



**COMMENTS OF NV ENERGY
EIM GOVERNANCE REVIEW
ISSUE PAPER AND STRAW PROPOSAL
DATED DECEMBER 14, 2018**

CAISO STAKEHOLDER PROCESS

January 18, 2019

NV Energy appreciates the opportunity to comment on the CAISO's EIM Governance Review Issue Paper and Straw Proposal dated December 14, 2018 ("Straw Proposal"). Section 2.2.3 of the Charter for Energy Imbalance Market Governance ("Charter") provides that, "[n]o later than September 2020, the EIM Governing Body will initiate a review of EIM governance in light of accumulated experience and changed circumstances." NV Energy submits that both factors warrant a comprehensive reexamination of governance at this time.

When the Charter was approved in late 2015, the term "Western Energy Imbalance Market" ("EIM") represented an aspirational goal. Now, with the current and announced EIM Entities, it has become a reality. With participants spanning ten western states and a portion of Canada, California load will represent a minority of the load served in the EIM. This expansion alone warrants a reassessment of the scope of the EIM Governing Body ("EIM GB") authority. In addition, the CAISO may begin a stakeholder process to consider an extension of the EIM to the day-ahead timeframe (the "EDAM").

All other organized markets in the United States are overseen by an independent governing body, unaffiliated with any market participant or state authority. Participants in the EIM or the EDAM must accept the boundaries of current California law – the CAISO Board of Governors ("CAISO BOG") will be subject to selection by the California Governor. Despite this limitation, far more can be done to expand the primary authority of the fully independent EIM GB as a subcommittee of the CAISO BOG. Under the principle of achieving maximum independence for the market oversight, consistent with existing law, ***the EIM GB should be delegated primary authority for any initiative related to the real-time market.*** The EIM GB also should have an expanded role with respect to market monitoring and the process for selecting and prioritizing stakeholder initiatives. In addition, the EIM GB should have the primary role for oversight of the EDAM stakeholder initiative. FERC, of course, will be the ultimate arbiter of what is just and reasonable and not unduly discriminatory for the CAISO Tariff.

The CAISO's Straw Proposal is too limited. To support the current and expanded operation of the EIM and to provide a necessary foundation for the EDAM, the CAISO must act expeditiously to increase the scope of independent oversight of the markets. Governance will be a key consideration as the EIM Entities, their stakeholders, and regulators consider the potential move forward to an expanded market platform.

I. THE EIM GB HAS DONE A TREMENDOUS JOB

Prior to launching into any discussions of necessary improvements, NV Energy would be remiss in not recognizing the success and widespread acceptance of the EIM GB. By attracting highly qualified individuals and the manner in which these EIM GB members have undertaken their responsibilities, the EIM GB has garnered trust and respect from market participants, other stakeholders, and regulators throughout the west. The EIM GB members have been diligent in reviewing both the CAISO's proposals and stakeholder comments and questioning both CAISO staff and stakeholder positions. They have been accessible to existing and potential EIM Entities, regulators, and market participants. In addition, they have been strong advocates and ambassadors for the EIM in a variety of meetings and conferences. Accordingly, NV Energy commends the work of the EIM GB and the original EIM Transitional Committee and does not recommend any changes at this time for the: (1) size of the EIM GB, (2) the criteria for membership, (3) the selection process, or (4) the term of office. NV Energy would support the suggestion in the Straw Proposal to include a short "holdover" period if the nomination and selection process unexpectedly runs beyond its prescribed deadlines, resulting in an otherwise vacant seat, similar to the process currently in place for the CAISO BOG.

Under the current Charter, the EIM GB is to make decisions and recommendations that will:

- Help control costs to ensure that favorable cost/benefit ratios are maintained for the benefit of market participants;
- Protect the CAISO market, including the EIM, its participants, and consumers against the exercise of market power or manipulation and otherwise further just and reasonable market outcomes;
- Facilitate and maintain compliance with other applicable legal requirements, including but not limited to environmental regulations and states' renewable energy goals;
- Allow EIM Entities to withdraw from the EIM prior to any action that would cause or create an exit fee; and
- Allow options to expand the functionality of the CAISO market to provide additional services.

NV Energy continues to support these objectives. Moreover, these criteria will provide a strong foundation for the EDAM.

II. THE NEED FOR IMMEDIATE EXPANSION OF THE SCOPE OF THE EIM GB AUTHORITY OVER THE EDAM STAKEHOLDER PROCESS

NV Energy has questioned the "decisional classification" (primary, hybrid, or advisory) of a number of initiatives. More fundamental than these specific determinations; however, is the overall scope of review reflected in the original charter. The EIM Governing Body has primary authority for considering and approving policy changes to market rules that would not exist "but for" the EIM. For an initiative to be included within the primary authority of the EIM GB, it must apply uniquely in the Balancing Authority Areas of EIM Entities, or differently in the Balancing Authority Areas of EIM Entities than in the CAISO's Balancing Authority Area. With experience,

this “but for” test has been shown to encompass an extremely narrow subset of initiatives. The vast majority of initiatives relate to the markets more broadly, limiting the independent EIM GB to an advisory role.

In recognition of the concerns over this scope of authority, the CAISO proposes a limited, interim expansion of this primary jurisdiction. The EIM Governing Body’s primary authority would extend to proposed changes to generally applicable rules of the real-time market, if the primary driver for the change is EIM. The CAISO’s Straw Proposal fails to identify which, if any, of the initiatives in the current catalogue or roadmap would see a change in decisional classification as a result of this proposal. NV Energy submits the impact of the proposed change is likely to be limited.

For example, the CAISO has already divided the classification for the Local Market Power Mitigation initiative as follows:

- (1) Modification of the calculation of the competitive locational marginal price used in market power mitigation (affects rules that apply uniformly in both the CAISO and EIM balancing authority areas). EIM GB advisory.
- (2) The mitigation framework that would impose transfer limitations between mitigated regions of EIM balancing authority areas to the greater of: (1) the flexible ramping upward requirement of the exporting balancing authority area; or (2) the pre-mitigation transfer quantity (applies exclusively to EIM Balancing Authority Areas). EIM GB primary.
- (3) The proposal to create a new default energy bid designed to approximate the opportunity costs for hydro resources (would apply uniformly to hydro resources in both the CAISO and EIM). EIM GB advisory.
- (4) Enhancements to the reference level adjustment process used by the real-time market for gas-fired resources and changes to the gas price index used to calculate reference levels in both the day-ahead and real-time markets (apply uniformly in both the CAISO and EIM Balancing Authority Areas). EIM GB advisory.

This example, illustrates limitations with the CAISO’s proposal. First, the only change might be to the decisional classification of the third element of the initiative, if the subjective motivation for the change was the EIM. While there is certainly evidence to this effect, it may be subject to dispute.

Second, while NV Energy does not oppose the expanded authority, the CAISO’s proposal does not address an important issue requiring expedited action. A significant flaw with the current scope of the EIM GB authority is with respect to the potential EDAM stakeholder initiative. The CAISO has classified this as “E2” meaning the EIM GB only would have an advisory role. The

CAISO’s Straw Proposal does nothing to correct this glaring problem. This is illustrated by the proposed text:

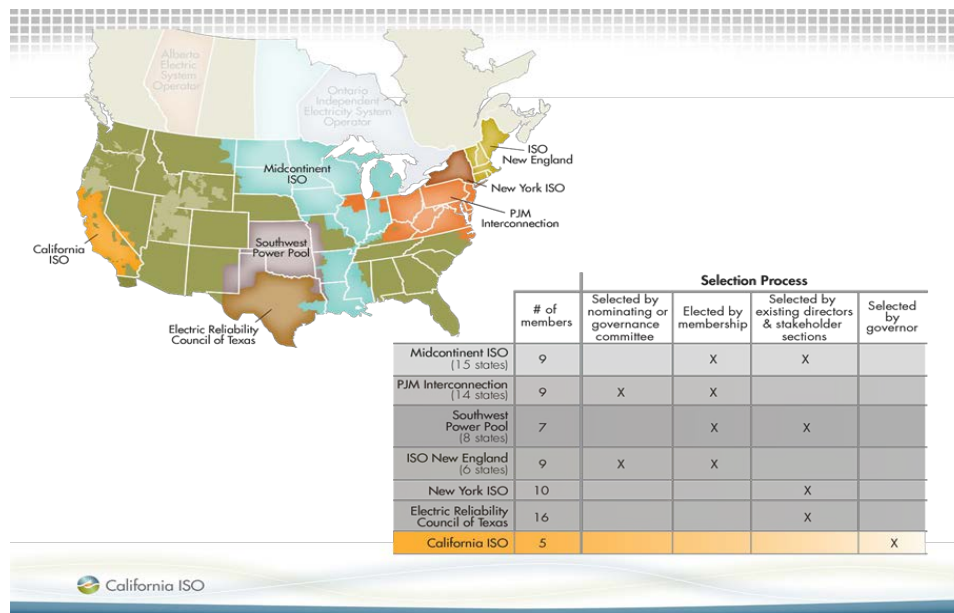
“Primary authority”: The EIM Governing Body will have primary authority to approve or reject proposed changes to a market rules if either:

- the market rule is EIM-specific insofar as it applies uniquely to EIM balancing authority areas, or differently to EIM balancing authority areas than to other areas within the ISO’s real-time market, or
- the market rule is generally applicable to the entire real-time market and an issue that is specific to the EIM balancing authority areas is the primary driver for the proposed change.

Despite the fact that the primary purpose of the EDAM is a market-expansion directed at EIM Entities, the scope of primary authority is restricted in all cases to the “real-time market.” Unless the scope of authority is expanded beyond that proposed by CAISO, the EIM GB will not have primary or even hybrid authority over the EDAM stakeholder process, even though that initiative that applies uniquely to EIM Balancing Authority Areas.

III. PRINCIPLES THAT SHOULD APPLY TO THE EIM GOVERNANCE REVIEW

FERC has referred to independence as the “bedrock principle” upon which the ISOs and RTOs must be built. In Order No. 2000, FERC stated that the governance structure should be independent "in both reality and perception." All organized markets operate with independent oversight of the day-ahead and real-time markets. As illustrated in the following slide from a February 2016 CAISO presentation, California’s Governor-nominated Governing Board is an outlier:



With the failures of SB 350 and AB 813, the goal of a single, fully-independent governing board remains a future hope and objective. But, that doesn't mean more can't and shouldn't be done to promote savings to customers under the proven two-tiered governance structure. Having established the groundwork for the EIM GB, it is now time to maximize the potential of this structure.

As noted in the CAISO's Straw Proposal,

When the EIM Transitional Committee (hereafter the "Transitional Committee" or "Committee") developed its EIM governance proposal, a key issue it faced was how best to give "non-California parties necessary comfort about the market's ability to act in the interest of the regional EIM, and not just the interest of one state."...To build this confidence, the Committee decided the Board should delegate to the EIM Governing Body part of the Board's existing authority to approve proposed tariff amendments before they are filed with FERC. The Board agreed and, as a result, the EIM Governing Body was given "primary authority" over a defined scope of issues. Any proposed tariff amendment falling within this scope must be approved by the EIM Governing Body before it goes to the Board for consideration on its "consent" agenda.

With the proven benefits of the EIM, the expansion of EIM membership, and the potential initiation of an EDAM stakeholder process, the scope of the authority delegated to the primary authority of the EIM GB should include all elements related to the real-time market as well as the EDAM stakeholder process. If the EDAM is developed, the authority of the EIM GB would extend to all elements of the day-ahead markets, with possible limited exception of issues that apply uniquely to the CAISO Balancing Authority Area. Depending on the market structure this limited category of exclusions could include elements such as congestion revenue rights, if, and only if, it is not part of the EDAM design.

In simplest terms, the EIM GB should have primary authority to the maximum extent permitted under California law. Having demonstrated the feasibility of the two tier governance structure, it would be extended to the broader scope. The CAISO BOG would always have the ability to pull an initiative from the consent agenda for discussion and possible rejection. Such an action; however, might then be the subject of a complaint before FERC. Importantly, FERC is ultimately responsible for ensuring the CAISO Tariff is just and reasonable and not unduly discriminatory.

This proposed expansion of the EIM GB's role would not affect critical issues of state policy. The CAISO BOG and the regulatory authorities supervising the EIM Entities would retain control over issues including: (1) long-term resource adequacy, (2) environmental policies, (3) transmission planning and siting; and (4) retail ratemaking.

IV. APPROACH

The Charter and Guidance Documents should be revised to provide for this new division of authority. Most of this can be accomplished without the need for a filing with FERC.

A. EIM GB Primary Authority

Any tariff rule that applies to the real-time market or that applies uniquely to the EIM Entities would fall within the EIM GB's primary oversight category. In addition, the EIM GB would have primary authority over the EDAM stakeholder process. To save time and promote certainty, the CAISO and the CAISO BOG should consider specifying, at this time, that the scope of primary authority will extend to the day-ahead market, if the EDAM is implemented.

B. CAISO BOG Primary Authority

All other tariff rules would continue to remain with the CAISO BOG's primary authority. This category would include, among other topics, any tariff rules that apply uniquely to the CAISO's Balancing Authority Area: (1) access to the CAISO grid; (2) transmission planning; (3) the basic structure of the transmission access charge (other than any EIM or EDAM specific transmission charge); (4) resource adequacy; (5) reliability must-run designations; (6) backstop procurement of capacity; (7) new generator interconnections; (8) treatment of existing contracts and transmission ownership rights; (9) blackstart service; and (10) CAISO Balancing Authority Area system operations and reliability responsibilities. In addition, tariff rules that apply generally to the management and oversight of the CAISO would fall within this category.

C. Hybrid

A limited subset of issues would be considered "hybrid," requiring formal approval by both the EIM GB and the CAISO BOG. For example, a credit policy may consider amounts owed by both the real-time market and day-ahead trading as well as non-market activities.

D. Dispute Resolution

Section 2.2.2 of the Charter contains a dispute resolution procedure if either the Chair of the CAISO BOG or the Chair of the EIM GB objects to an initial determination by the CAISO about how to categorize the decisional classification of a policy initiative. In addition, to this dispute resolution process, the Charter should be revised to provide a mechanism to resolve disputes between the CAISO BOG and the EIM GB over the approval of new initiatives.

If the CAISO BOG seeks to reject or modify an initiative within the EIM GB's primary authority, there should be a process to provide for reconsideration by the EIM GB. If the dispute continues, it may be possible to use the process outlined in section 2.2.2 (ii) of the Charter for a joint meeting.

V. ADDITIONAL ELEMENTS TO CONSIDER

Currently, the Charter only focuses on the respective roles of the EIM GB and the CAISO BOG with respect to the authority to approve proposed tariff amendments before they are filed with FERC. Governance encompasses additional activities. As part of this comprehensive review, the CAISO and stakeholders should consider the role of the EIM GB over market monitoring and the process for prioritizing stakeholder initiatives. In addition, NV Energy supports the suggestion in the Straw Proposal to reexamine the manner in which the Charter and supporting documents can

be amended to ensure that neither the EIM GB nor the CAISO BOG can take unilateral action to modify the expectations of market participants and regulators.

A. Oversight of Market Monitoring

FERC has recognized that market monitoring units enhance the efficiency and competitiveness of organized wholesale markets by identifying ineffective market rules and tariff provisions, identifying potential anticompetitive behavior by market participants, and providing the comprehensive market analysis critical for informed policy decision making. In Order No. 719, FERC did not express a preference for a particular market monitoring structure, “[t]he Market Monitoring Unit must report to the Commission-approved independent system operator's or regional transmission organization's board of directors, with its management members removed, or to an independent committee of the Commission-approved independent system operator's or regional transmission organization's board of directors”.

In the CAISO markets, monitoring is provided by the Department of Market Monitoring (“DMM”) and the Market Surveillance Committee (“MSC”). Consistent with the EIM GB’s primary responsibility for independent oversight of the real-time and potentially the day-ahead market, the functional reporting responsibility for DMM and the MSC for these market monitoring activities should be transferred to the EIM GB as an “independent committee” of the CAISO BOG.

B. Oversight of the Stakeholder Process

The CAISO Staff maintains a catalogue of current and potential policy initiatives and an Annual Policy Initiatives Roadmap to identify those initiatives that the CAISO will stakeholder in the following year and beyond. The CAISO Staff provides a briefing of the final Roadmap to the EIM GB and the CAISO BOG during their December meetings.

Given the importance of the roadmap, CAISO Staff should submit the document for review and approval. In essence, this would be similar to the process employed for the annual transmission plan. Any significant modifications to the roadmap would have to be approved in a similar fashion. The EIM GB should review, approve, and monitor the progress of activities on the Policy Initiatives Roadmap related to the real-time (and, if EDAM moves forward, the day ahead) markets. The CAISO BOG should have the same authority with respect to all other initiatives.

C. Permanence of the Governance Structure

In the Straw Proposal, the CAISO asks,

Should the EIM Governance Review consider any potential changes to these two documents that might render them more durable by making them more difficult to amend? For example, should changes to the Charter or the Guidance Document require approval by a supermajority of the Board, rather than a simple majority? Are there any other changes that should be considered with regards to the process used to revise these documents over time?

Development and entry into the EIM represents a significant commitment of resources by the CAISO, the EIM Entity, regulators, and other stakeholders. These activities will increase further under the EDAM. While the CAISO Tariff provides a process for withdrawal from the EIM, this is an extreme measure. NV Energy agrees that the stakeholder process should consider ways to limit unilateral action to modify the governance principles and documents.

D. Regional Implementation Forum and the Body of State Regulators

The current EIM governance includes a Regional Issues Forum (“RIF”) organized by ten sector-selected liaisons. In addition, state authorities are provided a role through the Body of State Regulators (“BOSR”). The BOSR meets regularly and can provide opinions on market design initiatives. For example, the BOSR submitted comments in December 2017 and June 2018 on EIM greenhouse gas initiatives. NV Energy believes the RIF and the BOSR provide useful forums to inform regulators and market participants of current and future initiatives. NV Energy would also support the expansion of the BOSR to include representations from members serving the interests of publicly-owned utilities.

VI. LOOKING TO EDAM AND TIMING

The CAISO may receive comments to the straw proposal indicating that a comprehensive review of governance should await the EDAM stakeholder process. NV Energy submits that the need to address the governance of the EIM warrants a full review at this time regardless of the EDAM. Moreover, even if one were to advocate combining a broader EIM and EDAM governance review, the time to establish the groundwork for that stakeholder process is now. Issues regarding governance cannot be delayed until development of the EDAM market design. For some participants, governance is likely to be a key consideration in securing regulatory authorization to participate. For others, it will be a critical factor before undertaking such a fundamental change to their existing commercial practices.

In summary, NV Energy recommends:

- (1) That the Charter be revised immediately to give the EIM GB primary authority over the EDAM stakeholder process;
- (2) That the CAISO proceed expeditiously to implement a stakeholder process, including the formation and use of an advisory committee, that will expand the scope of the EIM GB’s primary authority in the Charter to any initiative related to the real-time market, unless that initiative does not pertain to EIM Entities;
- (3) That the Charter also be amended to recognize the EIM GB’s primary authority over the day-ahead market, if the EDAM is implemented;
- (4) That, commensurate with its responsibilities to oversee the real-time and potentially the day-ahead markets, the EIM GB be given enhanced authority over market monitoring and the stakeholder calendar, roadmap, and catalogue process; and



- (5) That BOSR membership be expanded to include representation from members serving the interests of publicly-owned utilities and the other existing elements of the BOSR and the Charter be retained.