

**California ISO EIM Governance Review
EIM Governance Review Committee Scoping Paper**

Comments of Public Interest Organizations

Submitted via email: initiativecomments@caiso.com

Submitted by	Company/Organization	Date Submitted
Jennifer Gardner, Regional Energy Markets Manager (801-413-7355)	Western Resource Advocates	February 21, 2020
Kate Maracas, Managing Director (360-688-1105)	Western Grid Group	
Julia Prochnik, Director of Western Renewable Grid Planning (202-246-3025)	Natural Resources Defense Council	
Fred Heutte, Senior Policy Associate (503-757-6222)	Northwest Energy Coalition	

I. Introduction

Public Interest Organizations (“PIOs”) appreciate the opportunity to provide comments to the EIM Governance Review Committee (“GRC”) on its January 29, 2020 [Scoping Paper](#). The comments that follow are submitted on behalf of the following PIOs: Western Resource Advocates, Western Grid Group, Natural Resources Defense Council and Northwest Energy Coalition.

II. Comments & Recommendations

Issue 1: The Delegation of Authority for Market Rules to the EIM Governing Body and the Decisional Classification Process

As noted in PIOs’ previously submitted comments, the present decisional classification guidelines attempt to create a binary construct in which any policy changes are classified as wholly within the authority of one board or the other (with limited exceptions).¹ Even the hybrid

¹ Exceptions include recent decisions to require “joint approval” by both the EIM Governing Body and the CAISO Board of Governors in both the Extended Day-Ahead Market and Governance Review Committee stakeholder initiatives.

classification is binary in the sense that a hybrid decision is one which is composed of multiple inseparable policy changes – some falling under the exclusive jurisdiction of one board and the remainder under the exclusive jurisdiction of the other.²

This binary construct would otherwise be easy to implement and understand if the respective missions of each board provided for a clear, bright line of division. Unfortunately, this is not the case. The California statute establishing CAISO – AB 1890 – makes clear that the intent of the CAISO is to operate a California transmission system reliably and to operate an efficient power exchange as a California public benefit corporation. Implied is the fact that the five-member Board of Governors – appointed by California’s governor and confirmed by the state’s senate – is charged with protecting the interests of California ratepayers in all activities in which the CAISO engages.

By contrast, the EIM Governing Body’s mission is to “promote, protect and expand the success of the EIM [.]”³ However, the EIM Governing Body’s mission necessarily overlaps with the mission of the CAISO Board of Governors due to the fact that the EIM – a *multi-state* real-time market – is an extension of the CAISO’s *single-state* real-time market. This is acknowledged in the EIM Charter:

The EIM Governing Body shall promote, protect and expand the success of the EIM for the benefit of its participants as a whole, with due consideration of the interests of all participants in the ISO’s real-time market, including both participants transacting in the ISO’s balancing authority area and participants transacting in EIM balancing authority areas (meaning the balancing authority areas of EIM entities, collectively).⁴

If there were a clear, bright line dividing the mission of each board, it would imply that the EIM Governing Body’s mission would be to protect the interests of non-California entities in all interstate activities in which the CAISO engages. However, the real-time market, of which the EIM is a critical part, is a unified and interconnected interstate market which cannot be operated under one set of policies applying to California entities and another set of policies applying to non-California entities.⁵

Given experience to date, CAISO’s 2019 proposal to clarify the “but for” test and expand the EIM Governing Body’s primary authority was a necessary refinement that provided much needed clarity within the existing EIM governance framework.⁶ However, as more time elapses

² EIM Charter, pp. 3-4 and Guidance Document, pp. 2-5.

³ EIM Charter, p. 3.

⁴ *Id.*

⁵ This interrelationship was noted by the EIM Transitional Committee when it recognized “the close functional integration between the EIM and the ISO’s broader 5- and 15-minute markets, both of which share market rules running on a common platform of IT systems, as well as common staff and overlapping operational protocols.” EIM Transitional Committee Straw Proposal, p. 20.

⁶ Draft Final Proposal on Revision of Decisional Classification Rules, pp. 4-5.

and more members join the EIM, the EIM and the real-time market are likely to become increasingly indistinguishable. Longer term, it seems that fewer and fewer policy changes will be made solely because of the existence of the EIM, but rather more often as general enhancements of, and fixes to, the real-time market. This reality makes the continued use of a “but for” determination subjective, vague and open to challenge. PIOs therefore do not view clarification of the “but for” test as a permanent fix to the division of authority between the EIM Governing Body and the CAISO Board of Governors.

Rather, for simplicity’s sake, the GRC should consider proposing a clear line of division between the authority of the EIM Governing Body and the CAISO Board of Governors, including the consideration of those initiatives that would remain categorized as having “shared” board authority. There are potentially many ways to accomplish this and PIOs recommend that the GRC consider all feasible options. Below, PIOs outline two potential options and one overarching consideration for accomplishing this division of authority.

Option 1: Delineate governance between interstate markets and services versus California-only markets and services.

This option would cleave governance between those markets and services that are interstate versus those that are unique to California. This construct would therefore delegate to the EIM Governing Body authority over policy changes for both the EIM and the real-time market. By contrast, the Board of Governors would have authority over transmission and day-ahead market policy changes – at least until or at such time as the Extended Day-Ahead Market (“EDAM”) is launched and has a non-California participant. At that time, consideration would need to be given to further expanding the Governing Body’s authority over policy changes for both the EDAM and the day-ahead market.

While this option creates a bright line of division in authority between the two governing boards, PIOs foresee that this construct could still create ambiguity. For example, if the EDAM is launched but is voluntary for non-California participants (i.e., decisions regarding the amount of transmission capacity allocated to the EDAM and which power plants will participate are ultimately made by the EIM Entities), while for California entities it is effectively mandatory and under the control of the CAISO, how would policy changes to the EDAM be handled when they would have different impacts on California versus non-California entities? Should one board take precedence over the other? Is that fair to all market participants? There is also the issue of the CAISO’s annual work plan and associated budget, which are currently approved exclusively by the Board of Governors, but have impacts on interstate markets and services. These issues would need to be carefully considered and addressed under Option 1.

Option 2: Create a “dual board” governance model whereby the CAISO Board of Governors and the EIM Governing Body have shared roles in governing the various markets.

The second option eliminates the binary concept requiring one board or the other to have final authority over all policy changes and instead adopts the principle that many policy changes affect both California and non-California entities and must therefore be affirmatively approved by both boards. Affirmative approval would necessarily require a majority vote by both boards and where approval cannot be obtained, would require CAISO management to develop a revised proposal for both boards' reconsideration. This "dual board" or "joint authority" construct is already being used within today's EIM governance framework, including with regard to the EDAM and GRC stakeholder initiatives.⁷

Additional examples are instructive for how the dual board model, as envisioned by PIOs, would work in practice. Under this model, both boards' approval would be required for most policy changes to the EIM since these changes would not only impact the EIM, but also the CAISO's real-time market. Similar to the EIM example, when EDAM is officially launched, it is likely that most policy changes for it would require both boards' approval. Transmission policy changes (at least until EDAM is implemented) would fall exclusively to the Board of Governors.

In those rare instances where only California or non-California entities would be impacted, the appropriate board would instead exercise its single-board authority. Examples where single-board authority would apply include policy changes related to transmission and the current integrated forward market. Additionally, it is worth noting that under the dual board model, either board could provide advice to the other board at any time on any issue.

As a point of clarification, the dual board governance model is not the same as the present "hybrid" decisional classification. The hybrid distinction only applies to non-severable issues – that is, where a policy change requires multiple tariff changes, some of which are under the authority of the EIM Governing Body and some of which are under the authority of the Board of Governors, and where the changes are so interdependent as to be considered "non-severable" from the initiative as a whole.⁸ By contrast, under the dual board model, primary and advisory distinctions would disappear, being replaced by a distinction of single-board authority versus dual-board authority, which would effectively subsume the current hybrid classification.

In contrast to Option 1, the dual board governance model embraces the concept that many policy changes cannot be separated on the basis of geography, and therefore would require both boards' approval. Similar to Option 1, however, the dual board governance construct still has ambiguities around issues like the annual budget and work plan and the implementation of EDAM. As with Option 1, these issues would require additional consideration by the GRC and stakeholders.

Overarching Consideration: Consider eliminating the requirement that the CAISO Board of Governors provide final approval of decisions that fall squarely within the authority of the EIM Governing Body.

⁷ EDAM Issue Paper, pp. 20-21 and GRC Scoping Paper, p. 15.

⁸ Guidance Document, p. 3.

In concert with our prior recommendation that the GRC consider further modifications to the delineation of authority between the Board of Governors and the EIM Governing Body, PIOs also believe that consideration should be given to eliminating the requirement that the Board of Governors approve any decision that is solely within the purview of the EIM Governing Body, even on a consent agenda basis.

The current construct in which the CAISO Board of Governors must approve the decisions of the Governing Body creates the perception that the EIM Governing Body is subservient to the Board of Governors. This is because when the EIM Governing Body approves a tariff change within its primary authority, the decision is placed on the Board of Governors' consent agenda. While items placed on the consent agenda technically require no further action and can thus be deemed automatically approved, by a simple majority vote, the Board of Governors has the power to remove items from the consent agenda and instead consider the merits of a particular proposal.⁹ From this point, the Board of Governors can then decide to reject the matter – even over the Governing Body's prior approval – requiring CAISO management to develop an entirely new proposal for reconsideration by both boards.¹⁰

In other words, under the current EIM governance framework, the Board of Governors has the authority to veto or “undo” any of the EIM Governing Body's decisions. By contrast, the competing governance frameworks outlined in Options 1 and 2 (and particularly the dual governance construct in Option 2) strive to put both boards on an equal footing. PIOs therefore recommend that in conjunction with the consideration of any option to modify the decisional classification process, consideration also be given to clarifying that the approval of either board over its respective area of authority constitutes “board approval” for purposes of filing at FERC.

Issue 2: The Process and Criteria for Selecting Governing Body Members

Voting Role for Public Interest and Consumer Advocate Groups on the EIM Nominating Committee

Per the Selection Policy for the EIM Governing Body (“Selection Policy”), the EIM Nominating Committee is charged with nominating candidates to fill open seats on the EIM Governing Body. It is comprised of eight members, consisting of one representative from each of the following sectors: (1) EIM Entities; (2) Participating Transmission Owners; (3) Publicly-Owned Utilities; (4) Suppliers and Marketers of Generation and Energy Service Providers; (5) the Body of State Regulators; (6) EIM Governing Body; (7) CAISO Board of Governors; and (8) Public Interest and Consumer Advocate Groups. The Selection Policy makes a distinction between voting and non-voting members on the Nominating Committee and presently, only three sectors are currently relegated to non-voting roles: (1) EIM Governing Body; (2) CAISO Board of Governors; and (3) Public Interest and Consumer Advocate Groups. No justification or rationale

⁹ Guidance Document, pp. 2-3.

¹⁰ *Id.*, p. 3.

is provided in the Selection Policy for why some sectors are afforded voting rights and why other sectors are not.

In practice, it is worth clarifying that the Nominating Committee operates on a consensus basis of its members, with little emphasis (if any) being placed on this voting versus non-voting distinction. In other words, all sectors have a say in candidate selection and final candidate decisions are made upon the agreement of *all* sector representatives. Only two sectors have found themselves conflicted and have thus abstained from voting in certain situations. In these situations, the decision to abstain was based on the fact that the sector representative would eventually be involved to some degree in approving the final candidate slate.¹¹ Historically, these situations have been limited to sector representatives from the EIM Governing Body and the CAISO Board of Governors sectors only.

Thus, while it may make sense to create a voting versus non-voting distinction for those sectors that are likely to be conflicted (or face an appearance of conflict) – as has previously been the case with the CAISO Board of Governors and EIM Governing Body sectors – the same reasoning does not hold true for the Public Interest and Consumer Advocate Groups sector. This sector does not face the same kind of conflict of interest concerns as it has no role in approving the final candidate slate and further, has no shared decision making role over EIM market rules or other governance issues (a situation that could potentially create an appearance of conflict when voting on candidates for appointment to the Governing Body). Additionally, while PIOs and consumer advocates do not have a direct financial stake in the market like other sectors, they provide enormous value through the stakeholder process – as evidenced by their leadership roles on the Nominating Committee, the Regional Issues Forum and the GRC, as well as their ongoing engagement in various CAISO stakeholder processes. Therefore, the Public Interest and Consumer Advocate Groups sector is far more similarly situated to the other five stakeholder sectors with voting rights. In order to remedy this inconsistency, PIOs recommend that the Public Interest and Consumer Advocate Groups sector be afforded voting rights on the EIM Nominating Committee.

Issue 3: Governing Body Meetings and Engagement with Stakeholders

Meetings of the EIM Governing Body

PIOs believe the current model, wherein the EIM Governing Body holds seven public session meetings a year, with roughly half of those meetings occurring in locations throughout the Western Interconnection (rather than exclusively in Folsom, California, where the CAISO is headquartered) has worked very well. The EIM Governing Body's willingness to meet publicly throughout the region not only symbolizes the regional footprint of the market itself, but also provides an opportunity for the EIM Governing Body to meaningfully engage with a larger pool of regional stakeholders – particularly those stakeholders that might otherwise face travel

¹¹ The CAISO Board of Governors was charged with approving the initial five candidates who were appointed to the EIM Governing Body, but going forward, this approval responsibility is up to the EIM Governing Body itself.

restrictions. Furthermore, it serves to at least partially assuage concerns regarding the independence of the EIM Governing Body by emphasizing the regional (rather than California-centric) nature of this board's work.

Creation of a Stakeholder Advisory Committee

While PIOs have previously advocated for a more formalized role for the EIM Regional Issues Forum ("RIF") – potentially through the creation of a Stakeholder Advisory Committee ("SAC") – we also recognize the value of the current CAISO stakeholder process, including the role of the RIF in EIM governance. While the RIF does not currently submit comments on behalf of its members to the EIM Governing Body or the CAISO Board of Governors, it provides an important and related role to the EIM stakeholder community at large, by providing a forum for all stakeholders to learn about pressing and technically complex market issues that are not currently under consideration in a CAISO stakeholder process. Examples of topics recently discussed and debated at RIF meetings highlight the value of this forum to the market's stakeholders, including: greenhouse gas tracking and accounting in light of recently enacted western state climate policies, price formation at FERC, system market power analysis, and Energy Transfer System Resource best practices.

As the EIM continues to grow and as the market design for EDAM is developed and finalized, there may be a time in the future to consider a more formal role for the RIF (or, in the alternative, the creation of an entirely separate stakeholder committee to exist in tandem with the RIF). This stakeholder committee, or SAC, would provide the opportunity for more formal organizing by stakeholder sectors, including the opportunity for the SAC to submit comments and recommendations directly to the EIM Governing Body and the CAISO Board of Governors on behalf of its members. However, at present, PIOs believe the current model is working effectively and that a SAC is not currently needed. That being said, it may be time to conduct a re-evaluation of the RIF, as was done in 2017, to determine whether there are any changes to the existing RIF structure –including its membership model and responsibilities – that should be revisited in light of the growing EIM and the eventual implementation of EDAM.¹²

Possible Funding for the BOSR

According to the GRC Scoping Paper, in recent months, the EIM's Body of State Regulators, or "BOSR," has concluded that, in order to participate effectively in CAISO stakeholder processes – particularly those involving EIM and EDAM – it requires additional technical expertise.¹³ This expertise would enable the BOSR to procure the expertise necessary to participate more effectively in the EIM and eventually, the EDAM, stakeholder processes.

¹² For example, it is anticipated that these changes could include revisions to the existing sector definitions that currently comprise the RIF's membership. Operating Guidelines, Energy Imbalance Market Regional Issues Forum, p. 2.

¹³ GRC Scoping Paper, p. 12.

On August, 12, 2019, the BOSR entered into a Memorandum of Understanding (“MOU”) with the Western Interstate Energy Board (“WIEB”), through which WIEB may provide staff, technical expertise and office space to support the BOSR’s activities relating to the EIM and potentially, to EDAM.¹⁴ However, the MOU is *contingent* upon WIEB and the BOSR securing a source of funding to support the educational and technical support activities envisioned by the MOU. At present, the MOU contemplates that this funding would be provided to WIEB through retail electricity customers of the Western EIM Entities, recovered by the CAISO EIM tariff (in other words, through a portion of the Grid Management Charge, or “GMC”). If finalized, this funding relationship between WIEB, the EIM Entities and CAISO would be negotiated in a separate agreement.

The GRC Scoping Paper asks a number of questions related to the issue of potential funding for the BOSR, including the following:

- Is the GRC the appropriate body to make a recommendation on this funding issue – i.e., does this request fall within the GRC’s scope?
- Is the CAISO an appropriate source of funding for the BOSR?
- For what specific activities should funding be available? Should funding be available even if EDAM is not ultimately implemented?

PIOs believe that the BOSR’s request for additional technical support, funded through a portion of the EIM Entities’ GMC obligation, is appropriately within the scope of the GRC’s work. As noted in the GRC Scoping Paper, the CAISO currently provides support to the BOSR, as provided in the Charter for EIM Governance – this request simply seeks to *expand* upon that already existing support.¹⁵ Further, it is arguably an issue exclusively relating to governance (falling within the GRC’s scope), as opposed to one of market design or a revision to existing market rules (falling outside the GRC’s scope).¹⁶

As currently contemplated by the WIEB-BOSR MOU, funding for the additional technical support requested by the BOSR could be provided by CAISO through an incremental charge to the EIM Entities’ current obligations under CAISO’s GMC. Such a funding arrangement is not unusual and in fact, there are a number of examples of this type of funding arrangement that presently exist between other RTOs and ISOs and their “BOSR” equivalents, a few of which are highlighted below.

- Midcontinent Independent System Operator (“MISO”) and the Organization of MISO States (“OMS”): Similar to the BOSR, the OMS exists entirely outside of the MISO

¹⁴ WIEB-BOSR MOU, p. 1, available at: <https://westernenergyboard.org/wp-content/uploads/2019/11/08-12-19-wieb-eim-bosr-mou.pdf>.

¹⁵ See EIM Charter, § 7.1 (The CAISO will “provide the body with assistance and support to perform its functions,” including “education and information about the EIM,” and “reimburse travel expenses incurred by one representative of each state commission to attend meetings,” if requested).

¹⁶ See GRC Scoping Paper, p. 5 and GRC Charter, p. 8.

organization (i.e., it is not a committee or sub-committee located within the MISO governance structure). It also receives funding from MISO. The 2019 OMS budget was \$1.54 million, including 3.5 FTEs.¹⁷

- Southwest Power Pool (“SPP”) and the Regional State Committee (“RSC”): In contrast to the BOSR, the RSC exists as a committee within SPP’s committee structure. The RSC directly advises the SPP Board of Directors and receives annual funding by submitting a budget that SPP’s Board of Directors must approve. The 2019 RSC budget was \$400,000.¹⁸
- PJM and the Organization of PJM States (“OPSI”): OPSI is formally organized outside of the PJM governance framework and as such, is incorporated as a non-profit corporation and managed by a Board of Directors. It directly advises the PJM Board and receives funding from PJM. Specifically, Schedule 9 of the PJM tariff provides for OPSI’s funding and in 2017, that amount totaled \$1 million.¹⁹

In terms of the appropriate use of the funding, the WIEB-BOSR MOU sets forth a number of proposed activities – including ongoing technical expertise, staff resources and office space necessary to support the ongoing efforts of the BOSR. These activities seem reasonable and are not unlike the activities already being funded by SPP, MISO and PJM for the RSC, the OMS and the OPSI. The eventual implementation of EDAM certainly necessitates additional technical expertise so that the BOSR can effectively engage in the ongoing EDAM stakeholder process in order to meaningfully shape EDAM’s final market design. However, the rapid growth of the EIM and its recurring enhancements (including the local market power mitigation enhancements, the flexible ramping product refinements, and the commitment costs and default energy bid enhancements, among others) arguably already necessitates this type of assistance. In other words, PIOs support the consideration by the GRC of this type of funding mechanism to provide technical support for the BOSR regardless of whether EDAM is fully implemented.

Issue 4: Other Potential Areas for Governing Body Involvement

PIOs offer no comments at this time.

Issue 5: Guiding Principles

PIOs support the use of guiding principles to assist the GRC in its development of a final governance proposal to accommodate both the EIM and EDAM. These principles should not be considered a mandate, but rather, should be used as a guidepost to help inform the GRC’s critical

¹⁷ See OMS Funding Agreement, available at: <https://www.misostates.org/images/financial/OMSFundingAgreement.pdf> and OMS 2019 Budget Worksheet, available at: https://www.misostates.org/images/financial/Budgets/2019-21_Budget_Worksheet_APPROVED_16Aug2018.pdf.

¹⁸ See SPP Bylaws and Membership Agreement, pp. 66-67, available at: <https://www.spp.org/documents/13272/current%20bylaws%20and%20membership%20agreement%20tariff.pdf>.

¹⁹ See PJM Tariff, Schedule 9 – OPSI, available at: <https://www.pjm.com/directory/etariff/MasterTariffs/23TariffSections/4417.pdf>.

decision making process in the months ahead. PIOs believe that the Transitional Committee’s guiding principles provide a good starting point, but in order to reflect a change in circumstances since the Transitional Committee’s initial work product was released, recommend that the GRC consider adopting and using the following *modified* guiding principles:

- Enable options to expand the functionality of the “CAISO market” (i.e., CAISO’s day-ahead, real-time and ancillary services markets, including the EIM and in the future, the EDAM), to provide additional services necessary to improve the performance of the market.
- When possible, help control costs to ensure that favorable cost/benefit ratios are maintained for the benefit of all market participants, acknowledging that expanding or otherwise improving CAISO’s market services will involve an increase in costs.
- Protect the CAISO market and the market’s participants and consumers against the exercise of market power and manipulation and promote and enable just and reasonable outcomes. Encourage CAISO to utilize reporting and disclosure practices that will disincentivize suboptimal behaviors among market participants, such as unnecessary self-scheduling.
- Facilitate and maintain compliance with all applicable legal requirements, including but not limited to environmental regulations and western states’ renewable energy and clean energy goals.
- Preserve flexibility in market participation by allowing EIM Entities to withdraw from the EIM (and in the future, the EDAM) prior to any action that would cause or create an exit fee.
- Preserve, and where possible, strengthen the independence of the EIM governance model to reflect the changing nature of regional CAISO market participation and the potential addition of the EDAM. The market’s participants and regional stakeholders should be confident in the independent nature of not only the EIM Governing Body’s composition, but also its decision making.
- Enable widespread and diverse stakeholder participation from across the region that is truly meaningful. This means that every stakeholder – not just the market’s participants – is afforded an equal opportunity to engage in the CAISO stakeholder process.
- Encourage transparency across the CAISO market – particularly within the decision making processes of the CAISO management and staff, the EIM Governing Body, and the CAISO Board of Governors.

Issue 6: Other Potential Topics for Consideration

Additional Resources for the EIM Governing Body to Assess Market Design and Performance Issues

In comments submitted to the CAISO in response to the EDAM Issue Paper, PIOs supported the EIM Entities’ proposal for an independent market expert to provide additional perspective on the

complex and technical issues that the EIM Governing Body would oversee following EDAM implementation. PIOs reiterate that support here. Importantly, this independent market expert would not replace the function provided by CAISO's Department of Market Monitoring ("DMM"), but would supplement that function, reporting directly to the EIM Governing Body. In addition, PIOs recommend that the expertise of this independent market expert also be made available to the BOSR.

While PIOs support the initial need for this independent market expert, we also believe that the value and need for such an expert will likely decline over time as stakeholders become more familiar with EDAM's market design and operations, as issues arising from EDAM are resolved, and as trust in the CAISO's DMM increases. Therefore, PIOs recommend that CAISO consider acquisition of an independent market expert for purposes of EDAM on a contract basis.

III. Conclusion

PIOs appreciate the opportunity to provide these comments to the Governance Review Committee and look forward to our continued engagement in this important stakeholder process.