

**COMMENTS OF THE WESTERN PUBLIC AGENCIES GROUP
REGARDING THE CAISO’S EIM GOVERNANCE REVIEW ISSUE PAPER AND
STRAW PROPOSAL**

Submitted by Ryan Neale, ryann@millcreeklaw.com, on January 18, 2019

The Western Public Agencies Group (“WPAG”) appreciates this opportunity to submit comments on the California Independent System Operator’s (“CAISO”) EIM Governance Review Issue Paper and Straw Proposal. WPAG generally supports the comments of other Northwest public power entities and trade groups¹ in recommending that:

- In the near-term, CAISO should adopt its proposal to expand the primary authority of the EIM Governing Board to include generally applicable rules of the real-time market where the primary driver for the change is the EIM;
- In the long-term, the EIM Governing Body’s primary authority be expanded to encompass generally applicable rules of the real-time market, regardless of the driver;
- The charter provisions related to the EIM Governing Body be improved and/or impair its independence from the CAISO Board of Governors; and
- The EIM Governing Body be given a greater ability, with advisory input from EIM stakeholders, to develop and recommend items for the CAISO’s annual Policy Initiatives Roadmap that would fall within the EIM Governing Body’s primary authority.

In addition, we are commenting separately to further support the review of an increased role for public power in the EIM governance framework. The possibility that the Bonneville Power Administration (“BPA”) would join the EIM justifies the revisiting of this issue in the upcoming review process.

Each of WPAG’s twenty-two members is a publicly-owned utility located in the Pacific Northwest as well as a wholesale power and transmission customer of BPA. Some of WPAG’s members own and operate their own generation facilities, both to serve their own loads and as participants in the wholesale marketplace. Under federal law, each WPAG member has unique and valuable statutory and contractual rights vis-à-vis BPA, the Federal Columbia River Power System (the “FCRPS”), and the Federal Columbia River Transmission System (the “FCRTS”).²

¹ Including the comments of the Bonneville Power Administration and the Public Power Council.

² A non-exhaustive list of BPA’s statutory obligations to its public body and cooperative customers includes the following: 16 U.S.C. §§ 832c(a), 839c(a), 839g(c) (BPA must give preference and priority to public bodies and cooperatives when making power sales); 16 U.S.C. § 837a (BPA’s ability to sell electric energy and peaking capacity outside the Pacific Northwest is limited to “surplus energy” and “surplus peaking capacity”); 16 U.S.C. §§ 838g, 839e(a)(1) (BPA is to fix rates that, among other things, (1) encourage the widest possible diversified use of power at the lowest possible rates to consumers

In addition, under the applicable state laws, WPAG’s members are not subject to the jurisdiction of any state utility commission. Instead, within their respective service territories, the governing boards of WPAG’s members are the relevant regulatory authority for electric services.³ This includes regulatory control over rates, resource acquisition and adequacy, and many other policies that would be directly affected by BPA joining the EIM.

WPAG has not historically participated in CAISO’s stakeholder processes, including those processes related to the EIM. The prospect that BPA may join the EIM, however, requires our engagement on the issue of EIM governance. We join other Pacific Northwest public power entities and trade groups in recommending that the scope of the upcoming EIM governance review include an expanded role for public power, and specifically Pacific Northwest public power. Under the EIM’s current governance structure, there is no direct avenue for public power to give advice and input to the EIM Governing Body on issues impacting public power’s interests, including the substantial regulatory, statutory, and contractual interests of Pacific Northwest public power identified above.

Absent such an avenue, we are deeply concerned that ad hoc efforts by WPAG and other public power representatives would fall short of the level of participation that (i) would be useful for a regional EIM that includes BPA and, by extension, BPA’s public power customers;⁴ and (ii) is currently provided to communicate the interests of the regulators and customers of investor owned utilities through the Board of State Regulators. This represents a substantial blind spot for the EIM Governing Body in its policy and rule making. If this blind spot was, for example, to create a conflict between a future EIM rule and a statutory obligation that an EIM participating BPA owes to its public power customers, WPAG would expect BPA to follow the statute. Giving public power—and BPA for that matter—a more direct means to give advice and input to the EIM Governing Body regarding their interests would help reduce the risk that such conflicts

consistent with sound business principles and (2) recover BPA’s costs in accordance with sound business principles); 16 U.S.C. § 839e(b)(1) (the rates for power sold to meet the general requirements of BPA’s public body and cooperative customers are to be based first upon the costs of that portion of the “Federal base system” (“FBS”) resources needed to supply such loads and only when such sales exceed the capability of the FBS can the costs of non-FBS resources be included in BPA’s rates to its public body and cooperative customers); 16 U.S.C. § 839c(b)(1) (upon request, BPA is to sell electric power to meet the regional load of a BPA public body and cooperative customer to the extent such load is not met by the customer’s own resources); 16 U.S.C §§ 839d(a)(1), 839b(e)(1) (BPA must make cost-effective choices on resource acquisitions in meeting its load service obligations to its public body and cooperative customers). In addition, BPA had entered into power sales agreements with its public body and cooperative customers through 2028 as well as a multitude of long-term transmission contracts under its Open Access Transmission Tariff.

³ See, e.g., Revised Code of Washington (“RCW”) 54.16.040; RCW 35.92.050; Oregon Revised Statutes Chapter 225.

⁴ We note that the EIM Transitional Committee relied upon a similar justification for creating the Board of State Regulators with respect to the interests of the customers of investor owned utilities—*i.e.*, that ad hoc efforts by the state public utility commissions would be insufficient to be useful. See EIM Transitional Committee, Draft Final Proposal: Long-Term Governance of the Energy Imbalance Market at 24 (June 22, 2015).

would arise. It would also be a step in the right direction to give *all* “non-California parties necessary comfort about the market’s ability to act in the interest of the regional EIM, and not just the interest[s] of one state”⁵ and/or the subset of non-California parties that have their interests represented on the Body of State Regulators.

The exact framework for providing public power with more direct input to the EIM Governing Board should be addressed in the review itself. However, WPAG recommends that any such discussion should at a minimum include consideration of the following:

- (1) A means for public power to directly advise the EIM Governing Board comparable to the one currently available to the Body of State Regulators. Public power’s proposed representation in the Western States Committee proposal from 2016 may serve as a useful starting point. In the alternative, the CAISO should also consider forming a new advisory board comprised of representatives from public power and the federal power marketing authorities that would be able to directly advise the EIM Governing Body regarding their interests; and
- (2) Amending the executive search criteria under Section 3.5 of the CAISO’s Selection Policy for the EIM Governing Body to include public power expertise as one of the qualifications that the Executive Search Firm is to seek out when identifying candidates to be considered by the Nominating Committee for the EIM Governing Body.

In conclusion, with the prospect that BPA could join the EIM, and the further prospect that the opportunity to participate in the CAISO’s day-ahead market could be extended to EIM Entities, WPAG has a keen interest in ensuring that the interests of non-California parties impacted by such markets, including the interests of Pacific Northwest public power, are represented in market related decision-making by an independent, non-affiliated governing body that is fully informed of the wide breadth of interests that may be impacted by its decisions. The changes discussed above would be a positive first step towards reaching this objective. Thank you for the opportunity to comment. WPAG looks forward to substantive discussions on public power’s role in the future EIM governance review process.

⁵ See EIM Governance Review Issue Paper and Straw Proposal at 2 (Dec. 14, 2018).