EIM Governance Review

Draft Final Proposal for Formation of an EIM Governance Review Committee

May 21, 2019

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I.   Introduction and Overview

On April 1, 2019, the California Independent System Operator (ISO) published a straw proposal to establish a temporary stakeholder committee that would consider potential revisions or refinements to the current governance for the Energy Imbalance Market (EIM). The committee, called the Governance Review Committee or GRC, would be charged with developing, through an iterative public stakeholder process, a proposal that would then go to the EIM Governing Body and the ISO Board of Governors for their joint consideration. The proposed process for forming the GRC and the rules that would govern its operation were described generally in the April 1 paper and set forth in detail in a draft Governance Review Committee Charter (Charter) that was attached to the paper.

The ISO received written comments on the straw proposal and draft Charter from a broad cross-section of individual stakeholders and stakeholder groups, representing industry, governmental, and public interest groups throughout California and the West. The comments express broad support for establishing the GRC and for the ISO's proposal to use a stakeholder-based process to nominate and rank potential candidates to serve on it. There were, moreover, comments from various stakeholders proposing refinements to the GRC's scope of work, the process or criteria for selecting its members, and the process the GRC will follow in developing its proposal.

This paper presents the ISO's proposed path forward in light of the comments it has received. Given the strong stakeholder support for establishing the GRC, the ISO proposes to seek approval from the ISO Board and EIM Governing Body to move forward with establishing the committee. Specifically, the ISO proposes to ask the Board and the Governing Body to jointly approve a Charter for the GRC that will guide both the process for its formation and its operation once established. The ISO proposes to bring this matter to both bodies at joint meeting that would take place on June 28, which is the date on which the EIM Governing Body's next public meeting, in Salt Lake City, is already scheduled to take place.

The ISO has attached to this paper a revised version of the Charter containing various refinements that have been made in response to stakeholder comments on the prior draft. The revisions made to the prior draft Charter are shown in redline. The revised Charter constitutes the draft final proposal that ISO management proposes to bring to the Board and EIM Governing Body for approval.

In Section II of this paper, the ISO discusses each of the revisions it has made to the Charter, as well as several topics raised by stakeholders where the ISO has decided not to make a proposed change. The ISO is also including a stakeholder matrix that seeks to address comments raised by stakeholders that may not be fully addressed in the discussion section of this paper.

For ease of reference, the ISO uses the same organizational structure for Section II of this paper as was used in the April 1 paper, addressing first certain comments on the role of the GRC and its scope of work, followed by proposed refinements to the process for establishing its membership, and finally the operation of the GRC once it is established.

In Section III, the ISO covers next steps, including the schedule for any further comments on the draft final proposal.

II.   The Proposed Governance Review Committee

A.   Role of the Committee and Scope of Work

As discussed in more detail in the April 1 paper, the draft Charter charges the GRC with considering potential revisions to current EIM governance in light of experience to date and the evolution of the EIM since its inception. It also makes clear that this role would include considering any potential revisions needed for an extended day-ahead market (EDAM), if the ongoing EDAM feasibility assessment work has a positive outcome and the ISO moves forward with developing an EDAM market design.

Stakeholders generally expressed support for this scope of work, and there were relatively few comments on this portion of the Charter. There were, however, three categories of comments that require discussion.

First, one commenter expressed concern about language in Section II.B of the draft Charter stating that, while the scope of the GRC's review should be broad, the GRC "should seek to build upon and refine the current structure, rather than adopting a completely new model." The commenter suggested that the quoted language could be viewed as binding direction to the GRC to avoid proposals that involve more fundamental changes to EIM governance, even if the GRC determines that such changes are necessary.[1] The ISO did not intend the quoted language to preclude the GRC from considering and proposing any particular changes it may determine are warranted. The language was instead meant as non-binding directional guidance to the GRC that a complete new governance model may not be required. Thus, while the GRC should seek, if possible, to build upon and refine the existing structure, the language was not intended to preclude any proposal that the GRC may be inclined to make.

The ISO is proposing a revision to this paragraph of the Charter to clarify this intent. Specifically, the ISO has revised the relevant paragraph to read as follows:

> In developing its proposal, the GRC should generally seek, where possible, to build upon and refine the current structure, rather than adopting a completely new model. The GRC should in any event , however, undertake a broad review of that structure that considers the scope and nature of the delegation of decisional authority to the Governing Body, the process and criteria for

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[1] Pacific Gas & Electric (PG&E) Comments at 1-2.

selecting Governing Body members, and any other potential <u>changes</u> <s>refinements</s> to how the Governing Body currently performs its duties.

Second, several commenters identified particular governance-related topics or proposals that the GRC should consider when it performs its governance review.[2] The ISO agrees that the topics and proposals these commenters have identified properly fall within the GRC's purview to consider. The ISO has not, however, proposed revisions to the draft Charter to specifically identify such topics because the paragraph quoted above regarding the GRC's general scope of work is sufficiently broad as written to allow the GRC to consider the matters these commenters have raised. The ISO encourages these commenters to bring these governance-related issues forward in comments when the GRC commences its work and seeks initial stakeholder input on the topics it should consider.

Third, several commenters raised concerns that the period of time the draft Charter identifies for the GRC to complete its work may be unrealistic given the scope of issues it will likely need to address.[3] Although the draft Charter refers to a period of six to eight months, it bears mention that the language on the Charter makes clear this is not a hard deadline and is instead an approximate estimate of the amount of time that will be required. The ISO recognizes, however, that this estimate may be difficult to achieve depending on the total scope of issues that the GRC identifies, particularly given that the GRC will be developing its proposal through an iterative public stakeholder process. The ISO has thus revised Section III.B of the draft Charter to refer to an estimated six to twelve month period for the GRC to complete its work. The language continues to refer to this period as an approximation and does not impose a hard cap on the amount of time for the process to conclude.

B.   Process for Establishing Committee Membership

The ISO proposed in its April 1 paper establishing a GRC with 11 to 13 members. The GRC would include one member each from the ISO Board, the EIM Governing Body,

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[2] Body of State Regulators Comments at 2-3 (GRC should consider "how the ISO engages with all regional stakeholder communities"); EIM Entities Comments at 2 (identifying various topics the GRC should address as part of its review); Public Power Council (PPC) Comments at 1 (GRC should consider the creation of "more formal stakeholder advisory group" to provide input to the EIM Governing Body); Public Power EIM Entities at 4 (GRC should consider creation of a "Market Advisory Committee"); Southern California Edison (SCE) Comments at 1-2 (identifying and discussing various proposed principles that should guide any potential delegation of decision-making to the EIM Governing Body).

[3] California Municipal Utilities Association (CMUA) Comments at 2; EIM Entities Comments at 1; Northwest Requirements Utilities (NRU) Comments at 2; Public Power EIM Entities Comments at 3.

and the Body of State Regulators (BOSR), and the remaining members would be jointly selected by the EIM Governing Body and the Board from a list of nominees that have been developed and ranked by stakeholders.

Although stakeholders expressed general support for this proposed approach for establishing the membership of the GRC, there were several proposed refinements offered in stakeholder comments. Those comments fall into several categories, as discussed below.

1. Role of the GRC Members Representing the Board, EIM Governing Body, and Body of State Regulators

Various stakeholders offered comments about the appropriate role and status of the three GRC members from the ISO Board, the EIM Governing Body, and the BOSR.

Specifically, a relatively large and diverse set of commenters suggested that, while it is appropriate for members of the EIM Governing Body and the ISO Board to serve on the GRC, they should not be voting members and instead should participate in an advisory capacity.[4] A non-voting role, these commenters suggest, is more appropriate given that the Board and the EIM Governing Body ultimately will be responsible for deciding whether to approve the proposal forwarded to them by the GRC. A subset of these commenters further recommend that the member of the BOSR that sits on the GRC should also serve in a non-voting advisory capacity, given the official duties that state regulators hold over the utilities subject to their jurisdiction.[5]

The ISO agrees with these comments and has revised the draft Charter so that each of these three members would serve in a non-voting, advisory role. This will allow the GRC to have the benefit of the perspectives of these individual members, while avoiding any concerns that such participation may conflict with their roles in other contexts.

2. Criteria Used by the Board and EIM Governing Body to Select Members and Rules for Sector Nominations

Section III.A of the draft Charter sets forth certain criteria and qualifications that the Board and the EIM Governing Body should consider in selecting the membership of the GRC. This section requires that the GRC membership must (1) "collectively possess knowledge and experience in electricity markets, corporate governance, legal and

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[4] Bonneville Power Administration (BPA) Comments at 2; CMUA Comments at 2; EIM Entities Comments at 4; PG&E Comments at 3; Public Generating Pool (PGP) Comments at 2; PPC Comments at 2; Public Power EIM Entities Comments at 1-2; Seattle City Light (SCL) Comments at 1.

[5] BPA Comments at 2; PG&E Comments at 3.

regulatory matters," (2) be "geographically diverse," and (3) "collectively reflect the broad range of stakeholder and industry sectors that are involved in EIM."

Several commenters suggest that the ISO should consider either adding more specific and prescriptive language to this section to guide the stakeholder make-up of the GRC or potentially including an obligation or presumption that the GRC will include at least one member from each of the sectors charged with nominating candidates.[6]

The ISO has not made such changes out of a concern that imposing more prescriptive requirements risks undermining the ability of the EIM Governing Body and the Board to weigh all of the various competing considerations in developing the GRC. The considerations that must be weighed include not only each of the criteria set forth in Section III.A, but also the rankings that each sector gives to the overall list of prospective nominees.[7] Because these considerations could potentially point in differing directions and will require careful balancing, the ISO believes it is best not to impose more specific requirements that may limit the Board and the EIM Governing Body from exercising their discretion to achieve the best possible overall balance on the Committee. In addition, there is significant value in the GRC being comprised of a qualified and diverse membership, and not having the appearance or in fact a seat representing each sector. This, the ISO believes, will foster a collaborative effort of the GRC, acting as a body considering the broader interests of the region, and avoid risking an environment where each member could feel, or appear to be, beholden to only a subset of interests defined by sector.

For similar reasons, the ISO has not adopted a recommendation made by two commenters that the stakeholder sectors should be allowed to nominate fewer than three individuals as candidates for the GRC.[8] If multiple sectors were to nominate only one or two candidates, the EIM Governing Body and the Board may not have a sufficiently broad and diverse pool of candidates to be able to meet all of the criteria established in the Charter. To the extent the members of a smaller stakeholder sector may be concerned about being able to identify three or more members from their own sector as potential candidates, it bears mention that the sectors are not required to limit their proposed candidates to members of their own sector. The ISO has added language to the draft Charter encouraging sectors to actively consider nominating individuals from beyond their sector and acknowledging that an individual may be nominated by more than one sector.

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[6] EIM Entities Comments at 3; Public Interest Organizations (PIO) Comments at 4; Public Power EIM Entities Comments at 4; Public Advocates Office Comments at 2-3; CMUA Comments at 1.

[7] Draft Charter, Section III.C.2.

[8] Public Generating Pool (PGP) Comments at 2; PIO Comments at 2.

Finally, several stakeholders recommend public posting of both the full list of nominees and the rankings that each sector gives to the list of nominees for the GRC.[9] The ISO has not adopted this proposal out of concern for the privacy interests of potential nominees. The ISO believes that because the full, unranked list of nominees will go to each sector, stakeholders are provided with visibility into the breadth of candidates being considered. And, although it is important for the EIM Governing Body and Board to have candid input from each stakeholder sector on the potential nominees, public disclosure of the sector nominee rankings could dissuade certain otherwise qualified candidates from agreeing to be considered. This would undermine to goal of having the broadest, most diverse and highly qualified group of candidates available for the EIM Governing Body and the Board to consider.

3. **The Stakeholder Sector Definitions**

The April 1 paper proposed five sectors that would be used for the process of nominating and ranking candidates to serve on the GRC. The proposed sector definitions were closely modeled on the sectors currently used to nominate and rank candidates for service on the EIM Governing Body.

Various commenters suggested revisions to these sectors, with the comments falling into several categories.

The stakeholders that are currently operating as EIM Entities or that have signed implementation agreements to become EIM Entities object to including within their sector other balancing authority entities that have commenced a formal public process to join EIM but have not yet signed an implementation agreement.[10] These commenters believe that such balancing authorities should be able to participate in the sector nomination and ranking process, but should do so in a sector that is distinct from the EIM Entity sector.

Several commenters representing local publicly owned utilities suggest that the POU sector should be defined so as not to include federal public marketing administrations.[11] These commenters likewise do not oppose the participation of PMAs in the sector process, but believe their interests are sufficiently distinct from local publicly owned utilities to warrant participation in a different sector.

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[9] BPA Comments at 2; NRU Comments at 3; PGP Comments at 2.
[10] EIM Entities Comments at 2-3; Public Power EIM Entities Comments at 2; SCL Comments at 2.

[11] CMUA Comments at 2; Publicly Owned Utilities in the West Comments at 1-2.

There are, moreover, comments from entities in balancing authority areas that have not yet started a formal public process to join EIM who recommend expanding the sector definitions to allow such entities to participate.[12] These commenters generally suggest either creating a new sector that would include utilities within any balancing authority adjacent to the EIM footprint or expanding some of the existing sectors to include participation by such entities.

There is also one commenter who suggests disbanding the EIM Entity sector and merging those entities into other existing sectors[13], as well as several commenters who express satisfaction with the sectors as currently defined.[14]

As the diversity of these comments reflect, establishing appropriate stakeholder sectors is a challenging process that involves reconciling a variety of competing interests and concerns. The ISO's main objective is to establish sectors comprised of entities that have sufficient cohesion and commonality of interests to be able to function and perform their role of providing input, on a short term basis, on potential candidates for the GRC. The sectors also should include those stakeholders who have expressed a sufficient degree of commitment to the EIM to warrant their direct involvement in selecting the Committee.

Although the ISO appreciates the desire of entities within neighboring balancing authorities to participate in the sector nomination process, we have decided to maintain the limitation on sector participation to entities within balancing authorities that have at least commenced a formal public process to consider joining EIM. This ensures that the sectors are made up of entities that have exhibited some degree of commitment to the objectives and success of the EIM. The ISO recognizes that this will exclude some entities who may very much want to participate in EIM but are located within a balancing authority that has not taken concrete steps to become an EIM Entity. We encourage such entities to remain engaged in the process and to actively participate in the stakeholder process that the GRC will ultimately administer. In that way, such entities can ensure that their viewpoints are fully considered as the GRC works to establish a consensus proposal that can facilitate the ongoing expansion of EIM.

The ISO also has decided not to adopt the proposal to disband the EIM Entity sector and merge those entities into other sectors out of concern that this would undermine the goal of having cohesive sectors that are able to reach consensus on potential nominees. As SCE's comments observe, EIM Entities are differently situated from entities within the Participating Transmission Owner category or other market participants within the ISO balancing authority area that cannot readily exit the ISO's market. In light of these differences, it seems best to have EIM Entities participate in a separate sector rather than being merged into the PTO and other sectors.

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[12] Public Generating Pool Comments at 2; Chelan Comments at 1.

[13] SCE Comments at 3-4.

[14] BPA Comments at 2; NRU Comments at 2.

The concern about sector cohesion does, however, suggest that it would be better to have entities that have not yet made a formal commitment to join EIM participate in their own sector, rather than being grouped into the sector that includes EIM Entities and balancing authorities that have already signed EIM implementation agreements. The ISO has thus revised the draft Charter to create an additional sector (called the "Pending New EIM Participants" sector) that includes any balancing authority that has entered into a formal public process to consider joining EIM and the utilities or other entities that are located within such a balancing authority. The ISO has also proposed revisions to the other sector definitions to make clear that such entities are removed from the EIM Entities sector and the Publicly-Owned Utilities Sector. These revisions are set forth in Section III.C.1 of the attached draft Charter.

The ISO recognizes the importance of establishing appropriate sectors and appreciates the robust and thoughtful input stakeholders have provided on this topic in their comments. Although we recognize that no grouping can satisfy the concerns of all stakeholders, we believe this proposal achieves the best possible balance for the task at hand. It bears repeating that these sectors are being established solely for the limited purpose of nominating and ranking potential candidates for the GRC. After the GRC is established, all stakeholders will have a full opportunity to participate in the open stakeholder process that the GRC will administer.

4. **Committee Size**

As noted above, the ISO has proposed a total membership for the GRC of 11 to 13 members. This would include the three members from the EIM Governing Body, the Board, and the Body of State Regulators, leaving eight to ten spots that would be selected from the list of nominees developed by the stakeholder sectors.

Several commenters suggest that the ISO consider increasing the size of the GRC to allow for greater participation and diversity of viewpoints.[15] The ISO has not adopted this proposal due to the logistical challenges that a larger membership would present. The GRC will be asked to perform a substantial amount of work and will need to meet on a fairly frequent basis to complete its work within a reasonable amount of time. As the size of the membership increases, it becomes increasingly difficult to find mutually convenient times when a quorum – or ideally the entirety – of the committee membership can meet.

This challenge is especially severe in the context of a committee that will almost certainly be comprised of busy individuals, who have many other professional commitments besides their work on the GRC. The ISO observed this challenge in connection with its efforts to facilitate the scheduling of meetings of the Transitional Committee, which

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[15] NRU Comments at 3; PIO Comments at 2; PPC Comments at 2; Public Power EIM Entities Comments at 1.

started out with nine members and eventually grew to 13 total members as new EIM Entities signed implementation agreements to participate in EIM. Having a committee that is larger than the Transitional Committee would magnify this concern.

As previously noted, the members of the GRC will not be informed solely by their own individual viewpoints or the viewpoint of the organization for which they are employed. The GRC will be charged with administering a robust public stakeholder comment process designed to ensure that the perspectives of all stakeholders are heard and rigorously considered. The Charter reinforces this by emphasizing the importance of GRC members collaborating to develop, to the greatest extent possible, a consensus proposal that enjoys broad stakeholder support.[16] Because each GRC member will not be charged with voting for their own narrow interests or representing the interests of a single sector, it is appropriate to focus on establishing a broadly representative committee rather than on ensuring a specific number of seats are set aside for any given stakeholder sector or set of sectors.

C.   Operation of the Committee

The rules governing how the GRC will operate are set forth in Sections III.D-H and Section IV of the draft Charter. These provisions, which were largely modeled on the Transitional Committee charter, received minimal stakeholder comment and thus appear to have general stakeholder support.

The one topic that received comment from multiple stakeholders is the provision requiring that a minority opinion must have at least three votes in support in order to be submitted along with any majority proposal the GRC submits to the EIM Governing Body and the Board. As discussed in the April 1 paper, the ISO proposed this requirement to promote consensus by discouraging GRC members from presenting multiple individual opinions on topics where consensus may be more difficult to achieve.

Several commenters expressed concern with this provision, suggesting that the minimum number of supporting votes should either be reduced or eliminated.[17] The ISO believes there is value to having such a provision, and it has revised the draft Charter to reduce the required minimum number of supporting votes from three to two. This will align the provision with the minimum support requirement that was used for the Transitional Committee, which was able to successfully develop a single consensus proposal without any minority opinions.

III.   Schedule for Comments and Next Steps

The ISO will host a stakeholder call to discuss this draft final proposal on May 29 at 1:00 p.m. (PDT). Stakeholders should submit any written comments to initiativecomments@caiso.com by close of business on June 11.

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[16] Draft Charter, Section II.A.
[17] BPA Comments at 3; PG&E Comments at 2; SCE Comments at 3.

As noted, the ISO currently anticipates bringing this proposal to the EIM Governing Body and the Board at a joint meeting that would coincide with the EIM Governing Body's next scheduled meeting, in Salt Lake City, on June 28, 2019. This proposed timing is subject to consideration of any comments the ISO may receive from stakeholders in response to this paper.