

Memorandum

To: Energy Imbalance Market Governing Body

From: Roger Collanton, Vice President, General Counsel

Date: January 16, 2018

Re: Briefing on proposed energy imbalance market governance documents and decision on advisory role

This memorandum requires EIM Governing Body action.

EXECUTIVE SUMMARY

This memorandum explains proposed revisions to two governance documents for the western energy imbalance market: the *Guidance for Handling Policy Initiatives within the Decisional Authority or Advisory Role of the EIM Governing Body* (“Guidance Document”) and the *Selection Policy for the EIM Governing Body* (“Selection Policy”).

The Guidance Document describes how ISO staff should classify policy initiatives for purposes of obtaining approval from the ISO Board of Governors, the EIM Governing Body, or both, and how to resolve any disagreements between the bodies as to the classification. When necessary, the dispute resolution process culminates with a joint meeting of both bodies. Proposed changes to the Guidance Document clarify that Management may work with the Chairs of the Board of Governors and the EIM Governing Body to resolve potential decisional classification challenges before the Chairs proceed with the dispute resolution process.

The Selection Policy explains the process for filling vacancies on the EIM Governing Body. Under the proposed changes, the Nominating Committee will have discretion about whether to use an independent executive search firm to identify qualified candidates. The changes also provide additional guidance to the Nominating Committee on how to proceed when a member of the EIM Governing Body wants to be considered for re-nomination.

The proposed revisions have been posted for stakeholder review and comment. Copies of the revised documents are enclosed for reference as attachments A and B. Management asks that the EIM Governing Body provide any input, as it deems necessary, and endorse the documents for submittal to the Board for decision.

Management proposes the following motion, subject to discussion and revisions by the EIM Governing Body:

Moved, that the EIM Governing Body endorses the proposed revisions to the guidance document and the selection policy, attached to the memorandum dated January 16, 2018, and endorses the documents for submittal to the ISO Board of Governors for its approval of the documents, pursuant to Article IV, Sections 1(c) and 2 of the corporate bylaws.

The Guidance Document

Background

The EIM Governing Body has delegated authority over market rules of the western energy imbalance market. The Guidance Document explains the scope of this delegated authority and the process that Management should follow with policy initiatives during the stakeholder process and the decisional phase to ensure that the EIM Governing Body can perform its functions effectively and with the benefit of stakeholder input. The current version of the Guidance Document states that Management will reach its conclusion about the decisional classification of an initiative after written comments are due on the draft final proposal. Management then notifies the Chair of the Board of Governors and the Chair of the EIM Governing Body of this classification and provides links to relevant policy papers. The notice describes the proposed decisional classification, and provides links to the relevant documents and any relevant stakeholder input about the classification.

Either Chair may object to the decisional classification and, if an objection is made, the Chairs may confer with each other in an attempt to resolve the matter. If the Chairs cannot agree on the proper decisional classification, a formal dispute resolution process is triggered that involves a joint meeting of both bodies.

Proposed Revision

The proposed changes, shown in redline below, clarify that Management may work with the Chairs of the two bodies to resolve a potential decisional classification challenge before the Chairs proceed with the dispute resolution process. This provides Management, which often may be in the best position to address any such concerns, with an opportunity to attempt to do so without the need for further meetings and to avoid further delay. In addition, the proposal would remove the descriptor “initial” from the term “initial decisional classification” because, in most cases, this is also the final classification.

The proposed changes to the Guidance Documents are shown in redline here:

IV. Decisional Phase: Decisional Classification, Dispute Resolution and Presentations to the EIM Governing Body

A. Decisional Classification

After stakeholder comments are due on the draft final proposal, Management will reach its conclusion about the decisional classification and its plans to seek approval for the initiative. Management will notify the Chair of the ISO Board and the Chair of the EIM Governing Body of this decisional classification and provide links to the relevant papers about the initiative. If any stakeholders have submitted written comments on the draft final proposal disagreeing with Management's proposed decisional classification, the notice will also include a link to the relevant written comments from stakeholders regarding the initial classification. The notice, which will be posted on the ISO website, should also include a date when any responses from the Chairs are due back to Management. Under ordinary circumstances, the Chairs will have at least one week to review the notice before any response is due.

Unless Management receives an objection from either the Chair of the EIM Governing Body or the Chair of the Board, Management should proceed to present the initiative for approval as proposed in its notification. If an objection is submitted from either Chair, Management may consult with the objecting Chair in an effort to address and, if possible, resolve the matter. This may include, where appropriate, a revision to the classification, with notification of the change made to both Chairs, at which point either Chair again has the option to object. If Management cannot resolve the matter, the Chairs of the two bodies shall confer on the matter in an attempt to do so. Unless the Chairs cannot agree on the proper decisional classification after having conferred on the matter, then the following dispute resolution process will be triggered.

The Selection Policy

Background

The Selection Policy governs the process for selecting Members of the EIM Governing Body. It provides that Members will be selected by a Nominating Committee and explains the selection and composition of the Nominating Committee, how the Nominating Committee operates, and how slates of nominees are approved or rejected by the EIM Governing Body.

Candidates for the EIM Governing Body are selected by a Nominating Committee comprised of eight members, consisting of one representative from each of the eight sectors or groups identified in the Selection Policy. The Nominating Committee operates by consensus of its voting members. Candidates nominated by the Nominating Committee are subject to approval by the EIM Governing Body.

During its 2016 search to find the initial members of the EIM Governing Body, the Nominating Committee used an executive search firm retained by the ISO to identify qualified candidates, and supplemented the pool with candidates identified by the Committee. The Selection Policy specifies that if an EIM Governing Body Member whose term is scheduled to expire seeks to be nominated for a new term, then the Nominating Committee may decide to re-nominate that Member without interviewing or considering other candidates.

Proposed Revisions to the Guidance Document

After gaining experience with the selection process, it has become clear that members of the Nominating Committee have contacts with many qualified candidates who could be a good fit for the EIM Governing Body, both directly and through the other companies and organizations in their sectors. Consequently, it may not in all cases be necessary for the Nominating Committee to retain an executive search firm, which involves significant time and expense, to identify qualified candidates. For example, retaining such a firm may not be necessary in some instances where a sitting member is seeking another term, if the Nominating Committee decides that a more truncated consideration of potential other candidates is warranted. Rather than deciding whether an executive search firm must be retained in any particular circumstance, the proposed changes to the Selection Policy, shown in redline below, leave to the discretion of the Nominating Committee whether to use an executive search firm in each circumstance. If the Nominating Committee elects not to use the services of an executive search firm, the Nominating Committee itself will identify qualified candidates for consideration pursuant to Selection Policy criteria.

Additionally, the proposed changes provide further guidance on how the Nominating Committee should proceed when a sitting Member asks to be considered for another term. Specifically, the changes require the Nominating Committee to interview the sitting member and state that the Committee should normally consider additional qualified candidates, with or without the assistance of an executive search firm. This guidance is intended to give the Nominating Committee substantial flexibility, while expressing the view that, in most cases, it is advisable to consider additional candidates.

The proposed changes to the Selection Policy are shown in redline here:

3.4 Operation of the Nominating Committee

If a Governing Body member whose term is scheduled to expire has expressed a desire to be nominated for a new term, the Nominating Committee shall interview and consider that individual for the position. The Nominating Committee should normally consider additional qualified candidates. The Nominating Committee has discretion to decide whether or not to have the ISO engage an Executive Search Firm to identify additional candidates. If the Nominating Committee decides that an Executive Search Firm will not be engaged, then the Nominating Committee shall itself identify the additional candidates, following the same criteria set forth in this Section and Section 3.5 of this policy. ~~should determine whether it wants to re-nominate the departing member without interviewing other candidates. If the Nominating Committee does not decide to proceed in this manner, then it should ask the Executive Search Firm to identify at least two qualified candidates, in addition to the sitting member, for the Nominating Committee to interview.~~

With or without the assistance from ~~the~~ an Executive Search Firm, the Nominating Committee shall identify and select the best qualified candidates available in the United States. Optimally, the Committee's selections should ensure that the overall composition of the Governing Body reflects diversity of expertise so that there is not a predominance of Members who specialize in one subject area, such as operations or utility regulation. Similarly, no one state or sub-region in the West should have excessive representation — meaning members whose place of residence or work history tends to associate them with a particular Western state. The Committee should strive to ensure that the Governing Body includes at least one member with expertise in Western electric systems and markets. If the Nominating Committee can identify a qualified candidate with a Western background who has as strong overall experience and knowledge as the other candidates, and all other factors being equal, the Committee should prefer the candidate with a Western background. The Nominating Committee should interview and consider at least two candidates for each position that it is seeking to fill, in the situation where a sitting member is not seeking re-nomination.

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3.5 Executive Search Criteria

Not less than 90 days prior to the scheduled expiration of any Member's term and as necessary to fill other vacancies, the ISO will, if requested by the Nominating Committee, engage an independent Executive Search Firm to identify qualified candidates for consideration by the Nominating Committee.

Stakeholder Feedback

The proposed revisions to Guidance Document and Selection Policy were posted for stakeholder review on October 18, 2017, and presented to representatives of at least 19 stakeholders in a call on October 25. At the request of the Body of State Regulators, the deadline for submitting written comments was extended to December 18. Two written comments were submitted from the Body of State Regulators and the Bonneville Power Administration.¹

The general direction of the comments from BOSR and BPA were similar. Both support the proposed changes to the Guidance Documents. And both suggest revisions to the Selection Policy meant to ensure that, if the Nominating Committee decides not to use an executive search firm, its process for identifying candidates is transparent and attracts the strongest pool possible.

The BOSR recommends that, when a member seeks re-appointment and the Nominating Committee has decided not to use a search firm to identify potential alternative candidates, the ISO should issue a market notice 90 days before the member's term expires requesting the names of potential candidates. Management agrees that a market notice could be an effective way of identifying candidates. The ISO has a history of issuing such notices, including in 2016 when the initial members of the EIM Governing Body were selected. Management does not believe, however, that it is necessary to revise the policy to specifically require such a notice. The Nominating Committee can always ask the ISO to issue a market notice calling for candidates (which the ISO would issue). In fact, the BOSR has a voting representative on the committee who would be in a position to insist on a public call for candidates as a condition of supporting the final slate of nominees, because the committee can act only by consensus and thus needs the support of the BOSR representative. In addition, Management believes it is important that the autonomy of the Nominating Committee be maintained, and that it should not overly prescribe how the Nominating Committee should operate. Management thus believes it is preferable to leave this issue to be worked out by the committee in a way that they believe will produce the strongest candidates.

BPA's comments focus on the value of using an executive search firm in terms of independence from the members of the Nominating Committee. The members are from

¹ The comments are available at <https://www.westerneim.com/Pages/Initiatives/default.aspx>.

organizations that are EIM participants, which BPA believes may “bias” their consideration of new candidates. To counteract that bias, and ensure an effective search for candidates, BPA recommends that “criteria be developed for the Nominating Committee to follow to demonstrate the extent of its unbiased, objective effort to secure new candidates.”

Management appreciates BPA’s comment and shares its goal – i.e., the Nominating Committee should search for the strongest possible candidates. There are mechanisms in place already to assure this. The search criteria in the Policy is clear: “the Nominating Committee shall identify and select the best qualified candidate available in the United States,” Selection Policy § 3.4, and the specific criteria are detailed. The voting structure of the committee is designed to prevent the selection of candidates who may be biased in favor of one company or sector, because a nomination requires consensus among market participants with diverse and to some degree conflicting interests, as well as the support of a representative of the Body of State Regulators. Moreover, nominees must be confirmed in an open meeting in which any stakeholder may speak, and the Nominating Committee may describe the process it used to identify and select the strongest candidates. Management believes these structural incentives and checks will avoid the selection of candidates as the result of the Nominating Committee’s improper biases, and instead encourage the selection of outstanding candidates who can act in the public interest to advance the market as a whole. Accordingly, Management does not believe that providing more specific guidance for the Nominating Committee’s search is necessary at this time.

CONCLUSION

Management believes that the proposed revisions will improve the efficiency of the processes to classify initiatives for decision and to select members of the EIM Governing Body. Management asks the EIM Governing Body to provide its advice to the Board of Governors regarding the Board’s decision on the proposed changes.