

Memorandum

To: ISO Board of Governors and Energy Imbalance Market Governing Body

From: Stacey Crowley, Vice President, External and Customer Affairs

Date: June 21, 2019

Re: **Decision on Proposed EIM Governance Review Committee Charter**

This memorandum requires EIM Governing Body action and, if so approved, Board action.

EXECUTIVE SUMMARY

ISO Management presents for consideration by the EIM Governing Body and ISO Board of Governors the attached Energy Imbalance Market Governance Review Committee Charter. The proposed charter is the result of an ISO stakeholder process conducted over the past several months that has considered how best to undertake the EIM governance review required under the Charter for Energy Imbalance Market Governance. Through that stakeholder process, the ISO determined that a stakeholder-based Governance Review Committee (GRC), which is similar in structure and role to the Transitional Committee that helped form the EIM Governing Body, should be established on a temporary basis to develop any proposed refinements to the current EIM governance. Accordingly, Management seeks successive approval of the proposed charter, first by the EIM Governing Body and then by the ISO Board of Governors. If approved, the charter will establish the process for forming the GRC and selecting its membership, the committee's role and scope of work, and the procedural rules under which the committee will operate. The GRC will be responsible for conducting a public stakeholder process to review the EIM governance structure and will ultimately recommend any proposed governance changes for consideration by the EIM Governing Body and ISO Board.

Management recommends that the EIM Governing Body approve the charter for energy imbalance market governance review committee, and, assuming it does so, then that the Board separately approve the charter. Management proposes the following motions in order as follows:

EIM Governing Body Motion:

Moved, that the EIM Governing Body approves the revised draft final charter for the energy imbalance market governance review committee attached to the memorandum dated June 21, 2019.

ISO Board of Governors Motion:

Moved, that the ISO Board of Governors approves the revised draft final charter for the energy imbalance market governance review committee attached to the memorandum dated June 21, 2019.

DISCUSSION AND ANALYSIS

At its inception, the ISO Board included a provision in the Charter for Energy Imbalance Market Governance requiring the Governing Body to initiate a review of EIM governance by no later than September 2020. As stated in that Charter, this requirement was designed to ensure that the existing EIM governance is reviewed in a timely manner after startup to account for “accumulated experience and changed circumstances” over time. In the fall of 2018, the EIM Governing Body requested that Management commence a stakeholder process to determine whether to conduct such a review in 2019, and if so, what form the review process should take. Based on stakeholder feedback, Management believes it should form a temporary advisory committee to the EIM Governing Body and the Board, known as the Governance Review Committee, or GRC, to conduct the required governance review process.

With approval from the Governing Body and the Board, the GRC will be formed and governed according to the attached draft charter. The committee’s form and purpose will be similar to that of the Transitional Committee that was formed to develop the EIM governance structure. As provided in the draft charter, the committee will be responsible for overseeing an iterative, public stakeholder process to consider possible revisions and improvements to the EIM governance structure in light of experience to date and the evolution of the EIM since its inception. The committee will present the results of this work to the EIM Governing Body and ultimately the Board for their consideration. Upon completion of this work, the GRC will then be disbanded.

EIM Governance Review Committee Charter

The proposed EIM Governance Review Committee Charter establishes: (1) the committee’s role and responsibilities, (2) the process used to form the committee and appoint its members, and (3) the rules the committee will follow to administer its responsibilities. Each section is discussed below.

1. Role and Responsibilities

The committee will be responsible for developing proposed revisions to the EIM governance structure. The committee will develop its proposal through a public stakeholder process that includes posting a series of issue papers or straw proposals for stakeholder comment, culminating in a draft final proposal, posted publicly, for review and consideration by the EIM Governing Body and the ISO Board. The ISO anticipates that the committee will take from 6 to 12 months to complete its work.

During this process, the committee will periodically report on its progress to the EIM Governing Body and Board. As per the charter, the committee will be encouraged to develop a consensus proposal supported by all members of the committee. If, however, full consensus cannot be achieved, a proposal supported by a majority of the voting members would be presented along with any minority proposal(s) that has the support of at least two voting committee members.

The scope of work for the committee will be broad, but solely focused on EIM governance, and therefore will not include any market design or other non-governance topics. In-scope topics may include proposed revisions and enhancements to the existing EIM governance structure that reflect the collective experience and evolution of the EIM over its first five years of operation. These topics may include the scope and nature of the delegated authority of the EIM Governing Body, the EIM Governing Body selection process and criteria, and other potential changes to the current structure. Topics may also include the interaction between the Body of State Regulators (BOSR) and the ISO, though the charter acknowledges that the committee should be mindful that the BOSR is autonomous and has its own processes and procedures. Finally, the committee may consider governance issues related to a potential extended day-ahead market (EDAM), but only if the outcome of the ongoing EDAM feasibility study results in the ISO commencing a stakeholder process to develop an EDAM design.

2. Membership and Formation

The EIM governance review committee will be formed and constituted through a process similar to the process used to form the Transitional Committee that helped form the EIM governance structure. In general, committee members will be “stakeholders that are collectively capable of addressing all governance issues within the Committee’s purview.” Members will reflect diversity in terms of their geographic location, background and expertise, and will collectively possess knowledge and experience in electricity markets, corporate governance, and legal and regulatory matters. Further, they will be collectively committed to the success of the EIM and, if applicable, the EDAM, and must be available to work with the committee through the successful completion of the governance review process, which is anticipated to last approximately 6 to 12 months.

The committee will have between 11 and 13 members, including two non-voting members; one designated from each the ISO Board and the EIM Governing Body memberships, and one voting member designated from the BOSR membership. The balance of the members will be appointed jointly by the EIM Governing Body and Board, who will appoint them from a list of nominees that are developed and ranked by six stakeholder sectors.

The stakeholder sectors, that will put forward and rank nominees, are defined as follows:

a) **EIM Entities Sector:** Includes every EIM Entity (as defined in the ISO Tariff) and any entity that has executed an EIM Implementation Agreement to become an EIM Entity.

b) **Participating Transmission Owners Sector:** Includes every Participating Transmission Owner (as defined in the ISO Tariff).

c) **Pending New EIM Participants Sector:** Includes any balancing authority that has entered into a formal public process to consider joining EIM and any publicly-owned utility, other load-serving entity, or supplier of generation within such a balancing authority that may participate in EIM if the balancing authority becomes an EIM Entity.

d) **Publicly-Owned Utilities Sector:** Includes every publicly-owned utility that is located within the balancing authority of the ISO, within the balancing authority of an EIM Entity, or within the balancing authority of an entity that has executed an EIM Implementation Agreement to become an EIM Entity. A publicly-owned utility is any utility that is excluded from certain provisions of the Federal Power Act by virtue of Section 201(f) of the Act. By way of illustration, this includes, without limitation, municipally owned utilities, power cooperatives, and federal power marketing agencies. A publicly-owned utility that also falls within the EIM Entity sector, the Participating Transmission Owner sector, or the Pending New EIM Participants sector shall instead participate in that sector.

e) **Suppliers and Marketers of Generation and Energy Service Providers Sector:** Includes every entity that is party to a Scheduling Coordinator Agreement or a Participating Generator Agreement (as defined in the ISO tariff) with the ISO, provided that it does not qualify for the EIM Entities sector, the Participating Transmission Owners sector, the Publicly-Owned Utilities sector, or the Pending New EIM Participants sector. If the entity qualifies for one of those four sectors, then it shall instead participate in that sector.

f) **Public Interest or Consumer Advocate Sector:** Includes all public interest or consumer advocate groups that are actively involved in energy issues within the balancing authority of the ISO, an EIM Entity, an entity that has executed an EIM Implementation Agreement to become an EIM Entity, or a balancing authority that falls within the Pending New EIM Participants sector.

Each stakeholder sector will be required to nominate at least three candidates for the committee. Once an overall combined list of each sector's candidates has been established, each sector will then be asked to rank the nominees on the entire list.

The initial nominations will be provided to the ISO no later than July 26 and the ranked lists will be provided to the ISO by no later than August 16. The ISO will provide the

ranked lists to the EIM Governing Body and the Board, who will then use the lists to jointly select the remaining members of the committee.

Once its membership has been established, the committee will select a chair, who will preside over committee meetings, manage committee workload and schedules, ensure the quality and timely completion of work product, and serve as the primary liaison to the ISO. All voting members will serve without compensation or reimbursement for associated travel by the ISO.

As it did with the Transitional Committee, the ISO will designate a staff person to serve as a liaison to the committee and to assist the committee with all administrative tasks associated with its operation.

3. Administrative Rules

Committee meetings will be held in conformance with the ISO's bylaws and Open Meeting Policy, including public access and comment, notice and waiver thereof and formal committee actions. The committee will determine the time and place of its meetings, including but not limited to the ISO's Folsom headquarters as well as phone or web conference, and generally may establish its own processes consistent with the charter. A quorum will be two-thirds of the voting committee members then seated, and an affirmative vote of a majority of voting members then seated will be necessary for any formal committee action, other than the submission of a minority opinion, which will require at least two voting members' approval. Unless otherwise directed by the committee, the ISO Corporate Secretary or his or her designee shall serve as secretary to the committee, and will advise and assist the committee to ensure it satisfies its obligations under the Open Meeting Policy and bylaws. Finally, the ISO will provide, at the committee's request and to the extent practicable, administrative support such as office and communications, and any legal or technical support the committee needs to fulfill its role and responsibilities.

THE STAKEHOLDER PROCESS AND COMMENTS

Stakeholders have broadly expressed support for establishing a governance review committee and for the proposed governance review committee charter. The ISO conducted a stakeholder process that commenced with an issue paper and straw proposal and draft proposed charter. The ISO received written stakeholder comments and held a stakeholder call on the initial proposal, and then prepared a draft final proposal and charter that included relatively modest revisions based on stakeholder input. The ISO then received a second round of comments and held another stakeholder call on these documents. At that stage, stakeholders expressed broad support for the proposal, with one exception. The Body of State Regulators and certain other stakeholders expressed the view that the BOSR-designated member should be a voting member of the governance review committee, rather than a non-voting member as the ISO had proposed.

Since the last posting of the final draft charter on May 21, the ISO has addressed this issue by changing the status of the BOSR-designated member from non-voting to voting. As the ISO explained in an addendum to the draft final proposal, posted on June 18, it had proposed a non-voting role for the BOSR-designated member based on the belief that this would make it easier for a BOSR member to participate without raising any conflict with their official duties or complicating the process that the BOSR uses to formulate its positions on matters involving the ISO. In light of the BOSR's comments indicating that it does not have concerns about the ability of its committee member participating in a voting capacity and would prefer that its member have a voting role, the ISO has changed the draft final charter to make the BOSR-designated member a voting member of the committee.

In the June 18 posting, the ISO also added to the Charter the dates by which the stakeholder sectors are to submit their lists of nominees and their rankings of the overall list of candidates. These dates have been added to provide an efficient structure and timeline for the formation of the committee.

CONCLUSION

Based on the stakeholder support for and involvement in forming this proposal, Management recommends that both the EIM Governing Body and the Board approve the proposed charter so that the EIM Governance Review Committee can be formed and commence work on the process to identify and develop any proposed revisions and improvements to the current EIM governance structure.