



**Public Advocates Office Comments on the West-Wide Governance Pathway Initiative
Launch Committee Step 2 Draft Proposal and Revised Sector Proposal**

October 25, 2024

The Public Advocates Office (Cal Advocates) is the state-appointed independent ratepayer advocate at the California Public Utilities Commission (CPUC). Our goal is to ensure that all Californians have affordable, safe, and reliable utility services while advancing the state's environmental goals. Our advocacy efforts to protect California customers include energy, water, and communications regulatory matters.

Cal Advocates submits the following responses to the questions posed in the Stakeholder Comment Template.¹ In summary and following the structure of the Draft Proposal, Cal Advocates recommends:

High-Level

- smaller incremental steps to regionalization that will lead to tangible ratepayer benefits, including lower electricity rates and bills for customers;

Chapter 1

- do not initiate an Option 2.5 feasibility study until at least two years after a Step 2 launch;
- pursue options that do not lead to net increases in electricity rates and bills, and avoid options with evaluation criteria that risk incurring the highest costs;
- analyze the Regional Organization's (RO) assumption of greater liability in place of the California Independent System Operator (CAISO) to better quantify the benefits of Option 2.5;
- the RO Board should not have input into the CAISO's hiring decisions;
- implement the proposed process to analyze the CAISO tariff, clarify authorities, and reorganize sections that may have authorities individually relevant to both the CAISO and the RO;
- empower the Body of State Regulators (BOSR) to confirm a simple majority of load and a simple majority of states to approve any proposal that goes to the RO Board for a vote;

¹ Available at: https://www.westernenergyboard.org/wp-content/uploads/Stakeholder-Comment-Template_Step-2-Draft-Proposal_Final-1.pdf.

- allocate shared Federal Power Act Section 205 filing rights between the BOSR and the RO Board;
- allow the CAISO to determine how it should best participate as a Balancing Area (BA) in the RO and protect its right to advocate for its unique BA needs;
- reimburse CAISO if its staff members are called upon as subject matter experts to consult with the RO to ensure that the CAISO BA itself does not subsidize the RO;
- apply the existing appeal process for Business Practice Manual (BPM) changes at the CAISO to the RO;

Chapter 3

- adopt ex parte rules for communications with the RO Board;
- initially consider more than seven members for an RO Board;
- designate one seat on an RO Board to serve the interests of ratepayers;

Chapter 4

- fund the BOSR via a tariff from the outset of Step 2;
- implement a separate Consumer Advocate Organization (CAO) with a tariff-based funding mechanism;
- guarantee access for the CAO (via the Department of Market Monitoring [DMM]) to transmission expansion modeling;
- incorporate improved protections to ensure that the DMM will be adequately empowered to sustain an effective and fully independent role with the CAISO BA and the RO by: (a) reserving one seat for a consumer advocate representative and one seat for a BOSR representative on the DMM Oversight Committee and (b) adding one consumer advocate representative and one BOSR representative to the joint hiring committee for any future DMM heads;
- revise the DMM charter to reflect the RO's commitment to the public interest;

Chapter 5

- provide a minimum two-week public notice period for both Stakeholder Representative Committee (SRC) meetings and SRC votes;
- define the threshold for “adverse effects” and clarify what happens if a proposed initiative identifies a potential adverse effect;
- ensure that adverse effects cannot be weaponized as a veto for any faction that disagrees with a proposal;
- add another comment period to steps two and five of the roadmap development process;
- clarify that Standing Committees created by the SRC should have open selection;
- publish vote tabulations with several participant “demographic” indicators;

- confirm that voting processes will be automated and accommodate virtual voting and specify an option for proxy or alternate voting;
- protect sector self-determination and remove RO Board review of the self-defined minimum quorum requirements for a vote;
- revert to the previous seat allocation for the SRC and increase the number of Consumer Advocate seats to two;
- incorporate declarations of any financial interests in, or membership dues paid to, other participants in the RO, into SRC membership agreements;
- consider using “sector” in lieu of “stakeholder” in the title of the Stakeholder Representative Committee;

Chapter 6

- remove Chapter 6 to avoid presupposing outcomes without providing adequate time for the RO to establish itself; and

Appendix D

- incorporate several additions to the Stakeholder Registration and Participation Agreement to improve transparency and mitigate against the risk of sector shopping and astroturfing.²

1. ***Support for Step 2 Draft Proposal:*** Please indicate your level of support for the Step 2 Draft Proposal. Please provide general reactions, an indication of the benefits of the structural elements that are being proposed, and if you think that the Draft Proposal is on the right track.

The Step 2 Draft Proposal is the product of extensive efforts and substantial engagement by stakeholders over the past year and is a good start. However, Cal Advocates has expressed and continues to hold strong reservations about the Step 2 Draft Proposal. While Cal Advocates is encouraged by the inclusion of a Consumer Advocates Organization in the proposal, we remain concerned about the imbalance between supply and load on the Stakeholder Representative Committee,³ the speed of the proposed transition

² Merriam-Webster defines astroturfing as “organized activity that is intended to create a false impression of a widespread, spontaneously arising, grassroots movement in support of or in opposition to something (such as a political policy) but that is in reality initiated and controlled by a concealed group or organization (such as a corporation).”

³ See Cal Advocates’ response to Question 6.

towards Option 2.5,⁴ and the lack of Federal Power Act Section 205 filing rights for the BOSR,⁵ among other things.

2. **Stepwise approach:** *The Draft Proposal would continue the stepwise approach for Step 2, beginning with Option 2.0, followed by the RO commencing a feasibility study within 9 months of its formation. Depending on the results of the study, the RO would assume further responsibility in the form of Option 2.5 or a similar structure. This stepwise approach is motivated by a desire to continue early momentum towards regional governance by standing up the RO in the near term, while recognizing the time required to create the infrastructure and financial reserves to enable Option 2.5, and the need to better understand the costs, benefits and structural specifics of Option 2.5. The RO would then have the ultimate authority, with stakeholder input, to make decisions about next steps from and after its formation. Does this stepwise approach create a platform that can achieve the desired level of independence at an appropriate cost to customers?*

Cal Advocates supports smaller incremental steps to regionalization that will lead to tangible ratepayer benefits, including lower electricity rates and bills for consumers. The West-Wide Governance Pathways (WWGPI) has moved exceptionally fast for a stakeholder initiative and far outpaced previous efforts towards regionalization. The WWGPI has already achieved a major shift in CAISO and Western Energy Markets (WEM) governance in Step 1. While stakeholders understandably wish to capitalize on forward momentum, starting a feasibility study less than nine months into a new Step does not provide one year's worth of lessons to analyze. Indeed, the Launch Committee (LC) states, "we have concluded that a several-year transition period to reach Option 2.5 makes the most sense."⁶ As such, Cal Advocates recommends delaying an Option 2.5 feasibility study until at least two years after a Step 2 launch.

3. **Cost:** *The Launch Committee has created a high-level preliminary cost estimate for Option 2.0 and 2.5. Please provide feedback on the level of staffing and the costs for both options. Do these estimates seem reasonable, and would stakeholders be willing to shoulder these costs associated with increased independence?*

⁴ See Cal Advocates' response to Question 2.

⁵ See Cal Advocates' response to Question 8 in these comments, specific to Chapter 1.

⁶ Draft Proposal at 25.

Cal Advocates urges the prioritization of implementation costs in evaluating Option 2 versus Option 2.5. The Launch Committee (LC) has consistently acknowledged that arrangements that jump to greater institutional independence will come with commensurately increased costs. The illustrative cost estimates provided by LC expect Option 2.0 to cost around \$14 million annually and \$24 million for Option 2.5.⁷ Allocating these costs in the same manner as the CAISO's Grid Management Charge, these translate to \$0.0281/Megawatthour (MWh) for Option 2.0 and \$0.0498/MWh for Option 2.5.⁸ In future proposals, the LC should supplement these illustrative cost estimates with a production cost model with inputs and assumptions informed by stakeholders, that utilizes the same assumptions as the budget estimate to provide useful information about all-in net benefits to ratepayers. But at a time when electricity rates across the West are increasing, the WWGPI and stakeholders should pursue options that do not lead to net increases in electricity rates and bills and avoid options with evaluation criteria that risk incurring the highest costs. As the State Consumer Advocates' *Call to protect customers and commit to the public interest* states, steps towards regionalization should not lead to "net increase in retail electricity rates/bills for residential/small commercial consumers [...] In simplest terms: 'Do No Harm!'"⁹

One potential advantage that Option 2.5 offers California ratepayers is reduction of liability risk to the CAISO. The LC notes that, "[t]he RO's assumption of greater responsibility may reduce equivalent liability and associated expense currently borne by the CAISO, but we have not conducted an examination of how many offsetting costs might conceivably shift from the CAISO to the RO."¹⁰ Absent this analysis, it is unreasonable to expect a more equal distribution of costs among participants through reduced liability to the CAISO and thereby California ratepayers.

Beyond financial costs and benefits, the LC recommends "advisory authority of the RO Board to provide non-controlling input on the hiring of one or more officer-level senior CAISO managers responsible for the business line (or "vertical") that oversees the markets."¹¹ The LC

⁷ Draft Proposal at 34.

⁸ Estimate based only on BAs which have committed to join EDAM or have indicated a leaning to EDAM. Using a more generous assumption of all utilities in the WECC west of the Rockies, the cost range decreases to \$0.0182/MWh for Option 2.0 and \$0.0281/MWh for Option 2.5. Draft Proposal at 38.

⁹ Gridworks, *State Consumer Advocates and Western Electricity Regionalization: A call to protect consumers and commit to the public interest*, March 2024 at 2. Available at: https://gridworks.org/wpcontent/uploads/2024/04/State-Consumer-Advocates-And-Western-Electricity-Regionalization_Final-Report.pdf.

¹⁰ Draft Proposal at 21.

¹¹ Draft Proposal at 27.

clarifies that the CAISO would “delegate to the RO Board the authority to sign off on one or more officers at the Vice President level who oversee market services whose policies will be governed by the RO.”¹² The Matrix of Proposed RO Input on CAISO Management suggests that the RO Board would have a right of “[c]onsultation to address any material concerns for verticals with mixed functions affecting markets” when CAISO hires non-market Vice Presidents.¹³ The LC justifies these recommendations on the basis that the CAISO is the sole vendor that can provide specific, core services to the RO.

The RO should not give input on CAISO’s hiring decisions. Signing off is a higher level of authority than an advisory role and is not necessary. Such input is not necessary to operationalize Option 2.0. The LC’s hiring recommendations may have merit when or if the CAISO internal structure is reorganized to better reflect areas where its primary role is as a vendor to the RO. However, at this time, a blanket requirement that the RO Board sign off on all CAISO officer-level hires is inappropriate.¹⁴

4. ***Tariff approach:*** *The Draft Proposal recommended maintaining a single integrated tariff at the outset, and embarking on an effort to organize the tariff into the areas of sole CAISO, sole RO, and where there is overlapping shared authority. This effort would lay the groundwork to eventually to progress to separate tariffs, should that separation be desired by stakeholders. Do you support this approach? If not, please provide an alternative approach and as much explanation as possible on how the alternative would better address stakeholder needs.*

The LC outlines a division of tariff authority split between “(1) the RO sole Section 205 authority, (2) the CAISO sole Section 205 authority, and (3) shared authority between the RO and CAISO.”¹⁵ The LC acknowledges that “Preliminary analysis of the tariff reveals 14 sections that could be separated to create a scope that would be RO sole authority while moving CAISO specific provisions to a section that would be CAISO sole authority,” and describes a process to delineate authorities between CAISO and the RO within the applicable

¹² Draft Proposal at 28.

¹³ Draft Proposal at 31.

¹⁴ Additionally, the LC notes that such an arrangement would carry its own labor law risk because “it does create a potential risk of joint employment claims by the affected CAISO management hires.” Draft Proposal at 29.

¹⁵ Draft Proposal at 40.

tariff sections.¹⁶ Cal Advocates discusses its concerns with the formulation of RO sole Section 205 authority in response to Question 8 of these comments, specific to Chapter 1. Beyond concerns about Section 205 authority, Cal Advocates appreciates and supports the LC's proposed process to analyze, clarify authorities, and reorganize the 14 identified sections.

5. ***Department of Market Monitoring (DMM):*** *The Draft Proposal recommended a joint reporting structure for DMM and RO shared decision making in DMM upper management hiring. Would this change enable sufficient independence? If you think that the proposed approach does not achieve sufficient independence, please provide an alternative approach that would better address stakeholder needs, including any cost implications.*

Cal Advocates recognizes the intent of the Draft Proposal is to ensure that the DMM is sufficiently independent to provide market oversight for both the CAISO BA's functions and the markets overseen by the RO. However, the Draft Proposal fails to incorporate enough assurances that the DMM will be adequately empowered to sustain an effective and fully independent role with the CAISO BA and the RO. DMM will remain an internal market monitor, at least at the outset of the RO.¹⁷ Cal Advocates previously discussed the tradeoffs between internal and external market monitors and concluded that an internal market monitor is sufficient.¹⁸ Nonetheless, WWGPI stakeholders should consider the disadvantages of reliance on an internal market monitor and seek to mitigate those disadvantages. Internal market monitors face a unique set of structural challenges. It can be difficult to maintain an organizational culture that will continually engage in robust, public disagreements with a sibling organization made up of colleagues. Individual employees may face incentives to avoid conflict to enhance their eligibility for future opportunities at the CAISO (on the BA side). It is crucially important to provide an oversight structure that holds the DMM accountable to appropriately high standards, particularly so when it is an internal body.

The CAISO Board of Governors, WEM Governing Body, and future RO Board also face incentives of their own related to the DMM. Negative feedback and criticism from DMM may reflect poorly on the oversight by these bodies. No board members would want to be

¹⁶ Draft Proposal at 42.

¹⁷ Draft Proposal at 69.

¹⁸ *Public Advocates Office Comments on the August 15, 2024 West-Wide Governance Pathway Initiative Public Interest Workshop*, August 29, 2024, at 11. Available at: <https://www.westernenergyboard.org/wp-content/uploads/l.-Public-Advocates-Office-Comments-on-WWGPI-Public-Interest-Workshop.pdf>

held responsible for problems that may develop under their ultimate authority. Thus, the incentives for the highest level leaders skew towards a preference for a DMM that is less likely to support disruptive, though beneficial, policies.

To that end, Cal Advocates insists on the central importance of reserving one seat for a consumer advocate representative and one seat for a BOSR representative on the DMM Oversight Committee.¹⁹ Likewise, one consumer advocate representative and one BOSR representative should be added to the joint hiring committee for any future director of DMM. Including state regulators and consumer advocates will provide additional protection of the public interest. State regulators and consumer advocates regularly engage in advocacy and are more likely to be able to provide the necessary constituency support to ensure that DMM leaders and staff accomplish their mission.

6. **Sectors:** *The Launch Committee is holding a workshop (10/7) focusing on sectors and seats on the Stakeholder Representatives Committee (SRC), and will release a revised sector proposal on 10/14. Please share your thoughts on the revised sector proposal and if this component of the overall stakeholder process would allow for meaningful participation and all stakeholder voices to be heard.*

Cal Advocates appreciates that “[m]eetings of the SRC will be public, recorded, and available for remote participation”²⁰ and recommends that SRC meetings should also have a minimum two-week public notice period. The two public notice period should also apply to any vote of the SRC to allow individual stakeholders and sectors to establish positions and develop consensus if necessary.

The LC reasons that, “If the RO staff determines that a tariff change is required and the Public Policy Committee determines that there will not be adverse impacts to other state, local, or federal policies, the initiative is treated the same as a Compliance/Non Discretionary Initiative.”²¹ However, the adverse effect standard remains vague. First, the threshold for ‘adverse effects’ is undefined. Second, it is unclear what happens if an initiative proposal (not a final initiative) identifies a potential adverse effect. If any adverse effect identified is enough to disqualify an initiative from proceeding to the stakeholder process, this requirement could become a poison pill to eliminate state and local policy compliance proposals. Such a veto

¹⁹ These would be in addition to the LC recommendation to add RO members to the DMM Oversight Committee in equal number to the CAISO governors.

²⁰ Draft Proposal at 86.

²¹ Draft Proposal at 82-83.

point could be weaponized by any faction that initially disagrees with a proposal. Many proposals at the CAISO rely on the existing CAISO stakeholder initiative process to work through and address potential adverse effects and get to consensus solutions. Therefore, adverse effects should not disqualify a proposal but should instead flag potential problems for initiative participants to solve or weigh against beneficial effects. As such, the current reasoning for Compliance/Non Discretionary Initiatives is self-defeating.

The LC outlines seven steps for the roadmap development process and the second step states, “Draft Roadmap published for public comment.”²² The LC should add another comment period to accompany step five, “RO Staff revises and publishes the Final Roadmap.”²³

The LC states that “[t]he SRC may create Standing Committees to work on initiatives within broad categories like [greenhouse gas] or other continuing issues.”²⁴ The LC should clarify that Standing Committees created by the SRC should have open selection and solicit volunteers from the entire stakeholder community to join them. An open committee recruitment model would build trust among stakeholders, diversify the voices working on an issue, and allow the representation of multiple perspectives.

Cal Advocates appreciates and supports the LC recommendation that “[v]oting results will be made public, identify the voting entity, and should be able to be tabulated across different groups and sub-groups to convey more detailed information.”²⁵ The tabulations should show whether an entity is generation-owning, load-serving, profit-maximizing, non-rent seeking, a public entity, Balancing Area, and include weights for the annual energy served by the entity in each participating state²⁶ (based on the most recent available data). The raw data for each vote should be provided in an active Excel workbook to facilitate analysis by the RO Board, stakeholders, and the public. The Excel workbook should contain “demographic” characteristics for each voting entity. These characteristics would be collected via the SRC membership agreements and updated annually (see the response to Appendix D for edits to enable this transparency). The Excel workbook should include a row for each entity and a column for each of the following:

²² Draft Proposal at 85.

²³ Draft Proposal at 85.

²⁴ Draft Proposal at 89.

²⁵ Draft Proposal at 90.

²⁶ For example, data reported by the Energy Information Administration, although an alternative data source may be necessary to cover participants outside of the United States. See <https://www.eia.gov/electricity/data/eia861/>.

- Vote (Yes/No/Abstain/Did not vote);
- Voting entity name;
- Geography (e.g., Southwest, California, Northwest, Intermountain (or Mountain) West);
- Sector;
- Line of business (Participating Transmission Owner, Investor-Owned Utility, Consumer-Owned Utility [cooperative, municipal utility, public utility district, etc.], Power Marketing Administration, Community Choice Aggregator, Independent Marketer, Independent Power Producer, Distributed Energy Resource Provider, Consumer Advocate, Large Load [Commercial or Industrial], Public Interest Organization, etc.);
- Generation owning (yes/no);
- Load-serving (yes/no);
- Profit-maximizing (yes/no);
- Non-rent seeking (yes/no);
- Public entity (yes/no);
- Part of which balancing area;
- Net supplier or net buyer of energy over previous calendar year; and
- One column per state that has load participating in the RO, listing the annual energy served (in megawatt-hours) in that state by the entity in the row.

The raw data listed above will provide a substantial amount of transparency and should improve trust in the stakeholder initiative process' outcomes.

With respect to vote mechanics, the LC states that "[v]oting processes should be automated and accommodate virtual voting to enable the maximum number of organizations to vote."²⁷ The LC should amend this statement to replace "should" with "will" and specify the option for proxy or alternate voting.

The LC states that:

A sector is required to have a minimum number of entities voting as a quorum requirement. Sectors may self-define quorum requirements based on the size of their sector. All self-defined requirements will be reviewed and approved by the RO Board or a subcommittee of the RO Board.²⁸

²⁷ Draft Proposal at 90.

²⁸ Draft Proposal at 91.

Cal Advocates agrees that sectors should be allowed to self-define quorum requirements. However, allowing the RO to reject sectors' self-defined requirements undermines sectoral self-determination. The LC should remove the review by the RO Board of self-defined sector minimum vote requirements.

With respect to the Revised Sector Proposal,²⁹ the LC recommendation adds an additional seat to each to the WEIM and Extended Day-Ahead Market (EDAM) entity sectors, as well as one to the "Non-IOU load serving entities serving load from WEIM or EDAM"³⁰ sector.³¹ Additionally, the Revised Sector Proposal removes the seat reservations for community choice aggregators and independent power providers and marketers. Cal Advocates opposes these changes. The addition of these proposed additional extra seats would materially worsen the seat imbalance between supply and load interests and between non-rent seeking and profit-maximizing entities. The LC should revert to the previous formulation, including reserved seats, and increase the number of Consumer Advocate seats to two. Table 1 updates Cal Advocates' analysis of the imbalance.

Table 1: SRC Interests by Load and Supply, and Non-rent seeking and Profit-maximizing³²

	Load-side	Supply-side	Non-rent seeking	Profit-maximizing
Entities (Seats)	Consumer Advocates (1) PIOs (1) Large C&I (1) Non-IOU load serving entities serving load from WEIM or EDAM (4) ^a	EIM entities (3) EDAM entities (2) + PMA (1) ISO PTO (2) IPP, et al. (3) DER, et al. (1)	Consumer Advocates (1) PIOs (1) Non-IOU load serving entities serving load from WEIM or EDAM (4) ^a + PMA (1) ^b	EIM entities (3) EDAM entities (2) ISO PTO (2) IPP, et al. (3) DER, et al. (1) Large C&I (1) ^c
Sum	4 sectors (7 seats)	5 sectors (12 seats)	3 ^b sectors (7 seats)	6 sectors (12 seats)

²⁹ The Revised Sector Proposal supplements the Draft Proposal. The Revised sector proposal was published on October 14, 2024, one week after a follow-up workshop on stakeholder processes. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Revised-Sector-Proposal.pdf>

³⁰ Formerly known as Transmission Dependent Utilities.

³¹ Revised sector proposal at 1.

³² Acronyms used in Table 1: Public Interest Organizations (PIOs), Large Commercial and Industrial Customers (C&I), Transmission Dependent Utilities (TDU), Extended Imbalance Market (EIM), Power Marketing Administration (PMA), Independent System Operator Participating Transmission Owner (ISO PTO), Independent Power Producers (IPP), Distributed Energy Resources (DER).

Table 1 based on Sectors outlined in the Revised Sector Proposal at 1.

^a Cal Advocates defines the Non-IOU load serving entities serving load from WEIM or EDAM sector as load-side, but this is a generous assumption. The Non-IOU load serving entities serving load from WEIM or EDAM sector as proposed no longer reserves a seat for CCAs. At this time, CCAs primarily represent load-side interests, although future procurement will likely see some CCAs take ownership of generating resources.³³ Other entities in the sector likely include publicly owned utilities or Direct Access/Electric Service Providers which in many cases own their own generation portfolio. Thus, there is no guarantee that this sector would primarily advocate for load-side interests in any given initiative.

^b Cal Advocates classifies PMAs as non-rent seeking entities because they are publicly-owned enterprises and have a fiduciary duty to their customers. However, the Draft Proposal allocates only one seat to PMAs, not their own sector. Therefore, PMAs contribute one seat to the sum of seats but not to the sum of sectors.

^c While the Large C&I entities themselves are likely to be non-profit industry associations, the interests they represent are by and large profit-maximizing.

The current sector list favors the interests of supply and profit-maximizing entities.³⁴ The worsened imbalance suggests that the SRC will be a structural impediment to achieving the RO's public interest goals.³⁵ It is unlikely that such an imbalanced committee would develop proposals that avoid unnecessary ratepayer costs. Concerns about the imbalance between supply and load are not limited to Cal Advocates, or even the Pathways initiative, as the Colorado Office of Utility Consumer Affairs highlighted the same concerns with the Markets Plus Tariff Filing at the Federal Energy Regulatory Commission (FERC).³⁶

Finally, the LC does not adopt safeguards to prevent astroturfing or sector shopping. Instead:

³³ California Community Power, Open Solicitations, 2024 Request for Proposals. Available at: <https://cacommunitypower.org/solicitations/>.

³⁴ Cal Advocates acknowledges that public power entities have a fiduciary to serve their customers' best interests. However, the dual role of public power entities that also own generation and transmission assets complicate the priorities of these entities. It is unclear where most public power entities would group themselves among the sectors.

³⁵ West-Wide Governance Pathways Initiative, *Step 1 Recommendation: Final Draft, Appendix D Proposed Modifications to WEIM Charter*, May 2024 at 17-18. Available at: <https://www.caiso.com/documents/attachment-1-west-wide-governance-pathways-initiative-step-1-recommendation-final-draft-proposal-may-2024.pdf>.

³⁶ "Many of the IOU and Public Power sectors include both generation and load interests. Unlike public power, IOUs have a fiduciary responsibility to maximize profitability for shareholders. These entities will have a powerful incentive to maximize the return on investment for the transmission and generation assets (within the bounds of state commission regulated returns), far more than to control costs to consumers. Some public power entities are generation only. The independent sector is clearly weighted to benefit generation interests, creating the potential for generation interest domination over the overall vote. **Load and supply voting weights should be balanced.**" Emphasis added. *Comments of the Colorado Office of the Utility Consumer Advocate*, Federal Energy Regulatory Commission Docket No. ER 24-1658, April 29, 2024 at 13. Available at: <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=CD992645-411C-CB03-9D49-8F2B5EA00000>.

The Launch Committee recommends formal re-evaluation of sectors and structure at two future points in time: 1. at the RO implementation phase and 2. two years after implementation to ensure this structure is enabling consensus and achieving the goals set out in the proposal [...] Re-evaluation could include both consolidation of sectors and re-organization of sectors to reflect necessary changes based on meeting the goals. It should also consider whether it successfully prevents sector shopping and astro-turfing, and whether it creates the right balance across sectors for achieving the market goals.³⁷

Preventive measures against astroturfing and sector shopping may not be feasible from the outset, but transparency would help reveal the actual level of support for any given measure. To improve transparency for the RO Board and staff in advisory vote interpretation, Cal Advocates recommends that SRC membership agreements include declarations of any financial interests in, or membership dues paid to, other participants in the RO. For example, private sector companies would have to report common ownership interests or affiliates. Nonprofit organizations would have to disclose any funds received from other RO participants or affiliates, as well as any other registered trade name organizations. Cal Advocates' comments on Appendix D below provide several additions to the proposed Stakeholder Registration and Participation Agreement to provide the information necessary to improve transparency.

Finally, Cal Advocates understands that some outside parties may have raised concerns or sensitivities related to the use of the word "stakeholder" for the Stakeholder Representative Committee (SRC) and suggest that "sector" may be a less divisive alternative.

7. ***Tariff based funding for new public interest protections:*** *To help safeguard the public interest, the Draft Proposal recommended a new Consumer Advocate Organization and an Office of Public Participation. Both entities are contemplated to have minimal staff (possibly one or two staff members) and modest budgets funded through the tariff. The current BOSR funding structure would remain unchanged and not be funded through the tariff, but may be revisited in the future if stakeholders think reevaluation is appropriate. Do you support tariff-based funding for these enhanced public interest protections? Please share as much detail as possible in your reasoning to help the Launch Committee understand the drivers for*

³⁷ Revised sector proposal at 5.

stakeholders on this topic.

Cal Advocates supports the creation of a separate Consumer Advocate Organization with a tariff-based funding mechanism.³⁸ This organization would be overseen by a board that consists of state-appointed consumer advocates and provide the baseline resources necessary for consumer advocates to carry out their work. However, protection of the consumer interest will depend on a variety of other factors, most especially the policy decisions made by the RO Board. The draft proposal represents a starting point, only a single aspect of consumer protection. Providing the means for consumer advocates to sustainably engage in stakeholder processes will not address the need for the RO to transparently consider and incorporate the policy feedback provided by consumer advocates.

8. **Chapter specific feedback:** *In addition to the questions above, we are seeking feedback on the entire Step 2 Draft Proposal. Please use this space to provide general feedback by chapter, as well as feedback on the embedded technical questions by chapter.*

Cal Advocates provides several recommendations specific to each chapter under the relevant subheadings below.

Chapter 1: RO Scope and Function

Cal Advocates recommends that the BOSR require a simple majority of load and a simple majority of states to approve any proposal that goes to the RO Board for a vote. Load-weighted voting would provide a mechanism to protect California ratepayers from having to pay for more than their fair share of RO operations, such as potential transmission investments that benefit the entire footprint of an RO in addition to California. RO vote policies that require support from both a majority of states and a majority of load are the best formulation to provide each participant state a meaningful role in decision making and also protect the interests of California ratepayers.

The LC recommends “Vest[ing] sole 205 rights in the RO such that the RO Board has exclusive and unilateral authority to have filings made at FERC for areas under its domain.”³⁹ Cal Advocates disagrees with this proposed relationship between the BOSR and the RO

³⁸ Draft Proposal at 66-67.

³⁹ Draft Proposal at 17.

Board. CAISO's extant governance structure wherein the board of governors are appointed by the state governor exists for a reason: distrust of markets in the wake of the 2000-2001 energy crisis.⁴⁰ Given this troublesome history, the BOSR and the RO Board should share Federal Power Act Section 205 filing rights before FERC to ensure that states collectively have adequate oversight over the RO. The BOSR should obtain Section 205 filing rights to ensure that it can submit its own proposals to FERC independently and without the approval from the RO.⁴¹

Additionally, the LC recommends:

The CAISO should form a taskforce or standing advisory committee to address how the CAISO as a BA should present BA-specific concerns alongside other BAs in proceedings overseen by the RO. The objectives of this advisory body should be to increase the transparency of CAISO BA-specific concerns (i.e., when the CAISO is "wearing" its BA "hat" as opposed to opining on the basis of its other responsibilities) and foster more parity in how BA concerns of all EDAM Entities, WEIM Entities, and the CAISO are brought forward and considered.⁴²

Cal Advocates supports the recommendation that the CAISO determine how it should best participate as a BA in the RO. However, Cal Advocates seeks a process to ensure that the CAISO has a pathway to formally advocate for its unique needs as a BA participant in the WEIM and EDAM. This role may be as a stakeholder in the SRC or it may be in another procedural forum. The key outcome, however, is that the CAISO is able to advocate for itself

⁴⁰ "California is a complex case study when it comes to electricity, given that its fiascos in the early days of deregulation remain energy law's most prominent cautionary tale (although the state's 2019 blackouts to avoid wildfires may give this superlative a run for its money). Most commentators have concluded that private manipulation of the state's nascent state electricity markets played a substantial role in these early crises, although market design flaws and weather conditions also contributed. In light of this history, it is not coincidental that California lawmakers have chosen to maintain substantial state control over their ISO, and have thus imbued it with a markedly different governance structure." Shelley Welton, *Rethinking Grid Governance for the Climate Change Era*, February 2021, *California Law Review* Vol. 109:209 at 229. Available at: https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=2296&context=law_facpub.

⁴¹ The Organization of Midcontinent Independent System Operator (MISO) States (OMS) Committee can request that MISO file an alternative cost allocation methodology (see MISO, *Rate Schedule 01, Appendix K, Filing Rights Pursuant to Section 205 of the FPA [sic]*, at II.E.3.e. November 19, 2013.). The ISO-NE Tariff allows its Regional State Committee to provide an alternative cost allocation proposal to be included with participating transmission owners' Section 205 filing (see ISO-NE *Transmission Operating Agreement, Article III Operating Authority*, 3.04(h)(vi)(C)). Southwest Power Pool's (SPP) Regional State Committee (RSC) can submit its own proposals to FERC over certain aspects of the SPP Tariff (see Southwest Power Pool Tariff §7.2, p. 67).

⁴² Draft Proposal at 44.

on par with other participant BAs in the RO.

Concurrent with the issue of the CAISO BA's role as a member BA in the RO is the question about appropriate cost recovery of CAISO staff time in service of the RO. In other words, if CAISO staff is called upon as subject matter experts to consult with the RO, CAISO should be reimbursed for its staff time and expenses to ensure that the CAISO BA itself does not subsidize the RO. Defining when costs should be reimbursed by the RO will require attention to detail, but a similar taskforce or committee could be an appropriate venue to make these determinations.

Finally, the LC states that it “is unaware of any case in which a BPM was appealed by a market participant or stakeholder beyond the level of a committee of CAISO executives to the CAISO Board, which today would be the general ultimate decisionmaker in the case of such an appeal.”⁴³ Although no entity at the CAISO has yet seen necessary to appeal in this manner, it does not preclude the necessity of the option to appeal. Cal Advocates recommends that the LC incorporate a mechanism for the BOSR to request the RO Board rehear a decision.

The LC has emphasized the Step 1 additions to the WEM Governing Body Charter as the major safeguards for the public interest⁴⁴ and the public policy committee addition in Step 2 attempts to reinforce the public interest commitments.⁴⁵ However, it is unclear what recourse stakeholders would have if the RO Board were to take an action that is inconsistent with its public interest commitments. At a minimum, Cal Advocates recommends that the LC apply the existing appeal process for BPM changes at the CAISO to the RO as well.

Cal Advocates also opposes recommendations in Chapter 1 that give the RO input on CAISO's hiring decisions. For more extensive discussion and analysis, see the response to Question 3.

Chapter 2: Formation of the RO

Cal Advocates has no specific comments on Chapter 2.

Chapter 3: RO Governance

Cal Advocates recommends ex parte rules for communications with the RO Board.

⁴³ Draft Proposal at 17.

⁴⁴ West-Wide Governance Pathways Initiative, *Public Interest Workshop* (Workshop slides), August 15, 2024 at 9. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Public-Interest-Workshop-Slide-Deck.pdf>.

⁴⁵ Draft Proposal at 60.

Vistra also stated this concern and recommended, “ex parte rules should be adopted so that stakeholders will not be allowed access to the independent board outside of publicly noticed meetings to ensure that the board maintains its independence.”⁴⁶ Ex parte rules “ensure fair access to all and that there is not asymmetry of access to the board by certain stakeholders over others.”⁴⁷ This would not be a novel requirement, as PJM Interconnection provides precedent for the use of ex parte rules in a Regional Transmission Organization (RTO).^{48,49}

The LC recommends a seven-member board for the RO, and “that the board size be reevaluated in the future should RO responsibilities expand.”⁵⁰ Cal Advocates appreciates the commitment to future re-evaluation but recommends that the LC initially consider more than seven members for an RO Board. The modal CAISO Board of Governors and WEM Governing Body decision is unanimous. However, these boards’ frequent unanimity does not accurately reflect divisions among stakeholders on any given issue, suggesting a dearth of dissent among each body’s five members or even considered in public board sessions. Larger boards—e.g., more than seven—would allow for more diverse perspectives and mitigate against groupthink.⁵¹ Research indicates that increased board size is positively associated with financial performance among corporations, although diminishing marginal returns suggest there is a reasonable cap on the size of the board.⁵² While there may not be an obvious optimal board size, Cal Advocates recommends the LC consider a board size of nine to eleven.

⁴⁶ *Comments of Vistra Corp. on Stakeholder Process Discussion Document*, September 11, 2024 at 5. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Q.-Vistra.pdf>

⁴⁷ *Comments of Vistra Corp. on Stakeholder Process Discussion Document*, September 11, 2024 at 5. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Q.-Vistra.pdf>

⁴⁸ PJM Manual 34: PJM Stakeholder Process, at 15.4 Board Communication. Available at: https://www.pjm.com/directory/manuals/m34/index.html#Sections/154_Board_Communication.html.

⁴⁹ PJM also has an Ombudsman, and a Compliance Team that is tasked to “report any and all complaints received, and/or violations of this Code of Conduct, to the president as soon as reasonably possible after they occur or are received, and to the Governance Committee of the Board of Managers on at least a quarterly basis.” PJM, *Code of Conduct*, at 10. Available at: <https://pjm.com/-/media/about-pjm/who-we-are/code-of-conduct.ashx>.

⁵⁰ Draft Proposal at 59.

⁵¹ Groupthink is defined as “the mode of thinking that person engage in when *concurrence-seeking* becomes so dominant in a cohesive ingroup that it tends to override realistic appraisal of alternative courses of action.” Janis, Irving, *Groupthink*, IEEE Engineering Management Review, 2008, at 36. Available at: <http://agcommtheory.pbworks.com/f/GroupThink.pdf>.

⁵² Kathuria, V., & Dash, S, *Board Size and Corporate Financial Performance: An Investigation*, Vikalpa: The Journal for Decision Makers, 1999, at 11-17. Available at: <https://journals.sagepub.com/doi/pdf/10.1177/0256090919990303>

Cal Advocates disagrees with the LC's recommendation of "not reserving board seats and allowing the Nominating Committee and stakeholder processes to provide stakeholder input on the selection of directors."⁵³ One seat on an RO Board should be designated to serve the interests of ratepayers because end-use customers will ultimately bear the costs for the entire market. This seat could be nominated by a consumer advocate body within an RO yet subject to the same approval process used for an RO Board member. This seat would be tasked to prioritize ratepayer interests and be advised by a consumer advocate body within an RO.

Chapter 4: Public Interest

The LC recommends continuing the extant BOSR structure and funding mechanism at the outset of the RO, "with the exploration of future triggers to consider whether the structures and the market have evolved to support modest funding into the tariff."⁵⁴ However, the existing funding mechanism⁵⁵ for the BOSR is inadequate for an RO because the funding is not part of a tariff and is only based on a funding agreement that does not guarantee cost recovery.⁵⁶ Cal Advocates recommends that the BOSR receive funds via a tariff from the outset to support independent staff to serve the BOSR's needs. ISO-New England provides an example of tariffed funding for a States committee.^{57,58} The lack of a formal funding mechanism undermines the ability of the BOSR to hold the RO accountable to its public interest commitments.

Cal Advocates appreciates much of the discussion of the role of DMM in the Draft Proposal, with three exceptions. First, the LC "recommends adding an equal number of RO

⁵³ Draft Proposal at 59.

⁵⁴ Draft Proposal at 65.

⁵⁵ For a discussion of the WEIM-BOSR funding agreement, see: <https://www.westernenergyboard.org/western-energy-imbalance-market-body-of-state-regulators/state-regulated-market-participant-funding-agreement/>.

⁵⁶ *Term Sheet, Funding Agreement for EIM BOSR*, November 25, 2020. Available at: <https://www.westernenergyboard.org/wp-content/uploads/draft-BOSR-WIEB-SRMP-Term-Sheet-November-25-2020.pdf>.

⁵⁷ *ISO-NE Tariff Section IV.A Recovery of ISO Administrative Expenses*, January 1, 2024 at Schedule 5. Available at: https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_4/section_iva.pdf.

⁵⁸ *Memorandum of Understanding Among ISO New England Inc., The New England Power Pool, New England States Committee on Electricity, LLC*, November 21, 2007 at 4. Available at: https://www.iso-ne.com/static-assets/documents/regulatory/part_agree/mou_final.pdf.

Board members to the Market Monitoring Oversight Committee.”⁵⁹ However, the Draft Proposal fails to incorporate enough assurances that the DMM will be adequately empowered to sustain an effective and independent role within the CAISO BA and the RO. As such, Cal Advocates strongly recommends the LC reserve one seat for a consumer advocate representative and one seat for a BOSR representative on the DMM Oversight Committee.⁶⁰ Likewise, one consumer advocate representative and one BOSR representative should be added to the joint hiring committee for any future DMM heads. For further discussion and analysis, see Cal Advocates’ response to Question 5.

Second, the DMM charter should be revised to reflect the RO’s commitment to the public interest. DMM’s mission is “[t]o provide independent oversight and analysis of the California ISO markets for the protection of consumers and Market Participants by the identification and reporting of market design flaws, potential market rule violations, and market power abuses.”⁶¹ The WWGPI Step 1 Recommendation adopted by the CAISO Board of Governors and WEM Governing Body made several public interest additions to the WEIM charter.⁶² These additions include efforts to “reduce, to the extent possible, overall economic cost to customers within the market footprint” and to “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.” The same modifications should be incorporated into DMM’s mission to ensure that its oversight aligns with the priorities expressed by the WEM Governing Body.

Third, the LC recommends that “CAO would have full access to data and analysis from the Department of Market Monitoring, subject to appropriate confidentiality requirements and commensurate with at least the same level of access that CalAdvocates [sic] receives today via California statute.”⁶³ This access should also include guaranteed access to transmission expansion models, per the recommendations described in *A call to protect*

⁵⁹ Draft Proposal at 69.

⁶⁰ These would be in addition to the LC recommendation to add RO members to the DMM Oversight Committee in equal number to the CAISO governors.

⁶¹ Available at <https://www.caiso.com/market/Pages/MarketMonitoring/Default.aspx>

⁶² Joint ISO Board of Governors and WEM Governing Body General Session Meeting, *Attachment 1: West-Wide Governance Pathways Initiative Step 1 Recommendation: Final Draft May 2024, Appendix D: Proposed Modifications to WEIM Charter*, August 13, 2024 at 17. Available at: <https://www.caiso.com/documents/attachment-1-west-wide-governance-pathways-initiative-step-1-recommendation-final-draft-proposal-may-2024.pdf>.

⁶³ Draft Proposal at 66.

*consumers and commit to the public interest.*⁶⁴

Chapter 5: Stakeholder Engagement

See Cal Advocates' response to Question 6 for a full list of comments and recommendations on Chapter 5.

Chapter 6: Pathways to Additional Services

Chapter 6 envisions future services that the RO might provide, particularly under Option 2.5. These services include opportunities to simplify transmission optimization under a framework which would appear to exclude California from potential benefits under “two worlds” approach.⁶⁵ The LC also considers the potential for the RO to offer an ancillary services market, BA consolidation, generator interconnection queue harmonization, and congestion revenue rights.⁶⁶ Cal Advocates is concerned that Chapter 6 is an example of an LC recommendation that presupposes outcomes and does not provide adequate time for an emergent institution to consolidate itself. Cal Advocates recommends the LC remove Chapter 6.

Appendix D: Stakeholder Registration and Participation Agreement

The LC includes a draft Stakeholder Registration and Participation Agreement as Appendix D.⁶⁷ The LC should make the following additions (shown in **red font**).

- I. Organizational Information:
 - A) Organization Name:
 - B) Main Office Address:
 - C) Main Office Telephone Number:
 - D) Website:

⁶⁴ Gridworks, *State Consumer Advocates and Western Electricity Regionalization: A call to protect consumers and commit to the public interest*, March 2024 at 12. Available at: <https://www.westernenergyboard.org/wp-content/uploads/Public-Advocates-Office-Comments-on-WWGPI-Phase-1-Straw-Proposal.pdf>.

⁶⁵ Draft Proposal at 97-99.

⁶⁶ Draft Proposal at 99-100.

⁶⁷ Draft Proposal at 117.

- E) Description of Organization (Corporation, Nonprofit, Utility, etc):
- F) Geographic Area of Operation:
- G) Generation owning (yes/no):
- H) Load-serving (yes/no):
- I) Profit-maximizing (yes/no):
- J) Non-rent seeking (yes/no):
- K) Public entity (yes/no):
- L) Part of which balancing area:
- M) Net supplier or net buyer of energy over previous calendar year:
- N) List dues-paying membership in any organizations (e.g. industry associations, advocacy groups, PIOs) that participate at the RO:
- O) List all entities that participate at the RO that have a financial interest in or fiduciary relationship with your organization (including common ownership, corporate affiliates, equity, donations, membership dues):

II. Authorized Representative:

A) Primary Contact:

- 1) Name:
- 2) Title:
- 3) Telephone Number:
- 4) Email Address:

B) Secondary Contact:

- 1) Name:
- 2) Title:
- 3) Telephone Number:
- 4) Email Address:

III. Sector Participation:

Include List of Sectors once developed

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