reference point for the potential scale of the RO in a more modest form may be NEPOOL, the independent FERC-approved stakeholder advisory group in New England. NEPOOL advises ISO-New England (ISO-NE) on competitive wholesale market rules and has legal rights to compel ISO-NE to make alternative section 205 filings at FERC. NEPOOL itself has more than 500 members (market participants and stakeholders). It has a significant and, in some cases, determinative role over proposed market rules in New England, but as an institution it is relatively small. NEPOOL's annual operating budget for 2023 was approximately $7 million, which covered a variety of stakeholder meeting and communication costs, in

[28] CAISO 2024 Draft Budget and Grid Management Charge Rates (October 2023), 11, 13, available at: https://www.caiso.com/InitiativeDocuments/Draft-2024-Budget-and-Grid-Management-Charge-Rates.pdf; and CAISO 2023 Draft Final Cost-of-Service Study, September 2023, Table 25, available at: http://www.caiso.com/InitiativeDocuments/Revised-Draft-Final-2023-Cost-of-Service-Study-and-2024-2026-Grid-Management-Charge-Update.pdf. The remaining 10% of the annual revenue requirement relates to Reliability Coordination services (8%) and congestion revenue rights services (2%).

addition to compensation for outside legal counsel (eleven attorneys), two administrative staff, and consultants.[29]

- *Other examples:* Within the CAISO today, the Department of Market Monitoring (DMM) has an internal but autonomous role. DMM staff are CAISO employees but with reporting obligations directly to FERC and subject to management by the BoG and a Board Committee (called the DMM Oversight Committee) that includes three Board members and a WEIM GB member who is a non-voting participant. For example, the DMM Oversight Committee handles performance reviews, promotions, and other personnel matters directly. (We note that the appropriate role of the DMM itself going forward vis a vis the RO is also an open question for Step 2.) Market monitors at other RTO/ISOs may be useful reference points as well. The Reliability Coordination service within the CAISO (described below) has autonomous features as well.

The Launch Committee generally seeks feedback from stakeholders about how limited or expansive the size of the RO's dedicated staff should be, given the data and examples above, as well as fruitful employment models the Launch Committee or future RO board might consider as precedents.

Contractual issue #3: Existing contracts

The final challenge identified to date by the Launch Committee to a more expansive contractual agreement between the RO and the CAISO relates to existing contracts. It requires further investigation and feedback from stakeholders and parties to existing contracts with the CAISO.

If the RO takes on the ultimate responsibility of offering EDAM and WEIM to market participants (not merely deciding the content of market rules as in Option 2), this approach may not comport with agreements already executed by the CAISO as the service provider today, nor with the expectations of the counterparties to those agreements. This may hold true even if the RO takes on this responsibility on the condition that the CAISO alone will continue to operate the markets on a contractual basis (a sole supplier or vendor situation). The counterparties to existing the contracts may find themselves in the position of suddenly having a contract with a vendor of a service rather than the entity that has assumed ultimate responsibility for that service, albeit through a contract with the vendor.

Whether relevant contracts could be assumed collectively by the RO (as assigned by the CAISO) or would require substantial renegotiations remains an open question. The Launch Committee understands that there are approximately three dozen types of regulatory contracts between the CAISO and market participants included in or implicated by the CAISO tariff. Many of them

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[29] NEPOOL Annual Report (2023), available at: https://nepool.com/wp-content/uploads/2023/12/NEPOOL_Annual_Report_2023.pdf

are pro forma. Some involve hundreds of individual contracts (for example, contracts with Scheduling Coordinators or Participating Generators). In total, there may be thousands of individual affected contracts (many entities have entered into multiple contractual agreements with the CAISO covering various roles). Assuming no material change in the affected agreements, it is possible that some may be assigned *en masse*, depending on the assignment language and other rights in the contracts. This topic requires further review.

We also note that the CAISO's existing and potentially future debt covenants may be impacted by the potential structural changes in Step 2. Like the impact on existing contracts with commercial counterparties active in the energy markets, these potential impacts must be clearly understood and considered as well, and additional analysis is required.

Conclusion about the Step 2 contractual arrangement:

The tradeoffs between Options 2 and 2.5 fundamentally relate to the expectations of stakeholders and regulators about the administrative cost, on the one hand, and institutional independence, on the other hand. Given the issues above that affect the cost, implementation speed, and potential feasibility of a full contract-for-services model, the Launch Committee seeks additional stakeholder input to inform our deliberations on how expansive an initial contractual agreement to recommend between the RO and the CAISO. The Launch Committee hopes to gain a better sense of which approach (Option 2 or 2.5) would draw in the most interested parties and increase the depth of market participation, acknowledging that administrative costs are one of the most important decisional criteria for many entities.

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

4) ***Key Element:* Creating various pathways for services beyond WEIM/EDAM using the RO as a governing entity and potentially a host entity for those services.**

The Launch Committee has focused most of our attention on the details of implementing Step 2 for the energy markets, given FERC's approval of EDAM and the pressing question in the West for utilities and balancing authorities about whether to join a given day-ahead market. But we have also explored whether the overall approach to Step 2 outlined above would allow the RO to govern or host additional services that are the hallmarks of an RTO. We have tentatively concluded that it does. This section provides an initial explanation of that conclusion, which likely holds true regardless of the resolution of open issues above related to energy market governance.

The plausible pathways for services beyond WEIM/EDAM would vary based on the service to be provided. The Launch Committee is not recommending a particular structure for any given service but has evaluated the plausibility of extending such services in a number of alternative scenarios. We observe that what might be called the “cafeteria plan” of à la carte services likely has some practical limitations due to complexity and administrative costs. Many services may require a large critical mass of interested entities; others services may only make sense to offer grouped together. At this stage, the Launch Committee does not anticipate focusing additional time on more than the broad descriptions below of potential pathways beyond WEIM/EDAM. We also note that these further pathways may be viewed as part of the maturation of Step 2 in its later stages, or as part of Step 3 described in the introduction—a full suite of market, transmission, and related services offered by RTOs.

The Launch Committee has identified the following general categories and sub-categories of services beyond WEIM/EDAM that are part of the CAISO’s service offerings today:

- *Market services beyond WEIM/EDAM*:
    - Ancillary services
    - Convergence bidding
    - Congestion revenue rights
- *Reliability Coordination*
- *Transmission control:*
    - Transmission operations, including congestion management
    - A consolidated transmission service tariff, including procedures for requesting transmission and interconnection service
    - Flow-based, financial transmission reservations
    - De-pancaking of some transmission rates
    - Regional and interregional transmission planning
- *Balancing authority services*
- *Resource adequacy provisions*

Market services*:* With respect to additional market services, convergence bidding is already partially implicated by EDAM. Further, market-optimized ancillary services have been anticipated as a potential future feature of EDAM through the CAISO stakeholder process. For this reason, these services may be covered already by the “apply to” test going forward. Should they be more fully integrated into EDAM through a market design change, they may be brought under the WEIM GB’s authority in Step 1 or the RO’s authority in Step 2 without any further governance adjustments. Congestion revenue rights made available through auction and allocation are most likely tied to more fundamental transmission control reforms described below.

Reliability Coordination*: “*Reliability Coordination” (RC) is a precisely defined NERC function for a wide area view of the bulk electric system and procedures and authority to prevent or mitigate emergency operating situations in a day-ahead and real-time basis. RC is not a generic reliability function but rather a specific monitoring and coordinating role across other entities registered with NERC. The CAISO currently fills the role of Reliability Coordinator under the "RC West" service moniker for most of the BAs in the West, a service that began in 2019. An Oversight Committee comprised of representatives from each BA and transmission operator that takes RC service from the CAISO currently provide input and guidance to the RC West management related to the CAISO's performance of the RC function. Reliability Coordination may be a natural candidate for independent governance through the RO, upon its formation. RC West has little inter-dependence in the CAISO tariff with other CAISO services. As a critical West-wide reliability service, the option of migrating authority over RC West to the RO deserves careful evaluation by stakeholders and affected parties.

Transmission control*:* Operational control of transmission by a central organization is a hallmark of RTOs, along with the attendant reforms to transmission ratemaking (including de-pancaking), scheduling, and tariff consolidation. Some Western market participants and stakeholders view the transmission paradigm of an RTO/ISO, in contrast to the present transmission paradigm in the bilateral Western market, as the fundamental wholesale market-related reform that the West as a whole has not yet broached. The CAISO's ongoing and nontransferrable management responsibility in Step 2 for its BA function complicates but does not necessarily impede transmission control as a service that the RO could govern. For example, some de-pancaking could occur through bilateral reciprocity agreements between the CAISO and transmission owners not party to the Transmission Control Agreement, or through further evolution to the EDAM access charge; more consolidated approaches such as "highway/byway" cost allocation for new transmission, or zonal transmission access charges, could also be pursued without impinging on separated BAAs. Offering consolidated transmission operational control, transmission service, transmission rate de-pancaking, and a congestion revenue rights product through the RO may be complicated by continuing to have separate BAAs from the CAISO, but multiple credible options remain to offer the various aspects of these critical, definitional functions of an RTO. The Launch Committee looks forward to more specific stakeholder feedback on this important topic.

Balancing authority service*:* Because of the preservation of the CAISO BAA noted above, consolidated BA service via the RO could only be offered as part of a separate BAA apart from the CAISO BAA. This may still be a credible option for non-CAISO BAAs. For example, MISO offers one instructive example, given the persistence of separate "Local BAAs" within the RTO's BAA. The retention of some legacy BA functions in MISO, mostly by transmission owners, occurred alongside consolidated transmission operations and a single transmission service tariff. In the West, the door would also remain open to consolidation of non-CAISO BAAs into a single BAA in parallel to the CAISO BAA, creating an opportunity to co-optimize load, balance, and interchange across two large BAAs.

***Resource adequacy (RA) provisions**:* RA rules specific to the CAISO BAA would not fall under the "apply to" test and would remain under the purview of the CAISO BoG under Step 2. These rules flow in large part from California-specific requirements set by California state agencies, so these CAISO services and tariff provisions would remain as they are today. Other EDAM Entities would meet their own RA standards through the Western Resource Adequacy Program and state-specific obligations. The Launch Committee is aware that the design phase of EDAM devoted substantial attention to ensuring interoperability across these different RA programs.

***Migration or addition of new services via the RO**:*

In general, the difference between the potential approaches to additional services hinges on whether the relevant tariff provisions remain in the single integrated tariff administered by the CAISO or are placed in a separate tariff filed by the RO. Either of those options are available for additional services, regardless of whether the energy markets are governed under Option 2 or Option 2.5, as discussed above. The Launch Committee also notes that the traditional framework to obtaining additional services from the CAISO remains open to entities willing to become, for example, a Participating Transmission Owner whose transmission facilities would become part of the CAISO Controlled Grid.[30]

The Launch Committee has identified the following potential approaches via the RO:

1) Migration of services from sole CAISO BoG authority within the same tariff:
    - A transition to *Joint Authority* between the BoG and the RO, with or without a co-equal dual filing right for the RO at FERC.
    - A transition to *Primary Authority* of the RO, with the retention of a co-equal dual filing right for the BoG (as in Step 1 for energy markets).
    - A transition to *Sole Authority* of the RO within the same tariff, just as Step 2 apply to the energy markets.
2) Addition of services within the same tariff without a migration:
    - The CAISO, at the RO's behest, could add a *new* service within the same tariff, subject from the start to sole RO authority.
3) Transition to Sole Authority of the RO but in a newly filed separate tariff:
    - The RO could file its own separate tariff at FERC to gain authority over an existing service offered by the CAISO, while the CAISO removed the corresponding tariff sections.

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[30] The CAISO Controlled Grid is defined in the Transmission Control Agreement, the foundational agreement of the CAISO that governs the relationship between the CAISO and its participating transmission owners (PTOs). It refers to the system of transmission lines and associated facilities of the PTOs that have been placed under the CAISO's operational control. Note that the CAISO does not need to have operational control of transmission facilities to perform the market operator function. Similarly, the CAISO BA function overlaps with, but is not coterminous with, the CAISO Controlled Grid. The Transmission Control Agreement is available here: http://www.caiso.com/Documents/TransmissionControlAgreement.pdf.

4) Establishment of a new service the RO would offer from scratch:
    - Such services would be offered directly by the RO under its own tariff, with or without the CAISO operating the service under contract.
    - We note that this approach may be the only option for offering consolidated BAA services, for example, to interested EDAM Entities, given the CAISO's continued retention of its unconsolidated BA function.

The Launch Committee offers several general observations on these approaches. First, the provision of contract services by the CAISO would depend on decisions made by the CAISO BoG about the corporation's ability and willingness to provide such services. The Step 2 proposal here avoids a further need for legislative change to allow the CAISO BoG to make those decisions, but the overall approach to migrating authority or entering into new contractual arrangements remains voluntary.

Some services might involve a gradual migration of authority from the BoG to the RO, replicating the incremental path taken by the energy markets, including potential participation triggers. Others might lend themselves to a single, one-step transfer from sole BoG authority to sole RO authority. Others might have some enduring provisions subject to shared authority (Joint or Primary). The result would likely be an RO with a mix of *sole* 205 rights and *shared* 205 rights in the same tariff as the BoG, as well possibly its own separate tariff limited to specified services.

Any transfer of authority from the BoG to the RO would require at least one, and possibly two, votes by the BoG at the start and possibly end of initiatives to modify tariff provisions, which would include adjusting their decisional classification. Any additional transfers would also be bound by the legal limitations discussed above such as the protections of the CAISO as a corporation. A decision made voluntarily by the BoG to assign or allocate its existing 205 rights by subject matter or tariff provision appears to be essential for compliance with the Federal Power Act. The accompanying legal analysis describes this factor.

Because some services and tariff provisions may continue to require some form of shared authority between the BoG and RO, the Launch Committee anticipates the need for a potential additional classification test, or modifications to the existing "apply to" test, for services beyond EDAM. The need for, at minimum, refinements to the existing test may also be dictated by the retention of the CAISO BA function, as described already above.

In conclusion, the model described here of incremental, voluntary service offerings over time could eventually mature to include the full suite of typical RTO services, albeit in a form unique to the West.

C. Legal Analysis of the Step 2 Straw Proposal

The Perkins Coie legal analysis that accompanies this straw proposal is based on existing California state law. It provides guidance about what elements of current law would need to change legislatively to enable the full Step 2 proposal described here and "substantially mitigate the risk of legal challenge." Counsel also evaluated the separate federal legal risk of the various options scoped by the Launch Committee in the Evaluation Framework Paper. Counsel concluded that the options reviewed above for Step 2 (Options 2 and 2.5) are likely feasible, given FERC policy and precedent. Given that Options 2 and 2.5 maintain a single integrated tariff, at least at the outset of Step 2, these options do exhibit slightly higher, but not unreasonable, regulatory risk at FERC. More detail is provided in the legal analysis. The Launch Committee welcomes additional stakeholder views on this evaluation.

IV. Narrowed Options

The Launch Committee is narrowing the scope of work to focus on the most viable options that align with the Evaluation Criteria (see Appendix G). Step 1 centers on the original Option 0 design, and Step 2 reflects Option 2 and a variation of Option 3, which is referred to as Option 2.5. This section discusses the Launch Committee's election to defer consideration of Options 1, 3, and 4, at least on a standalone basis. Note that Appendix H has a matrix showing the Launch Committee's initial evaluation of the risks and challenges presented by the various options based on our eight evaluation criteria and the legal risks.

A. Option 1 - RO Primary Filing Rights + CAISO Joint Filing Rights, Tariff, & Operations

Considering the near-term incremental nature of Step 1 as proposed in this paper, Step 2 warrants greater movement than Option 1 can offer toward the independent governance that the Pathways Initiative is intended to achieve, and that Launch Committee believes can be achieved in Step 2. Stakeholder comments support this position as well. At this point, the Launch Committee is not recommending further evaluation of Option 1.

B. Option 3 – RO Sole Rights with CAISO Contract for Services with CAISO

While Option 3 has remained in the scope of consideration until now, the Launch Committee has moved toward a modified approach, new Option 2.5. Options 2.5 and 3 contemplate comparable degrees of governance separation from the CAISO necessary to enable RO Sole Authority. The options differ, however, in the treatment of the CAISO tariff. Option 3 contemplates separating the CAISO tariff to enable a standalone tariff administered by the RO, while Option 2.5 contemplates the CAISO continuing to administer, but not govern, a single integrated tariff. Option 2.5 offers the advantage of simplicity compared with Option 3.0; separating the tariff would require a substantial investment of time and resources, as detailed above in this paper. It is also possible that Option 2.5 could also facilitate lower costs and other reduced obligations, which are currently being investigated by the Launch Committee. For these reasons, the Launch Committee has focused more intently on Option 2.5, setting Option 3.0 to the side for now, to gain stakeholders viewpoints on the critical underlying tension between Options 2 and 2.5: independence vs. cost.

C. Option 4 - Spinoff Market Operator with Full 205 Rights

Option 4, which contemplates a fully independent and separate RO that assumes full responsibility for a separate tariff and takes on an operational role, received a relatively high degree of support from some stakeholders, given the full independence from the CAISO that it proposes. The Launch Committee's exploration of options, however, has highlighted the strong tension between two critical goals: independence and leveraging existing infrastructure (i.e., keeping costs low). Option 4, by enabling a complete organizational separation from the CAISO, would require participants to fund substantial levels of start-up and ongoing operations costs. Costs would include among other things securing substantial office space, market operations equipment, software, and infrastructure, staff, and capitalization of necessary reserves. The data cited above about costs associated with the market operations of the CAISO should serve as anchoring information for what Option 4 might cost. Option 4 would almost certainly require legislative change in California to enable CAISO BA participation, just as the other options do, however, the necessary change would likely be more contentious and comprehensive than what might be required for other options.

The Launch Committee recognizes that, as some stakeholders suggest, the RO could evolve towards Option 4 should stakeholders, including those in California, consider the benefits to outweigh the costs or non-California entities elect to pursue a more thorough suite of RTO-related services. While Option 4 maximizes some of the criteria that the Launch Committee prioritized for the Pathways Initiative effort, it has significant timeline and cost constraints and a higher political risk. Since there are other options that deliver the same or only slightly fewer benefits with lower costs and a shorter timeframe, the Launch Committee has decided not to pursue further evaluation of Option 4 at this time.

V. Next Steps and Stakeholder Feedback

A. Step 1

The Launch Committee will evaluate the stakeholder feedback and consider adjustments to the proposal. If the Launch Committee decides to recommend Step 1, we will work with the CAISO to present this proposal to the CAISO BoG and WEIM GB. If those bodies accept the proposal, the CAISO will conduct its own stakeholder process and evaluate a final proposal for potential approval.

B. Step 2

Given the complexity of the options the Launch Committee has explored for Step 2, the Launch Committee is seeking more fundamental input from stakeholders regarding comfort with and preference for the different aspects of the proposed options that create various tradeoffs. The Launch Committee will evaluate the stakeholder feedback received, continue to research open issues, and then develop a more refined proposal.

It is important to note that, to date, the Launch Committee has focused on exploring the options described in the Evaluation Framework Paper. If stakeholders have ideas of other structures or options that could mitigate some of the tradeoffs evaluated in this paper, the Launch Committee welcomes those ideas.

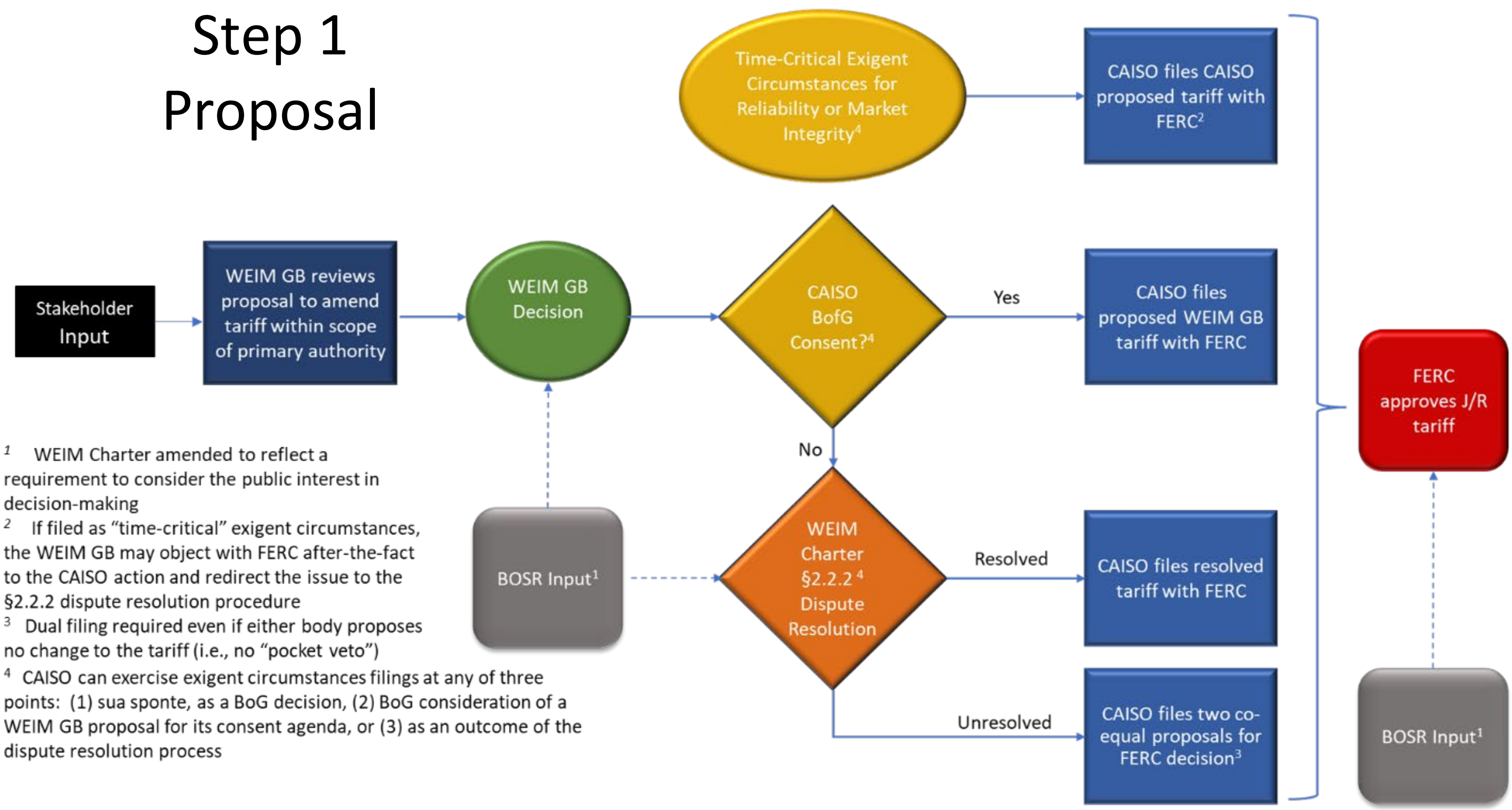
C. Stakeholder Feedback

Readers may refer to the accompanying stakeholder guidance document for the specific questions and areas feedback sought by the Launch Committee on this straw proposal.

Appendix A – Option Comparison Table

	Status Quo	Option 0	Option 0.5	Option 1	Option 2	Option 2.5	Option 3	Option 4
New Corporate Entity	No	No	No	Yes (RO)	Yes (RO)	Yes (RO)	Yes (RO)	Yes (RO)
Market Rules Governance	Joint	EIM Primary	EIM Sole	RO Primary	RO Sole	RO Sole	RO Sole	RO Sole
CAISO Veto Rights (Market Rules)	Yes (sole filer; Exigent Circumstances)	Time-Critical Exigent Circumstances	Time-Critical Exigent Circumstances	Time-Critical Exigent Circumstances	No	No	No	No
205 Filing Legal Rights	CAISO	CAISO	CAISO	CAISO	RO Sole	RO Sole	RO Sole	RO Sole
Vesting of Authority	Delegation	Delegation	Delegation	Delegation	Delegation or Transfer	Transfer	Transfer	Transfer
Dispute Resolution Outcome	Single CAISO filing	CAISO files both WEIM GB and Board proposals	CAISO files WEIM GB proposal	CAISO files both WEIM GB and Board proposals	N/A	N/A	N/A	N/A
Market Tariff Administration	CAISO	CAISO	CAISO	CAISO	CAISO	CAISO	RO Sole	RO Sole
Market Operation	CAISO	CAISO	CAISO	CAISO	CAISO	CAISO	CAISO	RO Sole
CAISO/RO Relationship	Tariffed	Tariffed	Tariffed	Tariff / Market Services Agreement	Tariff / Market Services Agreement	Tariff / Market Operating Agreement	Market Operating Agreement	None

Appendix B – Step 1 Schematic



[1] WEIM Charter amended to reflect a requirement to consider the public interest in decision-making

[2] If filed as "time-critical" exigent circumstances, the WEIM GB may object with FERC after-the-fact to the CAISO action and redirect the issue to the §2.2.2 dispute resolution procedure

[3] Dual filing required even if either body proposes no change to the tariff (i.e., no "pocket veto")

[4] CAISO can exercise exigent circumstances filings at any of three points: (1) sua sponte, as a BoG decision, (2) BoG consideration of a WEIM GB proposal for its consent agenda, or (3) as an outcome of the dispute resolution process

Appendix C – Current Joint Authority over Market Rule Changes

From the Charter for WEIM and EDAM Governance, as amended by the CAISO Board of Governors on March 20, 2024[31]

2.2.1 Decisions and Recommendations about Market Rule Changes

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

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

- "Advisory authority": The WEIM/EDAM Governing Body may provide advisory input over proposals to change or establish tariff rules that would apply to the real-time and/or day-ahead market but are not within the scope of joint authority.

[31] Redline available at: http://www.caiso.com/Documents/AttachmentB-CharterforEnergyImbalanceMarketGovernanceproposedredline.pdf

APPENDIX D

The Public Interest and Market Governance

March 5, 2024

Regulators catalyzed the West-Wide Pathways Initiative to maximize customer benefits across as broad a footprint as possible.[32] The enabling statutes for the CAISO set a foundation and template for this focus on customer benefits that can be extended to all customers served by the market operator.[33]

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

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

Customer Interest

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

"The independent board should be diverse, represent a range of sectors and geographies, and be expert enough to *substantively engage in decision making to balance diverse interests, including and beyond market participants.* The board may be advised by other bodies and delegate authority, though transparency in delegated decision making remains critical. *Customers are best protected when the board can directly weigh public benefit across the market footprint."*[34]

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

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

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

[34] Emphasis added. The Multistate Governance Principles are available at https://www.westernenergyboard.org/wp-content/uploads/Multistate-Governance-Principles-4-25-22.pdf

The enabling statutes that led to the creation of the CAISO set out expectations for the market that similarly center customer interests, reliability and affordability. The market is a tool for efficient resource dispatch and cost reductions.[35]

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

State Policies

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

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

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

APPENDIX E

Proposed Modifications to WEIM Charter

2. Mission and Responsibilities

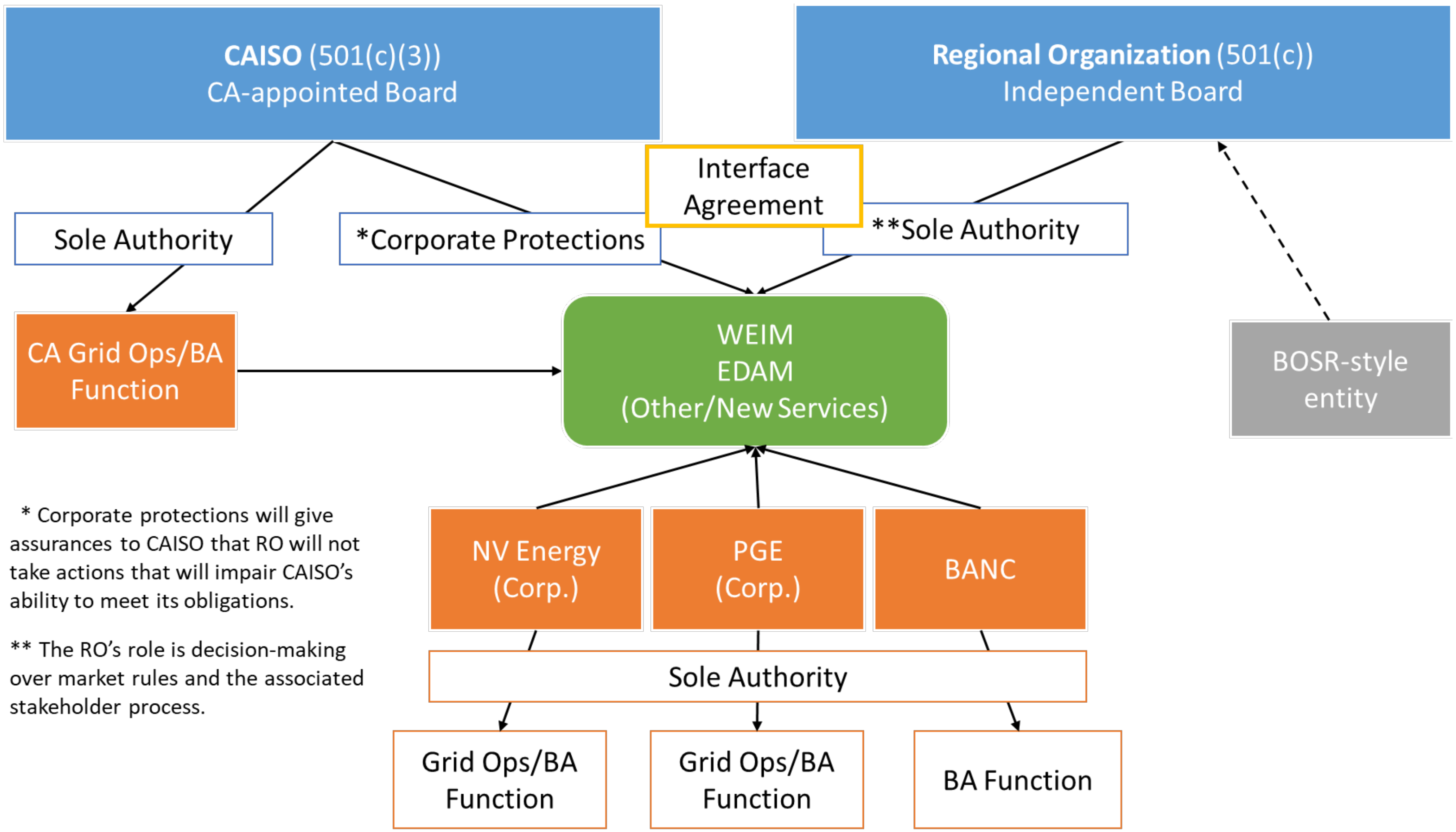
2.1 Mission: The WEIM Governing Body shall promote, protect and expand the success of the WEIM and EDAM for the benefit of its participants as a whole and the consumers they serve, with due consideration of the interests of all participants in the ISO's real-time and day-ahead markets, including both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

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

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

Appendix F – Step 2 Schematics

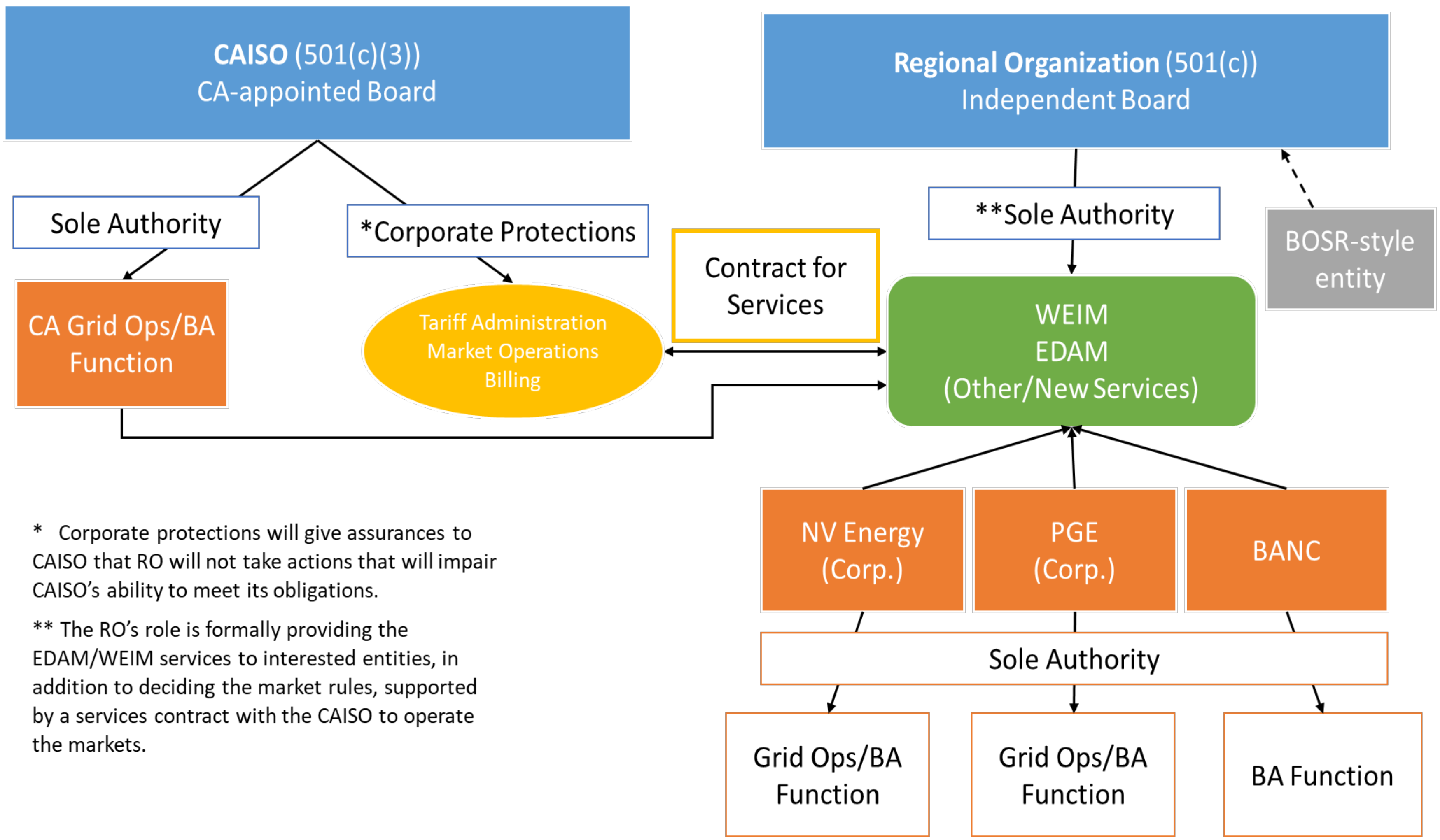
Option 2 for WEIM/EDAM



* Corporate protections will give assurances to CAISO that RO will not take actions that will impair CAISO's ability to meet its obligations.

** The RO's role is decision-making over market rules and the associated stakeholder process.

Option 2.5 for WEIM/EDAM



* Corporate protections will give assurances to CAISO that RO will not take actions that will impair CAISO's ability to meet its obligations.

** The RO's role is formally providing the EDAM/WEIM services to interested entities, in addition to deciding the market rules, supported by a services contract with the CAISO to operate the markets.

Appendix G – Evaluation Criteria

#	Criteria
1	Maximized net benefits, including reliability, affordability and environmental benefits, recognizing startup and ongoing costs, and considering both new benefits and impacts on existing benefits.
2	Equitable representation across the Western region and among all market participants, including for a wide range of legal entities.
3	A governance structure independent of any single state, participant, or class of participants.
4	Organizational flexibility to accommodate future expansion of regional solutions and to create a credible and timely path to a voluntary RTO, including the balancing authority and transmission planning functions.
5	Optionality to allow market participants to choose the market services they value.
6	Preservation of existing balancing authorities' ability to maintain independence, authority, and governance.
7	An implementation timeline that promotes broad market participation.
8	Respect for state authority to set procurement, environmental, reliability and other public interest policies.

Appendix H - Evaluation Criteria Comparison Chart for the Commencement of Step 2

	Option 1	Option 2	Option 2.5	Option 3	Option 4
1. Maximized net benefits	(++) Because Option 1 leaves all market operations and associated institutional capabilities with the CAISO, the RO start-up and operating costs would be small, likely covering the RO board costs, and minimal policy and legal staff. Minimal disruption or separation of the market operation functions and staff would maintain existing reliability, affordability, and environmental benefits, although expanding those benefits would be limited to the additional market services the RO would be able to offer without independence from the CAISO BoG.	(+++) Because Option 2 leaves all market operations and associated institutional capabilities with the CAISO, the RO start-up and operating costs would be small, likely covering the RO board costs, and minimal policy and legal staff. Minimal disruption or separation of the market operation functions and staff would maintain existing reliability, affordability, and environmental benefits.	(?) With the transfer of the responsibility over the market service offering from the CAISO to the RO, there is likely an increase in costs associated with the number of staff, assets, and liabilities. The scale of these costs would depend greatly on the legal structure and regulatory responsibilities the RO takes on.	(--) Option 3 provides some cost savings as compared to Option 4 since the CAISO continues to operate the market. However, it will likely incur higher costs than Options 2 and 2.5, given the increase in regulatory responsibilities and other liabilities associated with overseeing a service offering and a completely separate tariff.	(----) Option 4 would likely require significantly more start-up and operating costs than other options because it would likely duplicate investments many market participants have already made in CAISO through the WEIM and EDAM. While this approach may attract a larger footprint in concept, it is difficult at this time to foresee the incremental value offsetting its greater costs.

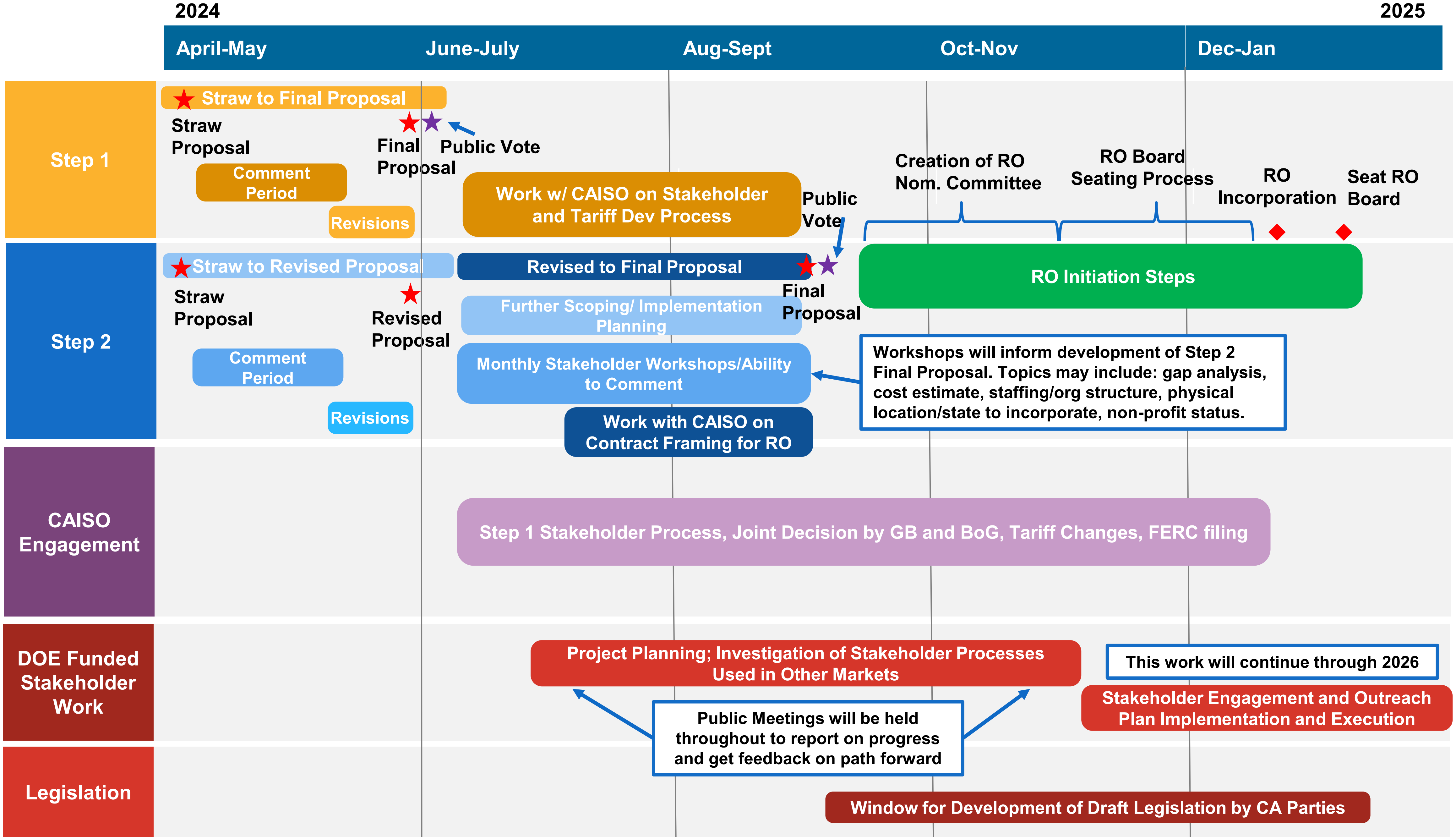
	Option 1	Option 2	Option 2.5	Option 3	Option 4
2. Equitable representation among all market participants	(++++) The board of the RO would be fully independent in all options. The RO-specific stakeholder engagement process may be evaluated and determined through the process outlined in the Launch Committee's U.S. DOE grant application submitted in January 2024.				
3. Independent governance structure	(+) Option 1 materially increases independence from the status quo, but up to the limit of giving the RO primary authority over market rules—an outcome that Option 0 would already achieve in Step 1. Option 1 creates additional institutional independence but little or no additional legal independence beyond Option 0.	(++/+++) In Option 2, the CAISO BoG delegates or transfers sole authority over the market rules to the RO, including all control over the content development and stakeholdering process to determine what the CAISO BoG will file. The RO has sole authority to file under section 205 or to determine the content of 205 filings, subject to common corporate protections for the CAISO. The CAISO continues market operations and tariff administration under a contractual agreement with the RO. The CAISO BoG would not approve or have any dispute resolution rights over changes to the market rules.	(+++) Option 2.5 has the same governance independence over market rules as Option 2 and goes beyond Option 2 by adding other institutional responsibilities and obligations. These include legal and compliance obligations that may create more flexibility and opportunities for increased independence as the RO evolves. The market rules remain in the CAISO tariff, and the CAISO operates the markets as a vendor under contract with the RO. Option 2.5 offers greater *institutional* independence but probably not greater *governance* independence.	(+++) Option 3 provides a similar level of independence as Option 2.5, with the primary difference being that the RO has its own tariff that has the market rules, rather than authority over the market rules contained in sections in the CAISO tariff. The CAISO would operate the markets as a vendor under contract with the RO.	(++++) Option 4 maximizes governance and institutional independence with no ongoing operational relationship between the RO and CAISO.

	Option 1	Option 2	Option 2.5	Option 3	Option 4
4. Organizational flexibility	(+) Because the CAISO BoG retains some material authority over changes to market rules, the limited governance independence may limit the RO's ability to attract other Western participants to future service offerings. The RO could still offer separate services, either with authority nested in the integrated CAISO tariff, or by filing its own separate tariff.	(++/+++) The RO could develop new and additional market services under a new and separate tariff. It could also obtain greater authority over other services within the CAISO's integrated tariff. To offer a fuller suite of RTO services in the future, the RO will likely need greater institutional capabilities beyond what would be required to govern the energy markets alone in Option 2. The CAISO BoG would also likely need to approve transferring governance authority over additional services in the future.	(++/+++) Option 2.5 may offer similar or slightly more flexibility than Option 2 since the RO would already have the additional institutional capabilities beyond Option 2 to offer new services directly to market participants. Unlike Option 3, the RO would not yet have a separate tariff filed at FERC. Like in Option 2, the CAISO BoG would likely need to approve transferring governance authority over additional services in the future (as opposed to new services offered by the RO).	(+++) Because the RO under Option 3 has its own tariff, it may be situated slightly better to add new services to that separate tariff. In addition, like in Option 2.5, the RO would have additional institutional capabilities beyond Option 2 to offer such services. Like in Options 2 and 2.5, the CAISO BoG would likely need to approve transferring governance authority over additional services in the future (as opposed to new services offered by the RO).	(++++) Option 4 would enable the RO to develop additional market services as Western stakeholders desire without additional material governance changes (aside from that required by the specific market services).
5. Optionality for new services	(-) Because adding new market services would likely be more limited in practice (given the more limited governance independence of Option 1), market	(++) For Options 2, 2.5, and 3, future optionality will depend on the institutional capability of the RO to add and offer new market services, on the CAISO's willingness to operate	(++) Same as Option 2	(++) Same as Option 2	(++/--) Since Option 4 is fully independent, it can offer whatever market services Western stakeholders desire within a structure that makes operational and economic sense.

	Option 1	Option 2	Option 2.5	Option 3	Option 4
	participants may have more limited options for new services.	those services (if the RO doesn't plan to conduct operations itself), and on the contractual agreement between the two entities.			However, unless Option 4 spun off the transmission control and other non-BA functions of the CAISO, in addition to the energy markets function, the optionality promised by Option 4 might preclude transmission control integrated with the existing CAISO controlled grid.
6. Preservation of BA independence	(++) Option 1 would not change anything about any BA functions and authority.	(++) Options 2, 2.5, and 3 are all built with the assumption that CAISO would retain control over its BA. Evaluation is ongoing for these options about how to create a situation that enables the CAISO BA to choose to participate in a new RO's service offering in a similar way to other BAs.	(++) Same as Option 2	(++) Same as Option 2	(++) Option 4 would remove all market functions from CAISO, leaving the BA functions and authority (along with other non-market functions such as transmission control and resource adequacy provisions) under the CAISO Board of Governors. The CAISO BA would have the same opportunity to join the RO as other BAs in the West.

	Option 1	Option 2	Option 2.5	Option 3	Option 4
7. Timeline for Implementation	(+++) Because Option 1 makes minimal change to the CAISO governance structure beyond Option 0, and would likely not require legislative change, it could be implemented relatively quickly. The process that would likely take the longest is FERC approval of a revised tariff.	(+) Option 2 likely requires legislative change in California. However, if and when a bill passes, implementation of Option 2 should be able to occur relatively quickly since the RO's responsibilities are limited to sole governance authority, as opposed to additional institutional capabilities that mirror an RTO/ISO. This would also require FERC approval of tariff changes.	(-) Options 2.5 and 3 likely require legislative change in California. Because there would also be an increased level of legal and compliance obligations as well as some form of assignment or other complexity with existing contracts between the CAISO and market participant counterparties, implementation would likely take longer than Option 2. This option would also require FERC approval of tariff changes.	(-/--) Same as Option 2.5, but with the added time required to separate out the current CAISO tariff into separately filed tariffs.	(----) Because of the complexity of fully separating the market and BA functions of CAISO, as well as the need to start at least some of the business infrastructure of the RO as a full market operator from scratch, Option 4 will take longer than the other options that the Launch Committee is evaluating. With utilities in the West making day-ahead market decisions in 2024, some of which are dependent on having a path to market services beyond a day-ahead market, the implementation timeline of Option 4 creates significant challenges.
8. Respect for state authority	(++++) All of the options would include development of a new RO with a governance structure that would incorporate processes and procedures for adequate state representation and input that ensure that the RO operates market services with the public interest in mind and in a way that maintains each state's equal ability to set and enforce its own energy policies and standards. The Launch Committee is currently evaluating ways to strengthen the role of the states in the structure and governance of the RO.				

	Option 1	Option 2	Option 2.5	Option 3	Option 4
Political viability/legal risk	The legal analysis indicated moderately low legal risk in California under current law, suggesting that legislative change would not be necessary to move to this structure. Legal risk before FERC is also low.	The legal analysis indicated material legal risk in California under current law and a likely need for legislative change to implement this structure. Legal risk before FERC is moderately low, with a lack of precisely analogous precedents for this structure.	The legal analysis indicated material legal risk in California under current law and a likely need for legislative change to implement this structure. Legal risk before FERC is moderately low, with a lack of precisely analogous precedents for this structure.	The legal analysis indicated high legal risk in California under current law and a likely need for legislative change to implement this structure. Legal risk before FERC is low.	The legal analysis indicated high legal risk in California under current law and a likely need for legislative change to implement this structure in a way that will facilitate participation by the CAISO BA. The members of the Launch Committee have identified Option 4 as potentially contentious politically, with much greater challenge for legislative support. Legal risk before FERC is low.



Timing and workstreams reflect best information available at the time of publication and are subject to change based on stakeholder feedback.

MCE Empowering Our Clean Energy Future
CONTRA COSTA | MARIN | NAPA | SOLANO

MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY
BENICIA | CONCORD | DANVILLE | EL CERRITO | FAIRFIELD | HERCULES | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY
PINOLE | PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

DRAFT

MCE Board of Directors Meeting
Thursday, May 16, 2024
6:30 P.M.

Public comments may be made in person or remotely via the details below.

1125 Tamalpais Avenue, San Rafael, CA 94901 (MCE)
2300 Clayton Road, Suite 1150, Concord, CA 94920 (MCE)
11780 San Pablo Ave., Ste D, El Cerrito, CA 94530 (Contra Costa County)
955 School Street, Napa, CA 94559, City Hall Committee Room (City of Napa)

Remote Public Meeting Participation
Video Conference: https://zoomto.me/F6Ogt
Phone: Dial (669) 900-9128, Meeting ID: 890 0487 7785, Passcode: 525690

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1. Roll Call/Quorum

2. Board Announcements (Discussion)

3. Public Open Time (Discussion)

4. Report from Chief Executive Officer (Discussion)

5. Consent Calendar (Discussion/Action)
   C.1 Approval of 3.21.24 Meeting Minutes
   C.2 Approved Contracts for Energy Update
   C.3 Member Community Voting Shares Annual Update

6. Board Member Additions to Committees (Discussion/Action)

7. MCE's Load Management Standards Plan (Discussion/Action)

8. Legislative Update (Discussion)

9. Board & Staff Matters (Discussion)

10. Adjourn

The Board may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3674 or ada-coordinator@mcecleanenergy.org at least 72 hours before the meeting start time to ensure arrangements are made.