

**Comments of the
Western Energy Imbalance Market Body of State Regulators to the
EIM Governance Review Committee's Draft Straw Proposal
August 27, 2020**

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) Draft Straw Proposal dated July 31, 2020 ("Draft Straw 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), the GRC developed initial recommendations for potential improvements to the governance structure (Draft Straw Proposal). The GRC will use comments to the Draft Straw Proposal to refine its recommendations. The GRC expects at least two rounds of refinements before formally submitting recommendations to the EIM Governing Body and CAISO Board of Governors ("CAISO Board") in the

¹ The Draft Straw Proposal is available at: <http://www.caiso.com/InitiativeDocuments/DraftStrawProposal-EIMGovernanceReviewCommittee.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 recently 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.

first quarter of 2021.⁵

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

The previous comments of the BOSR on the EIM Governing Body's EIM Governance Review dated January 18, 2019, and February 21, 2020, continue to represent the BOSR's views on the governance issues contained therein.⁶ We note at the outset that many of the recommendations in the Draft Straw 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

Consistent with previous comments, the BOSR supports the GRC's recommendation for joint authority between the EIM Governing Body and CAISO Board over: all proposed changes to the realtime market design or market rules; all aspects of the EDAM Initiative; and, if EDAM is implemented, all proposed changes to the day-ahead market design or market rules.⁷ As proposed, joint authority would require an affirmative vote, after discussion, of a majority of both the EIM Governing Body and the CAISO 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.

Further, 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

⁵ The GRC Charter states that GRC's recommendations for changes to EIM governance will be considered jointly by the Board and the 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.

⁶ The Comments are available at: <https://westernenergyboard.org/library/eim-bosr/>.

⁷ 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. Draft Straw Proposal, at 9, N.21.

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. The BOSR supports the GRC's recommendation for two attempts to reach agreement before filing two options with the FERC. A compromise 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. Therefore, the BOSR agrees with the GRC that a second attempt should be made to address a disagreement and resulting deadlock.

The delegation of authority model recommended by the GRC is likely to provide additional confidence to participants in the market, thereby adding durability to the governance structure.

Issue 2: Selection of 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 generally supports 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's Scoping Paper.

Issue 3: Stakeholder Engagement

Modify EIM Regional Issues Forum (RIF). The GRC recommends modifying the RIF to enhance opportunities for stakeholder engagement. Two key modifications include removing limitations, and encouraging engagement on, issues that are in active CAISO stakeholder processes, and allowing the RIF to provide written opinions on market issues to the EIM Governing Body and CAISO Board. 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 Draft Straw 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 be acted upon by the EIM Governing Body or the CAISO Board.

The BOSR recognizes the value of the public power perspective and is conducting discussions about the potential for two liaison positions and the Charter amendments necessary to provide for this change. The BOSR supports 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 one would be from a publicly owned utility; and (3) The liaison would be a non-voting position. The liaisons would be invited to participate actively in BOSR meetings. The liaisons would not only be able to inform public power of BOSR positions and reasoning, but also provide the BOSR membership with public power's perspective. The BOSR will collaborate with public power representatives and other stakeholders on the details of the selection process and other aspects of the liaison positions. The BOSR welcomes comments through the Governance Review process on the details of integrating the potential liaison positions in the BOSR governance model.

Issue 4: Other Potential Areas

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 if EDAM goes forward, the Governing Body should be able to contract for and select an outside market expert to provide expertise about the development and implementation of EDAM. Further, the BOSR also 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 Governing Body and 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.

Possible Funding for the BOSR. The BOSR notes that 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 is seeking comments on an appropriate mechanism.

The BOSR has studied the 20-year history of other multi-state electricity markets in the United States. After exhaustive discussions with our peers who have grappled with regional market development in other areas of the country, it is clear that early, educated and sustained engagement by state regulators in market policy initiatives benefits all market participants. When engaged and informed, regulators can more effectively and proactively identify germane issues in market design for their states, inform state policy designs impacting both publicly-owned and investor-owned utilities (IOUs) so that they complement rather than disrupt the market, and identify ways to protect customer interests within their state regulatory framework that enhance the efficiency of the market rather than add transaction costs. Working together, state regulators can identify common interests and concerns and better understand the nuances of divergences, often defusing competing state interests that pressure market policy decisions. Finally, effective, sustained engagement by state regulators can, in some cases, raise the confidence state legislators have that the market will provide long-run benefits to their constituents. The BOSR finds that all market participants benefit from this stability in the policy environment and decision-making that surrounds the market. In all other markets, delivering that outcome for the market has required that a states committee (SC) has a small, centralized, independent facilitation staff to complement the significant human resources state commissions invest in participating in market policy processes. Predictable travel support, including for staff, to participate in critical meetings has also proven crucial for other SC members to sustain consistent engagement in multi-year processes.

The BOSR recommends that funding to support this important role should be allocated among all state jurisdictional utilities participating in the EIM, including

California IOUs.⁸ The allocation between these participants should be equitable and rational. The BOSR is evaluating several options including, but not limited to, allocating the funding equally among all participating IOUs, reflecting the consensus-based approach to decision making in the BOSR⁹. Under this option, each IOU's allocation would be equal to: the total annual BOSR budget ÷ number of EIM IOUs. Collecting the funds through a component of the grid management charge (GMC) charged to specific entities through the CAISO tariff is an option that is administratively efficient, durable, stable and preserves the BOSR's independence. The BOSR remains open to proposals from other stakeholders on both the funding allocation and the collection mechanism. The BOSR continues to believe that the current governance review process is the appropriate time and place for consideration of this BOSR funding issue. Failure to address funding through the current stakeholder process will undermine the ability of this broad group of stakeholders from participating and cause an unnecessary additional stakeholder process to be initiated.

The BOSR notes that, as a self-governing and independent body, the organizational structure and source of expertise is solely the BOSR's decision. Prior to entering the Memorandum of Understanding between the BOSR and the Western Interstate Energy Board (WIEB),¹⁰ the BOSR formally considered other options, including commission staffing alone, CAISO staffing, and forming a new entity. 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.¹¹ Notwithstanding the above, the BOSR will consider comments submitted through this GRC stakeholder process addressing support for the BOSR.

⁸ California's IOUs participate in the EIM, California, including its ratepayers and IOUs, benefit from the EIM, and California has a representative on the BOSR with full voting rights and the opportunity to participate in leadership roles.

⁹ When the BOSR Charter was developed, [No – this was in reference to the possibility of a formal states committee when PacifiCorp sought to join CAISO and form a regional market. The voting rights among BOSR members for the BOSR has always been one state, one vote a one vote per state approach was adopted, but the BOSR seeks consensus in all decisions. The results of a consensus among BOSR members brings forward public interests over regional competition and can illustrate for the CAISO decision-making authorities where state-level decision makers see common, public benefits in market policy choices and where there may be state-level issues that are insurmountable and pose long-range challenges to the market policy under discussion.

¹⁰ Memorandum of Understanding Between the Western Interstate Energy Board and the Western Energy Imbalance Market – Body of State Regulators (August 12, 2019), a available at: <https://westernenergyboard.org/wp-content/uploads/2019/11/08-12-19-wieb-eim-bosr-mou.pdf>.

¹¹ As a minimum threshold the organization must be legally enabled to accept and contract for funds.

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 BOSR supports the application and inclusion of these principles in the GRC's process. The BOSR recommended in previous comments that the GRC articulate clear criteria for its use of closed executive sessions. The Draft Straw Proposal includes 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.¹² Pursuant to the bylaws and Open Meeting Policy, an executive session may be called by the Board to consider the following matters: litigation, personnel, or proprietary/confidential/ security-sensitive information.¹³ The GRC should strive to limit its use of executive sessions as it limits transparency.

¹² Draft Straw Proposal, p.3.

¹³ 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.