

Memorandum

To: Energy Imbalance Market Governing Body
From: Roger E. Collanton, Vice President, General Counsel, Chief Compliance Officer and Corporate Secretary.
Date: September 1, 2021
Re: **Decision on EIM Governance Review Committee Phase 2 Governance Documents**

This memo requires EIM Governing Body action.

EXECUTIVE SUMMARY

On August 20, the EIM Governing Body and the Board of Governors jointly approved the “part two” proposal of the EIM Governance Review Committee (“GRC”), which recommended further refinements to the ISO’s governance. This memorandum explains Management’s proposed implementation of the GRC’s proposal through changes to three governance documents:

- The Amended and Restated Bylaws (“Corporate Bylaws”);
- The Charter for Energy Imbalance Market Governance (“Charter”); and
- Guidance for Handling Policy Initiatives within the Decisional Authority or Advisory Role of the EIM Governing Body (“Guidance Document”).

The EIM Governing Body has advisory authority for these proposed changes. Management asks that the EIM Governing Body exercise its advisory authority and endorse the changes for submittal to the ISO Board for its approval. Management proposes the following motion:

Moved, that the EIM Governing Body will provide [written/verbal] advisory input to the Board of Governors, supporting the proposed amendments to the Amended and Restated Bylaws, the Charter for Energy Imbalance Market Governance and Guidance for Handling Policy Initiatives within the Decisional Authority or Advisory Role of the EIM Governing Body, as discussed in and attached to the memorandum dated September 1, 2021.

RECOMMENDED CHANGES

In its Part Two Draft Final Proposal, the GRC recommended governance changes to the delegation of authority to the EIM Governing Body, summarized as follows:

- A joint authority model for approving proposals to change aspects of the ISO tariff that are within an expanded scope of issues subject to shared approval. This will require both bodies to fully consider and vote to approve the proposal.
- A revised scope of the EIM Governing Body's advisory role, which extends to all proposed tariff amendments that apply to the real-time market that are not within the expanded joint authority.
- A new process for addressing possible deadlocks between the two bodies over whether to approve policy initiatives within their joint authority. The process includes sending the issue back to ISO staff for further stakeholder proceedings to establish a mutually acceptable proposal, as well as a process for having the Board authorize a filing when an impasse has been reached and exigent circumstances require a FERC filing.
- An adjustment to the process for resolving disputes about decisional classification to include weighted voting when either the Board or the EIM Governing Body has less than five member seated at the time of the dispute.
- Special notice and voting requirements as a condition of modifying the delegation of authority, in order to enhance the durability of the delegation.
- Elimination of an emergency filing provision for temporary amendments on topics covered by joint authority, which has never been used and is not needed in light of the ability to convene both bodies rapidly on a remote basis.

The approved Part Two Draft Final Proposal, which is attached for reference, describes each of these recommendations in greater detail in a table on pages 19-22.

Implementing these recommendations requires changes to the Corporate Bylaws, the Charter and the Guidance Document. Each of these documents requires Board approval for any amendments. While the EIM Governing Body has a greater role with respect to certain proposed changes to the Charter (specifically, to Sections 5 or 6), those sections are not implicated here. Accordingly, Management is seeking the EIM Governing Body's advisory input for the changes to each document.

The redlines to the attached governance documents reflect the following changes:

Corporate Bylaws

Article IV of the Corporate Bylaws, which establishes EIM governance and the EIM Governing Body, is revised to reflect the joint authority model. The new rules about amending the delegation of authority to enhance its durability are added to Article IX, Section 3, which governs amendments. These new subsections in Article IX state the foundational rule for the durability of the delegation of authority. In addition, because an integral part of the delegation is implemented through the Charter as well, a new provision has been added to the Corporate Bylaws that restricts amendments to the Charter. This new requirement, together with a new rule in the Charter that is discussed below, assures that the delegation of authority may be modified only if the new durability requirements are satisfied. See Art. IV, § 1(b) and new Section 9 of the Charter.

Charter

Section 2.2 of the Charter governs the scope of joint authority, the EIM Governing Body's advisory role, and the process of resolving deadlocks. To enhance the durability of these rules, a new sentence is added to Section 9. It states that Section 2.2 may be amended only under the conditions for amending Article IV of the Corporate Bylaws, which contain the foundational rule about the durability of the delegation.

Within Section 2.2, the proposed revisions reflect the new scope of joint authority and the advisory role (§ 2.2.1), as well as the new process for resolving possible deadlocks over policy initiatives (§ 2.2.2). The language in these proposed sections is drawn from the GRC's proposal.

In addition, in Section 2.2.3 about resolving disputes over the decisional classification of an initiative, the weighted voting rule is added so that each body have five votes even if it does not have five members at the time of the decision. Finally, the rule authorizing emergency short-term filings with the approval of only one body has been deleted. See former § 2.2.3.

Guidance Document

The proposed changes begin with a new, shorter title. The current title is "Guidance for Handling Policy Initiatives within the Decisional Authority or Advisory Role of the EIM Governing Body." The proposed revision would shorten the title to a more succinct and accurate: "Guidance for Handling Policy Initiatives that may Come Before the EIM Governing Body."

The substantive changes about the delegation of authority track the language in the Charter. See Guidance Document, Sections II.A and II.B. Other sections are modified to align with the new joint authority model, most extensively in Section III.C about severability.

Other revisions update phrases that, have become obsolete since the outset of EIM governance. See Section I (first sentence about the creation of the EIM Governing Body), and Section III (first paragraph, deleting the word "currently," which applied when the EIM Governing Body was new); see also Section IV(B) (changing reference to "telephone conference" to "remote meeting.")

CONCLUSION

Management recommends that the EIM Governing Body provide advisory input to the Board recommending the proposed amendments to the Corporate Bylaws, the Charter and the Guidance Document.

Attachments

A – Proposed amendments to the Corporate Bylaws

B – Proposed amendments to the Charter

C – Proposed amendments to the Guidance Document

D – July 19, 2021 EIM Governance Review Committee Part Two Draft Final Proposal (as approved by the EIM Governing Body and Board on August 20, 2021)