

Comments of the Staff of the California Public Utilities Commission on the EIM Governance Straw Proposal

Submitted by	Company	Date Submitted
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The Staff of the California Public Utilities Commission (CPUC Staff) appreciates the EIM Transitional Committee’s substantial efforts to develop a proposed governance structure that effectively complements the both the EIM market structure (as an extension and integrated part of the CAISO’s real-time market) as well as the EIM’s diverse geographic reach (beyond the footprint of Balancing Area Authorities served by all of the CAISO’s markets). The CPUC Staff strongly supports the proposal for a delegated authority governance model as the optimal solution, at least at the present time, to promote the successful establishment of the EIM.

The proposed model should facilitate a collaborative relationship between the EIM and ISO Boards as well as maintain close integration between EIM and other CAISO rules and operations, by requiring that any proposed tariff amendments for submission under Section 205 of the Federal Power Act must be approved by both decisional bodies. The proposed governance model also alleviates the CPUC Staff’s previously-articulated concerns that the governance model selected should promote a favorable cost/benefit ratio for the EIM as well as avoid potential legal issues with establishing a fully autonomous and separate entity for the EIM governing body.

The CPUC Staff offers further comments below, as requested by the Transitional Committee, on specific issues identified in the Stakeholder comments template:

Structure - composition of the Nominating Committee, composition of the EIM governing body, and process for selecting members.
The CPUC Staff appreciated the Transitional Committee members’ explanations regarding the decision to include only four stakeholder sectors as voting members of the nominating committee that will identify and select proposed members for the EIM governing body. The CPUC Staff still recommends one clarification to this process, to

specify that the nominating committee will include only one representative (in total) from the publicly-owned utilities sector. The proposal calls for a representative from publicly-owned utility (POU) to serve as a voting member of the nominating committee. Accordingly, the CPUC Staff expects that the nominating committee representative from the “body of state regulators and comparable representatives of publicly-owned utilities” would be a state regulator and not a second representative from a POU. The CPUC staff recommends that the governance proposal clarify this intention in order to ensure that the POU stakeholder sector is not over-represented, relative to other stakeholders, on the nominating committee.

Scope of authority – scope of authority, including whether it is appropriate and workable, the examples of issues that would fall within the primary and secondary authority of the EIM governing body, and process for resolving disagreements about the particular proposed rule changes or the scope of authority generally.

(1) Scope of Authority:

The CPUC Staff generally supports the proposed scope of authority for the EIM Governing Board; however, defining the actual delegation is a critical step and warrants further discussions with the Transitional Committee and stakeholders. The CPUC Staff therefore requests that the Transitional Committee host a working group session to discuss the proposed delegation and to work through examples of how specific proposed additions or amendments to the tariff would be delegated between the EIM governing body and the CAISO Board, including discussions of the impacts on rules addressed in the Business Practice Manuals.

Further, the CPUC Staff recommends that the scope of delegated authority be defined in reasonably specific terms in the Transitional Committee's final proposal, such as by defining general tariff sections delegated to the EIM, and not be left entirely for the EIM and CAISO governing bodies to define. The scope of authority is a critical threshold issue and key defining characteristic of the EIM governance structure. A general statement that establishes the scope of authority delegated to the EIM governing body should be written into the bylaws, and more specific definition of delegated tariff sections and rules should be included in the EIM governing body's charter. Doing the work “up front” to provide a reasonably specific definition on the scope of authority will enhance regulatory certainty for EIM participants as well as the durability of the EIM governance model. Facilitating a clear understanding by the leadership, management, staff, market participants, and stakeholders of the CAISO and EIM will likely go a long way to avoid future misunderstandings and disagreements about whether specific proposed rule changes should be subject to the primary decisional authority of the EIM or CAISO governing body.

(2) Proposed Process for allowing the ISO Board to discuss EIM proposals placed on the consent agenda:

The CPUC Staff recommends that the Committee further consider the proposed requirement to have a majority vote of CAISO Governors in order for the Board to discuss (versus voting up or down without discussion) any EIM proposal. The CPUC Staff could support this proposal, but query whether a lower number (e.g., a vote of one or two Governors) would be better.

First, the CPUC Staff supports maintaining consistency between procedural rules that apply to the CAISO Board's consideration of EIM proposals and any other agenda items. The CAISO bylaws and the CAISO's Open Meeting Policy currently allow any Governor to make changes to the meeting agenda up to two days before the meeting. (See Amended and Restated Bylaws, Article III, Section 9.2. See also CAISO's Open Meeting Policy Section 5.0: "Agenda items may be changed by any member of the Board up to two days before a meeting, and a revised notice will be posted on the ISO website at substantially the same time the revised notice is delivered to members of the Board and members of the public who have requested such a notice.") Thus adopting a different rule for modifying EIM items could yield confusing inconsistencies on the treatment and notice for modifying agenda items.

Second, the CPUC Staff can envision situations where requiring a majority vote for discussion could have unintended consequences, particularly when there are only four sitting Governors. For example, if two Governors opposed an EIM proposal they could defeat it without discussion by the Board on the merits (as 3 votes would be needed both to discuss the item and to approve it). Thus the CPUC Staff recommends considering if a lower threshold for allowing ISO Board discussions on EIM items might better serve the goals of efficiency and collaboration.

Documentation – documentation of these arrangements in the ISO's bylaws and a charter from the ISO Board of Governors, and mission of the EIM governing body that would be identified in its charter

The CPUC Staff generally supports the proposed documentation of the delegation of authority in the CAISO's corporate bylaws. Further, as noted above, the CPUC Staff recommends that the description of the scope of delegated authority be included both in the bylaws establishing the EIM governing body and the charter.

The CPUC Staff supports the current proposal's determination that no provision is necessary that would limit the CAISO Board's authority to amend or remove the delegation to an EIM governing body in the bylaws. Rather, the existing limitations on the CAISO Board's existing general authority and procedures for amending the corporate bylaws should remain in effect and apply equally to all bylaws, without any carve-out for specific sections.

The CPUC Staff agrees with the Transitional Committee that an EIM-specific limitation on the CAISO’s authority to amend the bylaws is not necessary to ensure the durability of the arrangement. Straw Proposal at 22. The bylaws may only be amended by the vote of at least two-thirds of the Governors then in office. Given the ease by which EIM entities can withdraw from the EIM and the CAISO Board’s demonstrated commitment to the EIM’s success, the EIM entities have strong lever for opposing any amendment or revocation of the delegated authority. Thus, short of an all-out failure of the EIM, which the CPUC Staff does not anticipate, the CAISO Board has every incentive not to disrupt the approved governance structure and it will take a super-majority to do so. Accordingly the CPUC Staff agrees these features together can provide enough assurance to prospective EIM participants that the CAISO Board will not unilaterally amend or revoke the delegation of authority to the EIM governing body.

On the other hand, the CPUC Staff believes there is benefit to minimizing any “EIM carve-outs” from the generally applicable rules and procedures that govern the CAISO stakeholder processes and Board, such as an EIM-specific limitation on the CAISO Board’s authority to amend the bylaws. All of the generally-applicable rules should apply equally to all CAISO actions as much as possible, while still accommodating the proposed delegation of primary authority. Obviously some changes and EIM-specific provisions are necessary in the bylaws to effectuate the proposed EIM governance structure, but the Transitional Committee should seek to minimize the extent to which there are any separate, parallel, rules for EIM-related issues.

Committee of regulators – composition, including the balance of representation between state commissions and public power, and role of the committee

The CPUC Staff recommends that the Transitional Committee consider incorporating a procedure for allowing the members on the committee of regulators to vote by a designated proxy (which could be a staff member), or allow for participation and voting in meetings by phone.

Trigger for re-evaluating EIM governance

The Committee is proposing for comment a “variety of potential triggers that could give rise to evaluating the possibility of more fundamental governance changes.”

The CPUC Staff supports committing to review EIM governance five years after establishment of the EIM governing body as a default, or sooner if specific trigger conditions were satisfied. But while it is important for the EIM to remain able to respond and evolve as the EIM grows, it is also important for participants to have clear expectations of how durable the governance structure will be, in order to enhance regulatory certainty. The CPUC Staff thus recommends against having too many triggers, or triggers that could occur suddenly, without sufficient and clear

advance warning of when or how they may be satisfied. The trigger conditions should be narrowly tailored to enhance regulatory certainty, including EIM participants' certainty about the stability of the governance structure.

Accordingly, the CPUC Staff supports the proposed trigger Nos. 1, 4, and 6 for the reasons that follow:

No. 1 – For trigger condition when “a certain number of EIM entities have entered the market,” the CPUC Staff proposes the number be eight entities, counting the CAISO as one. This would amount to a doubling of EIM participants from the current number that are participating or anticipated to join in the near-term and sets a clear bar for all EIM entities and prospective participants.

No. 4 – It also makes good sense to revisit the governance structure if the ISO adds “additional functionality beyond the real-time market for imbalance energy,” although the CPUC Staff would clarify this means “significant additional functionality,” not “additional functionality” that might technically extend beyond the real time market but which is added purely to support the EIM’s real-time market functions. The CPUC Staff also requests that the Transitional Committee provide examples of what types of functionality additions would meet this condition in the next straw proposal.

No. 6 - If another imbalance market joins or merges into the EIM, then it makes sense to revisit the governance structure.

The CPUC Staff requests additional details on the proposed trigger Nos. 2 and 3, which are defined more vaguely than the other proposed triggers and could result in a more rapid or unexpected triggering of governance review compared to the others. Tying a triggering condition to “overall load”, “a certain number of states,” or “a certain number of very large utilities” being “included” in the EIM is less predictable and produces more subjective criteria. The conditions could be met suddenly and without much lead-time, which undermines regulatory certainty for current and prospective EIM participants as to the durability of the adopted governance structure. By contrast, the other three triggers are clear and objective and will provide ample lead-time prior to being satisfied due to the timeline required under FERC approval processes.

Finally, the CPUC staff requests additional discussion of the pros and cons for triggering a review of the EIM governance if a “large entity” located outside of California decides to join the CAISO as a Participating Transmission Owner (rather than as an EIM entity).

Criteria for evaluating proposals – to revise and simplify the criteria for evaluating governance proposals, as reflected in the appendix

No comment at this time.

Miscellaneous items – Please provide comments to other aspects of the straw proposal or governance related issues here.

The CPUC Staff recommends that the Transitional Committee’s next straw proposal provide more clarity on high level rules that will govern the EIM body’s discussion and consideration of EIM proposals and that the rules provide transparency both for the EIM Board’s consideration of proposals and what processes staff will follow (i.e., an the general ISO stakeholder process). Further, the CPUC Staff recommends that the EIM governing board should also be subject to the rules regarding public notice and agenda requirements that generally apply to the CAISO Board and the CAISO’s Advisory Committees. See CAISO Amended & Restated Bylaws, Article III, Section 8 and Article IV Section 5; CAISO Open Meeting Policy Version #3.3. This should be both for actions of the EIM governing board in its capacity as the primary decision-maker on EIM proposals and in its capacity as an Advisory Committee.