

**Comments of the Western Energy Imbalance Market Body of State Regulators
to the Western Energy Imbalance Market Governance Review Committee’s
Phase Three Straw Proposal
August 15, 2022**

The Western Energy Imbalance Market Body of State Regulators (BOSR) appreciates the opportunity to submit consensus comments on the Western Energy Imbalance Market Governance Review Committee’s (GRC’s) Phase Three Straw Proposal dated July 15, 2022 (Straw Proposal).¹ The BOSR is a self-governing, independent body composed of one commissioner from each state regulatory utility commission in which a load-serving regulated utility participates in the Western Energy Imbalance Market (WEIM), including the California Independent System Operator’s (CAISO’s) real-time market.² This includes the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The BOSR also currently includes two liaisons representing consumer-owned utilities and a liaison representing a federal power marketing administration. One of the BOSR’s responsibilities is to express a common position, when possible, in CAISO stakeholder processes or to the WEIM Governing Body on WEIM issues.

I. Background on Western EIM Governance Review

The BOSR has been actively involved in governance matters for the WEIM since 2015.³ In 2019, the BOSR strongly supported the creation of the GRC, a temporary advisory committee charged by the CAISO Board of Governors and the WEIM Governing Body to provide input and advice to both bodies on matters relating to the WEIM and the proposed Extended Day-Ahead

¹ Western Energy Imbalance Market Governance Review – Phase Three (EDAM), available at: <http://www.caiso.com/InitiativeDocuments/EDAM-Governance-Straw-Proposal-WEIM-Governance-Review-Committee-Phase-3.pdf>

² Charter, Energy Imbalance Market Body of State Regulators (March 1, 2016, revised April 30, 2021) (“BOSR Charter”). See also, Charter for Energy Imbalance Market Governance (revised September 23, 2021), § 6.2

³ The BOSR’s comments on governance are available at: <https://www.westernenergyboard.org/category/library/eim-bosr-library/>

Market (EDAM) governance.⁴ The BOSR currently has a representative who sits on the GRC and is actively engaged in the development of the Straw Proposal. The Straw Proposal is the latest proposal of the GRC's WEIM governance review that specifically addresses governance of the EDAM. In the first two phases that took place from 2019-2021, WEIM governance was revised as part of a required five-year review.⁵

The Straw Proposal is the product of an on-going stakeholder process that identifies and implements further enhancements to support a successful EDAM governance construct. The BOSR applauds the efforts of all the participants in this initiative. The BOSR submits these comments recognizing that several of the elements discussed in the Straw Proposal are not yet fully resolved and the discussion in the document is often intended to elicit improved and refined proposals.

II. The BOSR's Comments on the Phase 3 Straw Proposal

The following comments address various topics related to the EDAM governance structure on which the GRC is specifically seeking feedback as part of the Phase 3 Straw Proposal.

1. The BOSR's Overall Views on the GRC's Phase 3 Straw Proposal

Overall, the BOSR generally supports the Straw Proposal put forth as an appropriate incremental step reflective of the deeper interdependence inherent in EDAM. The BOSR asserts that the incremental nature of the Straw Proposal demonstrates a respect for other governance changes that have been implemented recently. The success of those changes can be evaluated more fully after additional time. Furthermore, having a consensus governance plan allows EDAM participants to participate in making market decisions that allows for trust in that market. It is important to continue to evolve governance to be more multi-lateral as CAISO improves EDAM to take on the dispatch and control of more resources over longer periods of time.

⁴ Comments of the BOSR on the EIM Governance Review (June 14, 2019), available here: <https://www.westernenergyboard.org/wp-content/uploads/2019/09/06-14-19-EIM-BOSR-Comments-Governance-Review-Committee-and-Charter-formation-1.pdf>

⁵Western EIM Governance Review, GRC Draft Final Part One and Part Two Proposals are available here: http://www.caiso.com/InitiativeDocuments/PartOneDraftFinalProposal_EIMGovernanceReview.pdf;
<http://www.caiso.com/InitiativeDocuments/Decision-EIM-Governance-Review-Committee-Part-Two-Draft-Final-Proposal-July-19-2021.pdf>

2. Delegation of Authority - Type

The BOSR previously submitted comments in Phase 1 and Phase 2 of the WEIM Governance Review in support of the joint authority model for the WEIM, which requires both the WEIM Governing Body and the CAISO Board of Governors to jointly approve any market design element that would be filed at the Federal Energy Regulatory Commission (FERC) if the filing involves CAISO Tariff provisions that apply to the WEIM Entities in their capacity as WEIM participants.⁶ Prior to the joint authority model, some important policy matters were decided by the WEIM Governing Body and went to the CAISO Board of Governors' consent agenda, receiving little to no discussion by the Governors. Other important policy matters were taken up by the CAISO Board of Governors, but the WEIM Governing Body was limited to providing advice only. The joint authority model for the WEIM was adopted late in 2021. It substantially expanded the WEIM Governing Body's authority and created a venue for both governing bodies to engage together on the important policy issues impacting the regional market. Joint authority creates the opportunity to build confidence that transparent and truly regional decision making is in the interest of all stakeholders, both in California and the greater Western region. Though still in its early stages of operation, this governance model appears to be working successfully as intended and should not be amended prematurely.

By expanding the scope of joint authority to EDAM, the BOSR contends governance will fairly encompass the full collaboration, regionalization, and co-optimization needed to reflect the interests of all stakeholders across the entire market footprint. Concurrently, the BOSR acknowledges and respects the statutory limitation on governance structures that currently require the CAISO Board of Governors retain key authorities consistent with fiduciary duties as governors of the corporation. The joint authority approach provides greater assurance to market participants outside of California that their perspectives will be weighed in the decision-making process without usurping the authority of the Board of Governors or undermining CAISO's ability to ensure its system reliability.

⁶ Comments of the BOSR to the GRC's Revised Straw Proposal (January 29, 2021), available here: <https://www.westernenergyboard.org/wp-content/uploads/01-29-2021-bosr-comments-grc-revised-straw-proposal-b.pdf>;
Comments of the BOSR to the GRC's Key Aspects of the Delegation of Authority (June 9, 2022), available here: <https://www.westernenergyboard.org/wp-content/uploads/06-09-21-BOSR-Comments-GRC-Phase-2-Straw-Proposal.pdf>

Additionally, the BOSR would like to acknowledge the viewpoint of those stakeholders that have expressed support for switching back to the primary authority model. On its surface, the primary authority model seems to provide the Governing Body greater decision-making authority on issues that directly impact the WEIM and the proposed EDAM. However, as the BOSR stated in previous comments on this topic, reverting the decision-making authority back to the Governing Body on tariff rules related to the WEIM entities inadvertently silos regional market issues that are better addressed by both bodies through the joint authority model.

The BOSR contends that the joint authority model is a substantial improvement over the primary authority model. The BOSR believes the joint authority model, as implemented in the WEIM, significantly simplifies the decision-making process, is more transparent, and appropriately shares authority between the two governing bodies.

3. Delegation of Authority – Scope

The BOSR supports extending the scope of joint authority by using the “apply to” test to all real-time and day-ahead market rules. Under the current decisional classification rules of the WEIM, the scope of the Governing Body’s decisional authority is defined through this “apply to” test. This was a substantial expansion of the WEIM Governing Body’s decisional authority from the prior scope of primary authority. It remains quite a broad test when adapted to the day ahead market. This straightforward test looks at whether a proposed tariff amendment applies to WEIM participants in their role as WEIM participants. If it does, the Governing Body holds joint approval authority with the CAISO Board of Governors. If it doesn’t, the Governing Body does not have an approval role, but may still hold an advisory role to the Board of Governors on the matter. The BOSR believes this demarcation method appropriately moves towards and promotes inclusivity while removing subjectivity and complexity in decisional authority assignments. This helps more efficiently focus stakeholder debate on material issues, rather than procedural questions.

4. Designating the Decisional Classification for Initiatives and for Resolving Disagreements between the Board and the Governing Body on Whether to Approve a Proposal within their Shared Approval Authority

The BOSR supports the GRC’s proposal to retain the current processes for designating the decisional classification for initiatives. The BOSR notes that it is an open and transparent process

that allows all interested stakeholders to participate and shape the decisional classification for initiatives. Additionally, the BOSR supports extending the iterative remand process currently utilized for WEIM to EDAM for resolving disagreements between the Board of Governors and the Governing Body on whether to approve a proposal within their shared approval authority. The BOSR filed consensus comments last year in general support of this dispute resolution mechanism that would apply if either governing body does not approve a proposal.⁷ As the BOSR stated in prior consensus comments, submitting a proposed tariff change to FERC that is not supported by both governing bodies is not ideal. However, the current method used in the WEIM is an improvement of how to resolve issues prior to escalation. Furthermore, this dispute resolution process was only recently adopted and has not been needed thus far; therefore, it should not be prematurely amended or revoked.

5. Size, the Nominating Committee's Evaluation of Sitting Governing Body Members Seeking Reappointment, and Composition of the Governing Body

The BOSR supports maintaining the size of the Governing Body at five members. The Governing Body appears to be addressing matters of the WEIM successfully, sufficiently, and on a timely basis. As the EDAM market evolves, this matter can be reassessed to determine if the time commitment for Governing Body members appears to be too substantial.

Additionally, the GRC is seeking feedback on whether to require the Nominating Committee to evaluate qualifications of a sitting Governing Body member who wishes to seek an additional term after the EDAM transition. The selection policy allows the Nominating Committee to weigh whether to interview other candidates when considering re-nominating a sitting member. The BOSR believes that explicitly asking the Nominating Committee to consider the emergence of EDAM in that decision is reasonable and likely is implicit in their mandate and decision making, regardless.

Currently, compensation for the Governing Body is determined by the CAISO Board of Governors and is linked to the Board of Governors' own compensation. In July 2018, the Board of Governors modestly increased compensation of the Governing Body members. As evidenced by

⁷ Comments of the BOSR to the EIM GRC's Key Aspects of the Delegation of Authority (June 9, 2021) available here: <https://www.westernenergyboard.org/wp-content/uploads/06-09-21-BOSR-Comments-GRC-Phase-2-Straw-Proposal.pdf>

the most recent recruitment to the Governing Body, the BOSR believes that current compensation levels are sufficient and are attracting well-qualified candidates for the role. As the EDAM market evolves, the Board of Governors may want to reassess compensation structures depending on how much time the Governing Body must dedicate to WEIM/EDAM matters.

6. Stakeholder Engagement

The BOSR considers the current level of engagement from stakeholders not just sufficient, but significant, and, as it stands today, the CAISO policy initiative process is open and transparent.

However, the BOSR supports the GRC's proposal of beginning the annual roadmap process for prioritizing policies with a panel discussion of sector representatives hosted by the Regional Issues Forum (RIF) to ensure greater stakeholder engagement early in the process, and in a way that can shape the topics for the roadmap as well as the prioritization. The BOSR would like to be able to appoint a representative to participate in this panel discussion. In addition, the BOSR reserves the right to advise the Governing Body on the prioritization of policies in the annual roadmap.

The BOSR agrees with the GRC that the consumer advocates and public interest organizations, which are currently in a single sector with two RIF liaisons, should be structured to capture the sometimes-diverging goals and views of each group. The BOSR supports allocating the two liaisons for the RIF's public interest and consumer advocate sector in a way that allows for the perspectives of both groups to be reflected, with one liaison for state-sanctioned utility consumer advocates and large consumer representatives, and one for other public interest organizations. However, the BOSR believes that should the utility-sanctioned consumer advocates and large consumer advocates be represented together by one liaison, that liaison must ensure smaller retail consumer advocates are fairly represented. The BOSR is concerned that combining smaller retail consumer advocates and large consumer advocates may limit the smaller retail consumer advocates' ability to represent their viewpoints effectively.

7. Clarifying CAISO's Responsibilities

The BOSR supports amending the CAISO Bylaws to more clearly articulate CAISO's commitment to the fair treatment of regional stakeholders. The BOSR would like to acknowledge the concerns of those stakeholders who have expressed the view that California law governing CAISO requires the organization to act exclusively in the interest of California electric consumers,

at the expense of the interests of other market participants. In order to respect that the laws of the State of California govern the CAISO, while also acknowledging and respecting the concerns of other market participants outside of California, the BOSR supports the GRC's proposals to amend Article II, Section 1 of the Bylaws to state:

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 consider the interests of all stakeholders within the footprint of the markets that it administers, including the Corporation's balancing authority area, EDAM balancing authority areas and WEIM balancing authority areas.

The BOSR agrees the proposed language in the amended bylaw would speak to these concerns, explicitly describe how CAISO Board of Governors have a duty to the market as a whole and ensure the interests of all stakeholders are recognized and honored. As recognized in the CAISO's recent strategic plan, achieving a reliable, affordable clean-energy network is predicated on regional cooperation and inter-dependence.

III. Conclusion

The BOSR appreciates the opportunity to provide consensus comments on the GRC's Phase 3 Straw Proposal and looks forward to continued engagement and participation in EDAM governance.