



Comments on Western EIM Governance Review - Straw Proposal

Initiative: Western EIM governance review

Comment period

Aug 10, 2020, 10:30 am - Aug 28, 2020, 05:00 pm

Submitting organizations

- Joint EIM Entities (with the exception of LADWP)

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Submitted on behalf of

Avista, Arizona Public Service, Balancing Authority of Northern California, Bonneville Power Administration, Idaho Power Company, NorthWestern Energy, NV Energy, PacifiCorp, Public Service Company of Colorado, Public Service Company of New Mexico, Puget Sound Energy, Portland General Electric Company, Powerex Corp, Salt River Project, Seattle City Light, Tacoma Power, Tucson Electric Power, Turlock Irrigation District

1. Please provide your organization's overall position on the EIM Governance Review Straw Proposal:

Support with caveats

2. Provide summary of your organization's overall position on this proposal:

Support with caveats

The EIM Entities appreciate the opportunity to comment on the Draft Straw Proposal dated July 31, 2020 (Straw Proposal). First and foremost, the EIM Entities would like to thank the members of the Governance Review Committee ("GRC") for their hard work, thoughtful consideration of these complex issues, and impressive work product. The Straw Proposal represents a significant step forward in enhancing independent governance of the Western Energy Imbalance Market ("EIM") and the potential expansion to the Day-Ahead Market ("EDAM"), within the boundaries of existing California law. The EIM Entities hope that the Straw Proposal can be refined, approved, and implemented by the end of this year or early 2021.

The EIM Entities emphasize that the EIM (and potential future EDAM) governance and oversight framework must be robust and durable under all grid and market conditions. In light of the recent August heat wave event, the EIM Entities believe that further review of the governance and oversight approach to the EIM (and potential future EDAM) may be warranted once more complete information

and analysis on this August heat wave event is available.

3. Provide detailed comments including examples on Issue 1: The Delegation of Authority for Market Rules to the Governing Body, the Decisional Classification Process, and Durability:

The EIM Entities strongly support the proposal for joint authority between the EIM Governing Body (“GB”) and the CAISO Board of Governors (“BOG”). The EIM Entities agree that the EIM and by extension the EDAM “is deeply intertwined with, and inseparable from, all other aspects of the real-time market, that this integration has continued to increase as the EIM has grown.” Therefore, the norm is for an initiative to be generally applicable. Moving from an advisory role for the GB to full joint authority provides greater independence to market oversight while maintaining consistency with California law under the delegated authority approach.

The EIM Entities also agree that this bright line will be easier to administer than the current approach which contains a subjective criterion as to the motivation behind an initiative. Moreover, a generic market rule may have significantly different effects on the CAISO’s Balancing Authority Area as opposed to the EIM Entities’ Balancing Authority Areas operating under an Open Access Transmission Tariff (“OATT”) structure, but, under the current approach, the GB would only have an advisory role. These shortcomings are remedied by the joint authority proposal.

The EIM Entities support the proposed majority voting structure. While most of the decisions to date have been on a consensus basis, the majority voting is appropriate given the current 5-member size of the GB and the BOG.

The EIM Entities support the proposal to have initiatives considered at a joint meeting whenever possible. This will enable GB and BOG members to hear the questions of the other body and the CAISO staff responses and permit dialogue between the GB and the BOG prior to undertaking the vote and should foster collaboration.

The EIM Entities appreciate the need to include a dispute resolution process as part of the final proposal and agrees that, if there is no agreement, the initiative should be taken back to stakeholders to explore ways to address the identified concerns and to establish a revised proposal for the two bodies to consider.

If, however, in this second attempt the GB and the BOG are still deadlocked, the EIM Entities would recommend proceeding with the dual filings at FERC. It is important to remember the significant time between when an initiative is first considered and when it is presented for an initial vote, especially under the CAISO’s current policy of not seeking conceptual approval prior to developing the necessary tariff changes. Two or more additional rounds of process may significantly delay the initiative implementation schedule. Moreover, it may lead a market participant to file a Federal Power Act Section 206 complaint at FERC to address the situation if the CAISO cannot act expeditiously to resolve a market flaw.

The deadlock breaking process should appropriately address a situation where a change in the tariff is not clearly needed and one body supports CAISO management’s proposed change but the other body does not and has no alternative it would support. First, most initiatives are not needed but rather represent incremental improvements to the market. Only in rare instances, the CAISO has filed amendments necessary to address design flaws. By not providing a dispute resolution path, the GRC would essentially be giving the GB and the BOG veto power over market improvements. As to the process to follow in this situation, the EIM Entities would recommend a modified version of Section 11.1.5 of the ISO New England Participants Agreement along the following lines:

If, after attempting to resolve a deadlock through an additional stakeholder process the GB

and the BOG propose different versions of an initiative or one body proposes to adopt an initiative and the other votes to maintain the status quo, the CAISO will prepare a section 205 filing, with approval from the GB and BOG, laying out the following rules for review:

In the case of a dispute between alternatives, the CAISO shall, as part of the Section 205 filing, describe the alternate market rule proposals in detail sufficient to permit reasonable review by FERC and provide an explanation from both the GB and the BOG as to why each body believes its own proposal is superior to the proposal approved by the other body. FERC will not be required to consider whether the then-existing filed rate is unlawful and may adopt either the GB proposal or the BOG's alternate proposal whichever it finds to be just and reasonable and preferable.

In the case of a dispute where one body votes in favor of the initiative and the other votes to maintain the status quo, the CAISO shall, as part of the required Section 205 filing, describe the market rule proposal in detail sufficient to permit reasonable review by FERC, explain the GB or BOG's reasons for not adopting the proposal, and provide an explanation as to why the GB or BOG believes the proposal is superior to the status quo. The FERC will not be required to consider whether the then-existing filed rate is unlawful and may adopt the market rule proposal if it finds the revised rule to be just and reasonable and preferable to the status quo.

The GRC recommends an exigent circumstances provision to address the potential challenge of assembling both bodies for a vote to consider action that is urgently needed to prevent market manipulation or preserve reliability. The EIM Entities support an exigent circumstances provision that is narrowly tailored to the need to these situations and permits only a temporary amendment.

The EIM Entities agree that disputes on the proper decisional classification should be far less likely to occur under the proposed joint authority proposal. To address the potential for a dispute about whether or not a proposed rule change is a real-time (or for EDAM, day-ahead) market rule, the EIM Entities would support the option of randomly selecting an odd-numbered subset of the members of the two bodies, to decide the proper classification by a majority vote.

The GRC proposes several measures to ensure the durability of the governance proposal: (1) a requirement for a unanimous vote of the BOG for any changes to governance; (2) no changes could be adopted without stakeholder input and advisory input of the GB, RIF, and the Body of State Regulators ("BOSR"); (3) there would be a mandatory notice period for implementing any proposed change that is at least equal in length to any notice period that EIM or EDAM entities may have for withdrawing from the EIM/EDAM market. The notice period would apply to all changes to the delegation of authority, unless both the BOG and the GB unanimously agree to waive the notice period. The EIM Entities support the proposed durability measures.

4. Provide detailed comments including examples on Issue 2: Selection of Governing Body Members:

The EIM Entities do not oppose the recommendation to amend the selection policy so that the representative of public interest groups and consumer advocates becomes a voting member of the Nominating Committee as opposed to an advisory member as is currently the case. The EIM Entities have had representatives on the committee and opportunity to observe the diligent and collaborative work of the committee. The EIM Entities support the proposal to permit a 60-day "holdover period" if: (1) requested by the Nominating Committee, *2) approved by the GB, and (3) agreed to by the retiring member.

The EIM Entities support the proposed modifications to the selection criteria to emphasize diversity of expertise, geographic background, ethnicity, gender and perspective, so that the GB reflects a broad variety of personal backgrounds and life experience. In considering potential re-nominations, the Nominating Committee should evaluate which set of diverse qualities would best complement the remaining members and ask the executive search firm to identify at least two qualified candidates to interview, in addition to the sitting member.

5. Provide detailed comments including examples on Issue 3: Governing Body Meetings and Engagement with Stakeholders:

The GRC recommends allowing or even encouraging the Regional Issues Forum (“RIF”) to discuss matters that are part of an ongoing stakeholder process. The EIM Entities support this modification which will likely only be utilized for significant, widely applicable initiatives. The EIM Entities agree the RIF can serve as an additional avenue for stakeholders to become educated, collaborate, and exchange views. While several stakeholders had supported establishment of a formal Stakeholder Advisory Committee similar to structures in other RTOs, the EIM Entities agree with the GRC that the incremental augmentation of the role of the RIF is a logical step at this juncture.

The GRC also seeks comment on whether any changes should be made to the existing sector classifications that are used for selecting stakeholder liaisons. The EIM Entities would propose the following for greater specificity:

1. EIM Entity
2. EIM Entity Participating Balancing Authority Area Transmission Owning Utility
3. PTO Transmission Owning Utility
4. IPP/Power Marketer
5. IPP/Power Marketer
6. Public Interest/Consumer Advocate
7. Public Interest/Consumer Advocate
8. California Publicly Owned Utility
9. External Publicly Owned Utility
10. Neighboring BA

The GRC recommends finding a way for federal Power Marketing Agencies (“PMAs”) and consumer-owned utilities to participate in the existing BOSR, proposing that the BOSR be asked to establish *ex officio*, non-voting liaison positions for PMAs and consumer-owned utilities who participate in the EIM. The EIM Entities do not oppose the recommendation but believes the issue should be decided by BOSR.

6. Provide detailed comments including examples on Issue 4: Other Potential Areas for Governing Body Involvement:

Please see responses below.

7. Please detailed comments including examples on Issue 4.1: Annual Policy Initiatives Roadmap:

The EIM Entities commend the GRC for their thoughtful consideration of this issue and do not oppose the recommendation. The EIM Entities appreciate the recommendation that the CAISO management and staff explain the reasoning behind the priorities. That recommendation could be extended to regular reports on progress and changes to the scope of initiatives at the regular meetings.

8. Please detailed comments including examples on Issue 4.2: Governing Body Role with Department of Market Monitoring, Market Surveillance Committee and Outside Market Expert:

The EIM Entities believe it is critical that EIM (and EDAM) governance and oversight be rigorous under all possible grid and market conditions. These comments were largely prepared prior to the recent August heat wave event and accordingly the EIM Entities did not have sufficient time to consider the potential implications of this event, if any, to the topic of EIM (and EDAM) governance and oversight enhancements. The EIM Entities believe this topic may need further review once more information and analysis on this event is available.

The Straw Proposal states that FERC regulations require that a market monitor must report to the ISO or RTO's board of directors with management members removed. That is a potentially narrow reading of the regulation which provides, "[t]he Market Monitoring Unit must report to the Commission-approved independent system operator's or regional transmission organization's board of directors, with its management members removed, or to an independent committee of the Commission-approved independent system operator's or regional transmission organization's board of directors." It is not clear whether or not the independent GB would constitute an independent committee or if the committee must be made up of board members. A strong argument could be made to FERC that the independent GB is more in line with the intent of the regulation.

Nevertheless, the GRC recommends that a GB member be invited to attend the executive session meetings of the DMM Oversight Committee and participate in the discussions to reassure EIM participants and stakeholders that DMM is monitoring the entire market footprint. The EIM Entities support this improvement. As noted in the Straw Proposal, the participation and advice of this GB member during committee meetings would provide another means to ensure that DMM has the benefit of the perspectives of the GB.

The EIM Entities support the recommendation that the GB have joint authority to approve members of the Market Surveillance Committee ("MSC"). This is consistent with joint authority over the real-time and day-ahead market initiatives.

The Straw Proposal recognizes that design and initial implementation of EDAM will have long-term implications for the entities considering investment and pose issues of great complexity. The EIM Entities support the proposal that the GB should have an outside market expert should EDAM move forward. The EIM Entities agree that the market expert would need to have access to necessary data to comment on policy issues and to conduct specified evaluations of the impacts of market policies. The proposed re-evaluation after five years is reasonable.

In an EIM-only scenario, GRC recommends leaving it to the GB to propose the use of an expert. The EIM Entities support this approach given information at this time, however in light of recent events surrounding the August heat wave, the EIM Entities may soon amend this position to support the use of an independent market monitor for the EIM-only scenario

9. Please detailed comments including examples on Issue 4.3: Possible Funding for the Body

of State Regulators:

The GRC recognizes that there is value in greater technical expertise to support BOSR members. The GRC notes that the EIM Entities subject to the jurisdiction of their state commissions are engaging directly with the BOSR to explore alternative sources of funding. The EIM Entities support these efforts. The EIM Entities have concerns with a funding mechanism for the BOSR that is through a CAISO and FERC-administered charge. The EIM Entities support the comments of the State-Regulated Market Participants on this topic, wherein the concerns with a CAISO tariff charge are fully articulated.

10. Provide detailed comments including examples on Issue 5: Governing Body Mission Statement:

The EIM Entities agree that no changes are necessary to the mission statement and criteria for decision making and that these can easily be adapted to accommodate EDAM at a later date.

11. Provide detailed comments including examples on Issue 6: Other Potential Topics for Consideration:

The EIM Entities support the proposal for a re-evaluation no later than five years after the adoption of new governance policies. The review does not mandate change, but rather provides an opportunity to consider how the changes have worked in practice and make further refinements if necessary.

The EIM Entities support the GRC's suggestion to remain available for further evaluation prior to adoption of the EDAM market design. It is possible that experience with the revised governance program in an EIM-only environment will identify opportunities for further improvement.

12. Additional comments on the Straw Proposal or EIM Governance Review initiative:

The GRC proposes to produce a Revised Straw Proposal in Q4 2020 and a Draft Final Proposal in Q1 2021, "depending on the depth and breadth of comments received on this straw proposal." The Entities hope that the Straw Proposal is well received and that the GRC can move directly to a Draft Final Proposal in Q4 2020. Most importantly, the GRC recognizes that there will be a considerable length of time between development of a Draft Final Proposal and any go-live date for a potential EDAM. Accordingly, the GRC recommends that the BOG and the GB, "consider implementing the proposed changes to the delegation of authority contemplated for the current market structure (the "EIM-only" scenario) before EDAM is approved and implemented." The EIM Entities strongly support proceeding with the recommendations for the EIM first and then expanding to include EDAM. In addition, the GRC should clarify that the new joint authority would apply to approving and providing direction on the EDAM market design. Simply stated, there is no reason to postpone these significant improvements.

Attachments

- [EIM Entity Comments GRC Straw Final.rtf](#)