

**Comments of the
Western Energy Imbalance Market Body of State Regulators to the
EIM Governance Review Committee’s Revised Straw Proposal
January 29, 2021**

The Western Energy Imbalance Market (EIM) Body of State Regulators (BOSR) appreciates the opportunity to submit consensus comments on the EIM Governance Review Committee’s (GRC’s) Revised Straw Proposal dated December 14, 2020 (“Revised Proposal”).¹ The EIM BOSR was created by the Transitional Committee when a governance structure for the EIM was initially contemplated. The BOSR is a self-governing, independent body composed of one commissioner from each state public utilities commission in which load-serving regulated utilities participate in the EIM, including the ISO real-time market.² This currently includes the states of Arizona, California, Idaho, Nevada, Oregon, Utah, Washington and Wyoming.³ One of the BOSR’s responsibilities is to express a common position, where possible, in the CAISO stakeholder processes or to the EIM Governing Body on EIM issues.⁴

I. Background on EIM Governance Review

The GRC’s role is to develop, through an open stakeholder process, recommendations for changes in the EIM governance structure, including adjustments to the EIM governance as necessary to account for significant growth of the EIM and to facilitate possible further expansion through the Extended Day-Ahead Market (EDAM) Initiative. Based on the comments submitted by numerous stakeholders to the GRC’s Scoping Paper (issued in February 2020) and Draft Straw Proposal (issued in July 2020), the GRC has refined the recommendations for potential improvements to the governance structure (Revised Proposal).⁵ The GRC will use comments to the Revised Proposal to further refine its recommendations. The GRC expects at least one more

¹ The Revised Proposal is available at:

http://www.aiso.com/InitiativeDocuments/Revised_Straw%20Proposal_Western_EIM_Governance_Review.pdf.

² Charter, Energy Imbalance Market Body of State Regulators at 1 (March 1, 2016) (“BOSR Charter”). See also, Charter for Energy Imbalance Market Governance, V.1.1 (revised May 1, 2017), § 5.2.

³ Load-serving regulated utilities from the states of Montana, New Mexico and Colorado have stated their intent to join the Western EIM. Commissioners from these states and the Province of British Columbia have been invited to participate in the BOSR.

⁴ BOSR Charter, Purposes and Responsibilities at 1.

⁵ GRC documents are available at: <https://stakeholdercenter.aiso.com/StakeholderInitiatives/Western-EIM-governance-review>.

round of refinements before formally submitting recommendations to the EIM Governing Body and CAISO Board of Governors (“CAISO Board”) in the first quarter of 2021.⁶

II. The BOSR’s Comments on the Draft Straw Proposal

The BOSR’s previous comments on the EIM Governing Body’s EIM Governance Review dated January 18, 2019, February 21, 2020, and August 27, 2020, continue to represent the BOSR’s views on the governance issues contained therein.⁷ We note at the outset that many of the recommendations in the Revised Proposal are largely consistent with the BOSR’s views as expressed in previous comments. The BOSR adds the following comments to those positions.

Issue 1: Delegation of Authority

Postponement of the Extended Day-Ahead Market to EIM Entities Initiative (EDAM). Given that CAISO has postponed stakeholder activities on the EDAM Initiative, the BOSR agrees that the GRC should continue to move forward with the governance improvements for the EIM and postpone those changes specific to EDAM⁸. The GRC would reconvene at a time when the schedule for EDAM development is better known. However, consideration of any proposal for the EDAM market design should be reviewed based on a joint authority model. Review of the initial proposed market design would benefit significantly from a collaborative dialogue between both the CAISO Board and the EIM Governing Body.

Type and Scope of Delegation. Consistent with previous comments, the BOSR strongly supports the GRC’s recommendation for joint authority between the EIM Governing Body and CAISO Board over all proposed changes to the real-time market design and all aspects of the EDAM Initiative with limited exceptions.⁹ As proposed, joint authority would require an affirmative vote, after discussion, of a majority of both the EIM Governing Body and the CAISO

⁶ The GRC Charter states that GRC’s recommendations for changes to EIM governance will be considered jointly by the CAISO Board and the EIM Governing Body. GRC Charter, § A. While not formally defined in any of the governing documents, this means that the proposal must be fully considered and approved by both bodies in order to be adopted. GRC Scoping Paper at 15.

⁷ The BOSR’s comments are available at: <https://www.westernenergyboard.org/category/library/eim-bosr-library/>.

⁸ Examples of issues specific to EDAM include the EIM Governing Body’s mission statement and scope of authority over market rules.

⁹ This excludes various matters that are specific to California and subject to approval by the CAISO Board alone, for example, transmission planning, Reliability Must Run contracts and the Capacity Procurement Mechanism. GRC Draft Straw Proposal at 9, N.21.

Board before CAISO could file new tariff rules for approval at the Federal Energy Regulatory Commission (FERC). Further, the GRC recommends the EIM Governing Body and CAISO Board meet in a joint session whenever possible to consider these proposals. This is a significant improvement over the current process, as it substantially simplifies the process, is more transparent, and equitably and appropriately shares authority between the two governing bodies.

Joint authority is the cornerstone of the GRC's proposal. Movement to a more equitable and transparent shared authority model is an essential step in building trust and paving the way for continued market expansion through CAISO market options. All entities participating in the EIM, including the California members of the CAISO, are enjoying significant benefits.¹⁰ This is expected to increase with expanded participation, for example through extending day-ahead market services.¹¹ The joint authority model would continue to be limited by the statutory restrictions on delegation of authority that currently apply to the CAISO Board. This approach provides greater assurance to market participants outside of California without usurping the authority of the Board or undermining CAISO's ability to ensure its system reliability. Any delegation of authority remains limited.

The joint authority model is largely supported by the diverse group of stakeholders who provided written comments to the GRC on this recommendation,¹² though some specific concerns were raised. The Revised Proposal offers well-reasoned and balanced proposals to address concerns raised while preserving the joint authority model. We, once again, commend the GRC on their commitment to this process and the quality of their work. The BOSR understands that participation in the CAISO wholesale energy markets is not voluntary by many California entities, as it is for the EIM Entities, and this poses different risks. As discussed below there may be more room to address remaining concerns. The BOSR reiterates, however, that the current and future growth of the market warrants adoption of the joint authority model.

As contemplated in the Draft Straw Proposal, there would be limited exceptions to the scope of joint authority. Joint authority would apply to all real-time market rules except various matters that are specific to California that would be subject to approval by the CAISO Board alone, for example transmission planning, generator interconnection and reliable operation of the

¹⁰ See Western Energy Imbalance Market quarterly benefits reports, available at: <https://www.westerneim.com/Pages/About/QuarterlyBenefits.aspx>.

¹¹ See Extended Day-Ahead Market: Feasibility Assessment Update from EIM Entities, available at: <https://westernenergyboard.org/wp-content/uploads/2019/10/10-08-19-crepc-wirab-brown-edam-fa-results.pdf>.

¹² See Revised Proposal at 7 (CPUC Public Advocate Office and SCE do not support joint authority; CPUC Energy Division recommends deferring the issue).

CAISO's balancing authority area.¹³ Not all stakeholders supported the scope of joint authority proposed in the Draft Straw Proposal. To address this, the Revised Proposal includes two options for the exception. Option 1 would be the broadest interpretation of the exception and includes all rules that apply "only to the CAISO balancing authority area." Option 2 is a more limited interpretation of the exception, and thus offers the broadest scope for joint authority. Option 2 includes rules that apply "only to the CAISO balancing authority *that are related to reliable operations.*" Under both options, issues such as transmission planning, generator interconnection, reliability must run contracts and capacity procurement mechanisms would be excluded from joint authority. However, an initiative such as system market power mitigation would likely be excluded from joint authority under option 1 but not option 2. Placing this issue under joint authority raises significant concerns for a number of California entities, while limiting it to the CAISO Board raises concerns from some entities outside the CAISO balancing area. The GRC asks stakeholders to provide feedback on the two options.

The BOSR strongly believes that the joint authority model is a substantial improvement over the current classification process applied in the EIM. Further, both options for the scope of joint authority represent movement in a positive direction. The BOSR is a body that represents diverse perspectives and, after a thorough discussion by the members, cannot offer a unanimous opinion on Option 1 or 2 at this time. However, the BOSR reached consensus on the value of a joint authority model and notes that it and other stakeholders may benefit from a more thorough understanding of initiatives and issues that would be considered exceptions by Option 1 but not Option 2.

Dispute Resolution Mechanism. The BOSR generally supports the dispute resolution mechanism recommended if only one body approves a proposal, i.e., there is a deadlock. This includes sending the proposal back to CAISO staff, who would commence another round of the public stakeholder process culminating in another vote of the two bodies on the new proposal. If the two bodies still do not agree, there can be another round of public stakeholder process, or the two bodies can develop two alternative versions of the proposal, which CAISO would submit to the FERC for the Commission's approval.¹⁴ The BOSR supports the GRC's recommendation for additional attempts to reach agreement before filing two options with the FERC. A compromise

¹³ GRC Draft Straw Proposal at 9, N.21. Examples of reliability operations specific to the CAISO balancing authority area include Reliability Must Run contracts and Capacity Procurement Mechanism.

¹⁴ The two bodies would decide whether to undertake a third round of stakeholder process before filing with FERC.

reached by Western stakeholders is more desirable as it would likely be more positively received by stakeholders across the region than an option selected by a federal regulatory body.

There are potential issues regarding conflict of interest, both real and perceived, associated with a dual filing proposal. Though the Revised Proposal provides additional detail on the dual filing process, further information would assist stakeholders in formulating a position.

- Can the GRC provide a more thorough explanation of the conflict-of-interest rules that apply when the same group of attorneys represents two opposing parties in the same matter, including the accepted procedures for resolving these conflicts.
- Did the GRC consider using outside counsel to represent the EIM Governing Body, and if so, why was it not recommended (for example, providing the EIM Governing Body the discretion of choosing to use outside council on a case-by-case basis)?
- Did the GRC conduct a review of procedures used by other ISO/RTOs to identify other alternatives that could be considered?¹⁵

Durability of Delegation. The delegation of authority model, including the durability of that delegation is likely to provide additional confidence to participants in the market and help pave the way for the development of or participation in an EDAM. The BOSR recognizes that there are limits to the authority that can be delegated by the CAISO Board imposed by the California Corporations Code.¹⁶ Given these limits, the BOSR supports the process for changing the delegation recommended in the Revised Proposal as it embodies a reasonable compromise. Changing the scope or type of delegation would require a unanimous vote of the CAISO Board with advisory input from the EIM Governing Body and input of the BOSR and stakeholders. If the EIM Governing Body opposes the change, there would be a 45-day period to hold a public meeting and work to resolve the disagreement. Finally, any changes cannot be implemented until after a notice period equal to an EIM exit notice period.

The proposal also includes a provision to address the unlikely, but possible, event of significant EIM withdrawal. The CAISO Board may withdraw the delegation of authority to the EIM Governing Body, by unanimous vote, if 85% of the net energy for load in the EIM outside of the CAISO balancing authority area give notice of their intent to withdraw. This provision was

¹⁵ The Revised Proposal references ISO New England as the source for the current dual filing proposal but is silent as to the procedures used in the other seven North American ISO/RTOs.

¹⁶ See Revised Proposal, Appendix A: Overview of Legal Issues Relevant to Governance.

added to address a concern raised by more than one California entity¹⁷ and the BOSR supports it. Realistically, CAISO Board withdrawal of its delegation of authority at something less than 85% of the net energy for load withdrawing could be workable as part of a joint authority proposal. This may be an area for additional compromise.

Issue 2: Selection of EIM Governing Body Members

The GRC recommends three changes to the process for selecting EIM Governing Body members. First, the GRC recommends amending the Selection Policy so that the representative of the Public Interest Organizations (PIOs) becomes a voting member of the Nominating Committee as opposed to serving in an advisory role, as is currently the case. Second, the GRC recommends enhancing the role of diversity in the nomination process. Third, the GRC recommends establishing a 60-day “holdover period” for Governing Body members when a replacement has not yet been confirmed. The BOSR continues to support all three recommendations and notes that providing voting status to the PIO sector representative on the Nominating Committee is a specific recommendation in the BOSR’s prior comments to the GRC.

Issue 3: Stakeholder Engagement

Modify EIM Regional Issues Forum (RIF). The GRC recommends modifying the RIF to enhance opportunities for stakeholder engagement. This includes removing limitations, and encouraging engagement on issues that are in active CAISO stakeholder processes and modifying the sector representation to more accurately reflect current EIM participation. The BOSR strongly supports this recommendation, as it establishes an advisory committee that provides an avenue for market stakeholders to effectively engage with the CAISO and EIM governing bodies.

Public Power Liaisons to the BOSR. The GRC asks the BOSR to consider establishing a limited number of liaison positions for public power entities that participate in the EIM. Public power used here is intended to include both federal power marketing administrations (PMAs) and publicly owned, or consumer-owned, utilities (POUs). The BOSR notes that this recommendation differs from the others in the Revised Proposal, as it would require an amendment to the BOSR Charter, which can only be accomplished by the BOSR. Therefore, it is not a recommendation to

¹⁷ See Revised Proposal at 23 (referencing comments by PG&E and SCE).

be acted upon by the EIM Governing Body or the CAISO Board.

The BOSR recognizes the value of the public power perspective and supports the addition of three liaisons. Three liaisons strike the appropriate balance between the diversity of perspective that will enhance regional discussions and the maintenance of a size that will allow the BOSR to continue to effectively and efficiently perform its role. The BOSR will move forward with the charter changes necessary to provide for the following: (1) Each liaison would be from an entity participating in the Western EIM; (2) One liaison would be from a power marketing administration and two would be from publicly owned utilities with emphasis given to diversity; and (3) While invited to participate actively in BOSR meetings, the liaisons would serve in non-voting roles. The liaisons would provide the BOSR membership with public power's perspectives, while providing the liaisons an ability to inform public power of BOSR positions and reasoning.

The BOSR appreciates the opportunity the GRC has provided to explore this concept with a broad range of regional stakeholders. This outcome is a good example of the value added by this regional stakeholder process. The BOSR commends the GRC on their commitment to working with various stakeholder groups to improve the governance structure of this unique market. The BOSR will continue to work with the public power sector as we move through the charter amendment process.

Issue 4: Other Potential Areas for EIM Governing Body Involvement

EIM Governing Body Support. The BOSR generally supports making additional resources available to provide technical advice on market design and performance issues to the EIM Governing Body. The support should be provided in a manner and in an amount that ensures the Governing Body can effectively carry out its role. As such, the BOSR supports the GRC's recommendation that the EIM Governing Body's role in the CAISO Market Surveillance Committee (MSC) and Department of Market Monitoring (DMM) should be expanded to be more equal to that of the CAISO Board regardless of whether EDAM goes forward. Given the proposal for joint decision authority, it is necessary for the EIM Governing Body and CAISO Board to have equal access to market data, information and analysis produced by the DMM and MSC and ensure the work of the DMM and MSC will benefit the entire market footprint. Further, the BOSR also supports the GRC's recommendation that if EDAM goes forward, the EIM Governing Body should be able to contract for and select an outside market expert to provide expertise about the development and implementation of EDAM.

Possible Funding for the BOSR. Commenters are largely in alignment that there would be an overall benefit to the long-term stability of the market associated with active engagement by the BOSR in policy initiatives, and thus of providing financial support to the BOSR. Accordingly, the GRC supports BOSR funding and has encouraged the BOSR's discussions with state-regulated participants in the EIM (a.k.a., State-Regulated Market Participants (SRMPs)) and other stakeholders on the appropriate funding mechanism.

Through an open and thorough process, guided by comments from the GRC stakeholder process and running concurrently with their work, the BOSR has reached agreement on funding through outside of the market agreements with the SRMPs. As the GRC notes, the option of an outside agreement provides flexibility for the parties to adjust the agreement over time to meet changing needs.¹⁸

With funding provided by the SRMPs, the Western Interstate Energy Board (WIEB) will provide the technical expertise, staff resources and office space necessary to assist the EIM-BOSR in its efforts to achieve and maintain a better understanding of the Western EIM; to draft comments; and to provide advice on market design and policy to the EIM Governing Body, the CAISO Board, the FERC and other key organizations. The BOSR notes that, as a self-governing and independent body, the organizational structure and source of expertise is solely the BOSR's decision. After considering other options and applying the guiding principles of competence, cost-effectiveness and preservation of independence, the BOSR determined that WIEB, operating under its longstanding interstate compact, was the best choice. The details of BOSR support and funding, as well as information from BOSR public meetings, are available on the BOSR webpage.¹⁹

BOSR funding is another illustration of the value of the GRC's work. The governance review process provided an ideal forum for broad stakeholder engagement on this important governance issue and the GRC did an exceptional job of guiding and encouraging this participation in a manner that built towards consensus on key aspects of the issue.

Issue 6: Other Potential Topics for Consideration

Timing. The BOSR agrees that there is significant value in re-evaluating the governance

¹⁸ Revised Proposal at 41.

¹⁹BOSR webpage, SRMP Funding: <https://www.westernenergyboard.org/energy-imbalance-market-body-of-state-regulators/state-regulated-market-participant-funding-agreement/>. All documents were unanimously approved by the BOSR. In addition, the EIM BOSR – Western Interstate Energy Board (WIEB) Memorandum of Understanding has been approved by the WIEB Board.

structure and supports the recommendation to do so within five years. The BOSR also supports the recommendation that the GRC move forward with the recommendations for improving the EIM governance structure on the planned schedule and postpone consideration of governance modifications necessary to support EDAM. The GRC will reconvene to address governance modifications related to EDAM once the CAISO resumes consideration of EDAM design.

GRC Principles: Transparency and Inclusiveness. As previously noted by the BOSR, transparency and inclusiveness are key principles for any healthy and constructive governance or stakeholder process. The Draft Straw Proposal and Revised Proposal include the following as a principle to guide the GRC: Ensure transparency by conducting all meetings in conformance with the CAISO bylaws and Open Meeting Policy.²⁰ Pursuant to the bylaws and Open Meeting Policy, an executive (closed) session may be called by the CAISO Board to consider the following matters: litigation, personnel, or proprietary/confidential/ security-sensitive information.²¹ The GRC has conducted 38 meetings since January of 2019; six have been public.²² The GRC should strive to limit its use of executive sessions as open forums benefit both the process and the end product.

²⁰ GRC Draft Straw Proposal at 3; Revised Proposal at 3.

²¹ California ISO, Open Meeting Policy, version 3.8, §10 (use of executive sessions), §10.3 (definition of proprietary/confidential/ security-sensitive information) (effective Dec.9, 2019), available at: <http://www.caiso.com/Documents/CaliforniaISOOpenMeetingPolicy.pdf>; Amended & Restated Bylaws of California Independent System Operator Corporation, §9.2, available at: https://www.caiso.com/Documents/ISOCorporateBylaws_amendedandrestated_.pdf.

²² Western EIM Calendar, available at: <https://www.westerneim.com/Pages/Calendar.aspx>.