

Comments of the
Western Energy Imbalance Market Body of State Regulators
on the EIM Governance Review Committee’s Scoping Paper
February 21, 2020

The Western Energy Imbalance Market (“EIM”) Body of State Regulators (“BOSR”) appreciates the opportunity to submit consensus comments to the EIM Governance Review Committee’s (GRC’s) Scoping Paper dated January 29, 2020. (“Scoping Paper”).¹ The EIM BOSR is a self-governing, independent 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 the states of 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 GRC held a stakeholder call on the Scoping Paper on February 5, 2020 and requests comments by February 21, 2020.

I. Background on EIM Governance Review

The EIM Governance Charter was approved in December of 2015 and requires a review of the Charter no later than September 2020, after gaining experience with the new governance structure. That review process has begun. It is being conducted by a temporary advisory body, the Governance Review Committee (GRC), composed of representatives from a broad array of stakeholder groups from around the West. The

¹ The Scoping Paper is available at: <https://www.westerneim.com/Documents/ScopingPaper-EIMGovernanceReviewCommittee.pdf>.

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, New Mexico and Colorado 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.

BOSR has a voting representative on the GRC. The GRC's role is to develop, through an open stakeholder process, recommendations for changes in the EIM governance structure; this includes adjustments to the EIM governance as necessary to account for significant growth of the EIM and to facilitate possible further expansion through the Extended Day Ahead Market (EDAM) Initiative. The GRC will recommend any changes to the EIM Governing Body and CAISO Board of Governors.⁵ The purpose of the GRC's Scoping Paper is to provide the GRC's preliminary view on topics they will consider with a request that stakeholders weigh in on the scope and substance of the issues to be considered. Comments to the Scoping Paper will be considered as the GRC develops a Straw Proposal.

II. The BOSR's Comments on the GRC's Scoping Paper

The BOSR agrees that Issues 1-5 in the Scoping Paper are all appropriate issues to include in the GRC's scope of review, as well as, an open category for new issues that arise during the review process (Issue 6). Comments of the Western Energy Imbalance Market Body of State Regulators on the Energy Imbalance Market Governing Body's EIM Governance Review dated January 18, 2019 continue to represent the BOSR's current views on the governance issues contained therein.⁶ The BOSR adds the following comments to those views.

A. Governing Body Meetings and Engagement with Stakeholders (Issue 3 in Scoping Paper)

Possible Funding for the BOSR. When the EIM-BOSR was first created, there was much uncertainty about how the Energy Imbalance Market (EIM) would expand and how

⁵ The GRC Charter states that GRC's recommendations for changes to EIM governance will be considered jointly by the Board and the Governing Body. GRC Charter, § A. While not formally defined in any of the governing documents, this means that the proposal must be fully considered and approved by both bodies in order to be adopted. GRC Scoping Paper at 15.

⁶ The Comments are available at: <https://westernenergyboard.org/library/eim-bosr/>.

successful the EIM would be. Initially, the BOSR's need for staff and technical resources was small and fulfilled by staff of the public utility commissions. However, due to limited state resources, it quickly became apparent that another approach was needed. In 2016, the EIM-BOSR reached out to the Western Interstate Energy Board (WIEB). Since that time, WIEB has provided limited staff resources and arranged for EIM-BOSR meetings to be held in conjunction with Spring and Fall Joint CREPC-WIRAB Meetings.

The EIM has been a tremendous success and CAISO is now contemplating expansion to a day-ahead market, which will significantly increase the volume of energy transacted by participants through a wholesale market. Both of these factors, independently, substantially increase the need and opportunity for the BOSR to thoughtfully engage on related developments. Ensuring that the BOSR is provided with an appropriate level of technical and staff assistance—assistance that will support an increased level of BOSR activity and engagement—is becoming more critical and more challenging than ever.

Having discussed this matter in depth, and having considered multiple options, the BOSR concluded that WIEB is best situated to provide this support to the BOSR in a competent and cost-effective manner. As a result, the BOSR entered into a memorandum of understanding with WIEB.⁷ The WIEB – EIM-BOSR Memorandum of Understanding on Technical Support (“MOU”) answers many of the questions posed in the Scoping Paper.

It is the intention of the BOSR to have its funding provided by retail electricity consumers of the Western EIM entities, recovered via the CAISO EIM tariff. MOU § IIIA. Funding provided to support BOSR activities will be used for staff salaries and benefits, overhead, meeting costs (e.g., room rental, audio-visual support, and webinar service), WIEB staff travel, BOSR member travel, travel for public utility commission staff, and other activities, as needed concerning EIM activities. MOU § IIIB. The specific needs of the BOSR are spelled out in Section V, Staff Support and Responsibilities. MOU § VA-K. The BOSR will determine its funding needs, applying principles of efficiency and effectiveness, and budgets will be submitted

⁷ Memorandum of Understanding Between the Western Interstate Energy Board and the Western Energy Imbalance Market – Body of State Regulators (August 12, 2019), available at: <https://westernenergyboard.org/wp-content/uploads/2019/11/08-12-19-wieb-eim-bosr-mou.pdf>.

for approval by CAISO. MOU §IV. The BOSR's proposed process for participation and funding is not dissimilar to the process utilized by other regional ISO's.

There is a question as to whether the BOSR's request for independent and increased staff support should be included in the GRC's scope of work. The BOSR, although an independent body, is part of the EIM governance structure. The CAISO created the GRC as a temporary advisory body, tasked with proposing governance changes and specifically adjustments needed due to the growth of the EIM and the potential expansion of the current market to a day ahead market such as the EDAM. Therefore, this request is consistent with the mission of the GRC and will provide the BOSR a means to achieve its purpose and effectively participate in governance. Thus, the BOSR requests that the funding proposal be included in the GRC's scope of work. If, however, the GRC determines not to consider this proposal or another method of funding support for the BOSR in the EIM Governance Review, the BOSR will pursue other options.

Stakeholder Advisory Committee. The BOSR supports the establishment of an advisory committee that provides an avenue for market stakeholders to effectively engage with the CAISO and EIM governing bodies. The Regional Issues Forum has provided an effective way for market stakeholders, both participants and interested persons, to engage in discussion on topics related to the EIM. However, the RIF is not part of the formal stakeholder process at the California ISO. The BOSR supports discussion of the specifics of a stakeholder committee through the GRC process. However, a broader stakeholder advisory committee should not be a substitute for the BOSR.

Role of Public Power. There also is a proposal to include formal representation for the governing bodies that oversee public power and the federal public marketing agencies ("Public Power") to the Governing Body. Public Power has an important and distinguishable perspective. Publicly owned utilities and federal public marketing agencies are regional market participants and can be impacted by decisions made by the EIM Governing Body and ISO Board of Governors.⁸ The BOSR supports consideration of this proposal. However, in considering the

⁸ See Western EIM Body of State Regulators Draft Principles to Guide EIM BOSR Membership and Authority (April 10, 2019), available at: <https://westernenergyboard.org/library/eim-bosr/>.

range of options, the GRC should recognize that members of the BOSR are not market participants, BOSR members do not have the same participation in EIM activities as Public Power entities; the BOSR is self-governing; and it is not a committee or sub-committee of or established by the California ISO Board of Governors or the California ISO EIM Governing Body. Review and changes to the BOSR Charter, which includes BOSR membership, are made by the BOSR upon recommendation of a BOSR member.

B. Other Potential Areas for Governing Body Involvement (Issue 4 in Scoping Paper)

Additional Resources for the EIM Governing Body. The BOSR supports making additional resources available to the EIM Governing Body to provide technical advice on market design and performance issues. The support would be in addition to assistance the Governing Body receives from the Department of Market Monitoring and the Market Surveillance Committee. The additional support should be provided in a manner and in an amount that ensures the Governing Body can effectively carry out its role.

C. Delegation of Authority for Market Rules to the EIM Governing Body and the Decisional Classification Process (Issue 1 in Scoping Paper)⁹

Shared Decisional Authority. Regardless of whether EDAM is established, the BOSR supports shared authority between the EIM Governing Body and the California ISO Board of Governors on proposed market changes that affect the EIM Balancing Authority Areas (BAAs). This includes proposed market changes that uniquely affect the EIM BAAs, as well as proposed market changes that are generally applicable to the real-time market, regardless of motivation. The BOSR further supports moving towards a simplified process. Under the existing designation and approval process, a proposed market change is designated into one of four decisional categories (i.e., primary, advisory, hybrid motivated by the EIM, and hybrid not motivated by the

⁹ This largely restates the BOSR's views in comments they previously submitted in the EIM Governance Review. See Footnote 6.

EIM), and a different approval process is applied for each of the four categories. Further, a “primary driver” and “motivation test,” which are subjective evaluations, are included in the designation process to determine if the Governing Body has primary or advisory decision authority over proposed market changes. The past approach of moving towards shared authority by incrementally adding to an already complex framework has the potential to lead to procedural conflicts and unexpected outcomes. Thus, the BOSR recommends the GRC propose moving towards a simplified process that nonetheless equitably shares decisional authority between the California ISO Board of Governors and the EIM Governing Body.

The Governing Body’s scope of authority should be commensurate with the participation by BAA’s outside of California in the CAISO markets and the value they bring to the existing market. Therefore, if EDAM is established, the BOSR supports an increased delegation of authority from the California ISO Board of Governors to the EIM Governing Body corresponding to the increased participation of EDAM BAAs.

D. The Process and Criteria for Selecting Governing Body Members (Issue 2 in Scoping Paper)

Voting Status of Nominating Committee Members. The proposals suggested in the stakeholder process regarding the process and criteria for selecting governing body members all merit consideration. One of these proposals is to change the voting status for the representative of public interest and consumer advocate groups on the EIM Governing Body Nominating Committee (“the Nominating Committee”). Under the current policy there are 3 non-voting members on the Nominating Committee, the representatives from the: EIM Governing Body, California ISO Board of Governors and public interest and consumer advocate groups. The EIM Governing Body ultimately approves (or rejects) the slate of candidates proposed by the Nominating Committee for appointment to the EIM Governing Body. The relationship between the CAISO Board of Governors and the EIM Governing Body is unique, in that the Governing Body draws its authority from a CAISO Board of Governors’ delegation. However, there is no actual or perceived conflict of interest that applies to the representative of the public interest and consumer advocate groups, nor is there a reason given for their non-voting status, therefore, the

BOSR supports a change in the voting status for the representative of public interest and consumer advocate groups on the Nominating Committee.

E. Guiding Principles (Issue 5 in Scoping Paper)

Transparency and Inclusiveness. The BOSR recommends that the GRC supplement the guiding principles received from the Transitional Committee to add statements covering the transparency and inclusiveness of its decision process. The GRC should articulate clear criteria for its use of closed executive sessions. Transparency and inclusiveness are key principles for any healthy and constructive governance or stakeholder process. The BOSR supports the application and inclusion of these principles in the GRC's process.

The BOSR also recommends the GRC include provisions for transparency and inclusiveness in any proposal developed by the GRC. Specifically, the GRC should ensure these principles are incorporated into any proposal it submits to the EIM Governing Body and the ISO Board of Governors for refinement of the of the existing EIM governance structure.