

**Comments of the
Western Energy Imbalance Market Body of State Regulators
on the Energy Imbalance Market Governance Review
June 14, 2019**

The Western Energy Imbalance Market (“EIM”) Body of State Regulators (“BOSR”) appreciates the opportunity to submit comments to the EIM Governing Body (“Governing Body”) on the Draft Final Proposal for Formation of an EIM Governance Review Committee (“Draft Final Proposal”) and the Draft Final Proposal Governance Review Committee Charter (“Draft Final Charter”), both issued on May 21, 2019.¹ The BOSR is a self-governing 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 includes 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

The CAISO is assisting the Governing Body in conducting the review and held a stakeholder call on the Draft Final Proposal and Draft Final Charter on May 29, 2019. A decision on the Draft Final Charter will be by consensus of the CAISO Board of Governors (“CAISO Board”) and the Governing Body at a joint meeting on June 28, 2019.

I. Background on the Draft GRC Charter Proposals

CAISO recommends the formation of a new interim stakeholder committee called the Governance Review Committee (“GRC”) which would be similar, though not identical, to the Transitional Committee that developed a proposal, through a stakeholder process, for the current EIM governance structure that the CAISO Board subsequently

¹ Draft Final Proposal for Formation of an EIM Governance Review Committee and Draft Final Proposal GRC Charter (May 21, 2019), available at: <https://www.westerneim.com/Documents/DraftFinalProposal-EIMGovernanceReviewCommitteeFormation.pdf> and <https://www.westerneim.com/Documents/DraftFinalCharter-EIMGovernanceReviewCommittee.pdf>, respectively.

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 and New Mexico have recently stated their intent to join the Western EIM. Commissioners from these states have been invited to participate in the BOSR.

⁴ BOSR Charter, Purposes and Responsibilities at 1.

approved. The GRC would have a total of 11-13 members. The role of the GRC would be to develop potential proposals for public stakeholder comment and consideration for ways to refine and improve the current governance structure,⁵ and at the end of the process, present a proposal to the Governing Body and the CAISO Board for consideration. The GRC would focus exclusively on issues relating to governance and would not address other topics such as market design or revisions to existing market rules.⁶

In the Draft Charter published on April 1, 2019 (“Draft Charter”),⁷ CAISO proposed that the CAISO Board, Governing Body, and BOSR would each designate one member from their respective bodies to serve as voting members of the GRC. The remaining 8-10 members would be determined through a nomination and selection process, organized through stakeholder sectors.⁸

In the Draft Final Charter, published May 21, 2019, CAISO proposes that the BOSR representative on the GRC have non-voting status, as well as the CAISO Board member and the EIM Governing Body member on the GRC.⁹

In addition, the voting provision states that a minority opinion may be submitted to the Governing Body and Board if at least two of the voting Committee members vote in support of the minority opinion.¹⁰

II. Objection to the Proposed Change in Voting Status

The BOSR objects to CAISO’s proposed change to the voting status for the BOSR member on the GRC. After thorough discussions between BOSR members, the BOSR has concluded that the proposed change is unnecessary, inconsistent with the principles included in both drafts of the GRC Charter, and departs significantly from the original

⁵ As proposed, the GRC should generally seek, where possible, to build upon and refine the current structure, rather than adopting a completely new model. Draft Final Charter, § II.B. at 2. Though not a prohibition of considering an entirely new model, that options is being discouraged.

⁶ Draft Final Charter, § II.B. at 2.

⁷ Draft Governance Review Committee Charter (April 1, 2019), (hereinafter “Draft Charter”), available at: <https://www.westerneim.com/Documents/DraftCharter-EnergyImbalanceMarketGovernanceReviewCommittee.pdf>.

⁸ In the Draft Charter, CAISO proposed five stakeholder sectors: 1) EIM entities; 2) participating transmission owners; 3) publicly-owned utilities; 4) suppliers and marketers of generation and energy service providers; and 5) public interest or consumer advocates. Draft Charter, §III.C.1(a)-(e) at 3-4. In the Draft Final Charter, CAISO modified three of the sector definitions and added another sector, Pending New EIM Participants Sector. Draft Final Charter §III.C.1 (a)-(f) at 4.

⁹ Draft Final Charter, §II.C. at 3.

¹⁰ Draft Final Charter, §IV.B. at p. 7.

Transitional Committee upon which the GRC is supposedly based and the current EIM governance structure.

The rationale provided to justify non-voting status for the CAISO Board and Governing Body members is that the Board and Body will ultimately be responsible for deciding whether to approve the proposal forwarded to them by the GRC. Some commenters suggested that the BOSR member serve as a non-voting member “given the official duties that state regulators hold over the utilities subject to their jurisdiction”.¹¹ This is precisely the rationale for providing the BOSR member a vote. The duties of state regulators are broad and include interests that are certain to be impacted by increased regionalization of electric markets.

Both drafts of the Charter emphasize “the importance of establishing a diverse and sophisticated committee, comprised of members with strong leadership skills, broad industry experience in various areas relevant to governance, and a strong understanding of the regional issues and the regional political landscape.”¹² They also emphasize that “the Committee must be geographically diverse and collectively reflect a broad range of stakeholder and industry sectors that are involved in EIM.”¹³ State regulators have a distinct point of view and role in governance of the electricity sector. “Inclusion of distinct perspectives to the EIM would ensure the Committee’s foundational work accurately captures the full needs of the region, which will be invaluable to the long-term success of the EIM and any potential future market states.”¹⁴

Finally, three sitting public utilities commissioners from Western States participated as full voting members on the 2015 EIM Transitional Committee¹⁵ and the current EIM governance structure reflects the value in having full participation by the BOSR, e.g., the voting role provided to the BOSR representative on the EIM Nominating Committee

¹¹ Draft Final Proposal at 4.

¹² EIM Governance Review Straw Proposal for Formation of an EIM Governance Review Committee (April 1, 2019) at 6, available at: <https://www.westerneim.com/Documents/StrawProposal-EnergyImbalanceMarketGovernanceReviewCommitteeFormation.pdf>.

¹³ *Id.*

¹⁴ Comments filed by Bonneville Power Administration in the California EIM Governance Review (April 29, 2019) at 2, available at: <https://www.westerneim.com/Documents/BPAComments-GRCFormation.pdf>.

¹⁵ EIM Transitional Committee Issue Paper Conceptual Models for Governing the Energy Imbalance Market (January 5, 2015) FN1 at 4, available at: https://www.westerneim.com/Documents/IssuePaper_ConceptualModels-EnergyImbalanceMarketGovernance.pdf.

which has been effectively carried out.

To address any concerns regarding the BOSR's ability to carry out their responsibilities on the GRC effectively, the BOSR has established the following guidelines:

- It is understood that the BOSR member on the GRC will not be representing him or herself or their State on the GRC.
- The BOSR member on the GRC will have full authority to negotiate in good faith on behalf of the BOSR using their own best judgment.
- The BOSR member on the GRC will periodically check-in with the BOSR to seek input from the other members of the BOSR, but is generally not required to get consensus from the BOSR to participate in GRC votes.

In addition to these comments, we refer the Governing Body to the comments previously filed by the BOSR, particularly the comments addressing the proposed scope of work for the GRC.¹⁶

The BOSR appreciates the opportunity to provide these comments and looks forward to full and productive participation in the EIM Governance Review.

¹⁶ Comments of the Western Energy Imbalance Market Body of State Regulators on the Energy Imbalance Market Governance Review (April 29, 2019) available at: <https://www.westerneim.com/Documents/BOSRComments-GRCFormation.pdf>.