

## Stakeholder Comments Template

Submitted by	Company	Date Submitted
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Please use this template to provide your comments on the Energy Imbalance Market Governance White Paper posted on August 13.

Submit comments to [EIM@caiso.com](mailto:EIM@caiso.com)

[Comments are due September 6, 2013 by 5:00pm](#)

Please provide your comments following each of the topics listed below:

- 1. Do you support the roles identified for the transition committee – i.e., to provide the Board with input on EIM-related issues during start-up and early implementation and to develop a proposal for an independent governance structure? Please explain the basis for your views.**

Comments:

Yes. The dual role of the Transitional Committee is appropriate. Its tasks also require it to have a broader regional constituency than does the CAISO for its other functions. If the Board of Governors moves forward with the Transitional Committee, it will be important for the Board and the Committee to operate with the understanding that the Committee, while advisory in nature, is entitled to substantial deference on the issues with which it is charged, in order to ensure the credibility of the process.

**2. Do you support the sector definitions and the nomination and ranking process for the transition committee? Please explain the basis for your views.**

Comments:

The PUC EIM Group believes that government agencies and public interest/advocacy groups are inappropriately lumped together in a single sector. State government agencies should have their own sector. The sector comprising government agencies should be defined broadly—including utility commissions, gubernatorial energy offices, and state agencies that represent consumers—but the definition should exclude government agencies that own or market generation and transmission. Organizations of relevant state agencies, such as the Western Interstate Energy Board, should be able to participate. The PUC EIM Group agrees with the Governance Proposal that membership and voting for those in a government or public interest sector should be construed broadly, to include anyone in the Western Interconnection.

There is a large amount of overlap between sectors; in addition to using the proposed definition for the government-agency sector, the CAISO should spell out a definition of each in the Governance Proposal.

The Governance Proposal limits membership in the four industry sectors to those who have participated in the ISO's markets since 2009 (pp. 8-9). This definition should be broadened, to include those who have loads within a balancing area authority (BAA) of an EIM Entity, or have imported, exported, or wheeled power through such a BAA, not just the CAISO BAA.

The PUC EIM Group is concerned about sector participants' lack of familiarity with the model of sector-based input and advisory bodies that CAISO evidently uses on a routine basis. Where possible, CAISO should use a member- organization governance model like the Western Electricity Coordinating Council's, because of its wider familiarity to all Western parties.

A sector- or class-based nominating structure depends on a person to coordinate nominations, or a "liaison," as the Governance Proposal calls it. The PUC EIM Group is satisfied with the selection of a temporary liaison by CAISO, who would work to convene a meeting of the sector, and then allow the sector to choose a liaison to do the work of surveying the sector for candidates, selecting the sector's nominees in a transparent nomination process by sector member voting, and then ranking all sectors' nominees in a similarly transparent member-voting process.

**3. Do you support the number of members in the transition committee and its composition? Please explain the basis for your views.**

Comments:

The credibility of the Transitional Committee depends on its geographic and sector diversity; a lack of its diversity would undermine the committee as a venue for open discussions about EIM matters, and likely would lead to a disputed work product. The PUC EIM Group feels that specifications that would limit the maximum and minimum number of representatives from a particular area or a particular sector are not as helpful as applying judiciousness and foresight to the selection of Transitional Committee members to ensure the body will be diverse and competent.

**4. Do you support the independence proposals identified in the paper for long-term independent EIM structure? Please explain the basis for your views.**

Comments:

The PUC EIM Group supports an independently governed EIM. The CAISO Board of Governors, whose members are appointed by the governor of California, is not a workable long-term governance board for a market whose greater value derives from a wider geographic footprint.

**5. Are there details not covered here that you would suggest be included in the next round that will include a draft charter?**

Comments:

There are several details that the PUC EIM Group believes are worthy of further exploration:

1. *Legal questions regarding the CAISO's California statutory authority to create an independent board to govern a regional EIM.* The PUC EIM Group has heard CAISO staff occasionally opine on their view that California statute does not require modification for the type of governance envisioned by the Governance Proposal; that view is implied in the Governance Proposal, which is silent on any revision to California statute. This view should be spelled out in writing, citing authority, and providing analysis in the next Governance Proposal.

2. *Legal and practical questions regarding the CAISO's Section 205 delegation to an independent board.* The PUC EIM Group has conducted some limited legal research about Section 205 delegations by organized markets. (See the attached memorandum.) Those examples pertain to delegations by an ISO or RTO to the affiliated body of state regulators from the region. The PUC EIM Group is not aware of a situation where an RTO has spun-off what is in essence a separate organized market, for the limited purpose of real-time dispatch, which is both wider in its geographic footprint but also unavoidably intertwined with the geographically smaller but more complex CAISO that birthed it. Research on this question is in order, and CAISO may want to consider a request for declaratory order to FERC at the same time its tariff language for the EIM's initial operations is filed.
3. *The role of state regulators in an independently governed EIM.* Organized markets whose footprints encompass multiple jurisdictions usually have a body like SPP's Regional State Committee, PJM's Organization of PJM States, or MISO's Organization of MISO States embedded within their organizational structures or tariffs. CAISO (and the Transitional Committee) should consider whether it is appropriate to envision having a body composed of state regulators to advise and intervene on EIM tariff matters of state regulatory interest.
4. *Market monitoring.* CAISO should explain how market monitoring and surveillance will be conducted vis-à-vis EIM operations.

## 6. Any other comments?

The PUC EIM Group believes stakeholders to the CAISO process have done an admirable job of fleshing out the details of market design. As a group, we offer no specific comment on those aspects of market design in this round of comments. However, where questions of principle bear on CAISO's decisions on market design, the PUC EIM Group would continue to request that the guiding principle to inform those decisions be to have a market design that will allow for the participation of new EIM Entities who may decide to join the market.

**TO:** Travis Kavulla, PUC EIM Group Chair

**FROM:** Jennifer Gardner, WIEB Staff

**DATE:** August 30, 2013

**RE:** Section 205 Tariff Delegation Authority of the CAISO

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### ***Background***

On August 13, 2013, the CAISO released its Energy Imbalance Market (EIM) Governance Proposal as part of its ongoing EIM stakeholder process. Pursuant to the proposal, the CAISO proposes to amend its tariff to provide an independent EIM governance structure specific, authorized EIM tariff authority. Additionally, because this will result in overlap between the CAISO market and the EIM market, there would need to be a mechanism by which to resolve potential conflicts in tariff language. This arrangement would necessarily involve a delegation, from the CAISO to the new EIM governance structure, of Section 205 tariff authority. This type of delegation has historically been permitted by FERC.<sup>1</sup>

### ***Analysis of SPP and MISO***

Both the Southwest Power Pool (SPP) and MISO (Midwest Independent System Operator) are organized markets (i.e., RTO, ISO, etc.) and are advised by state regulatory agencies in the form of advisory bodies that are incorporated as public benefit corporations. Both state advisory bodies have received increased authority from FERC via Section 205 delegation.

The SPP Regional State Committee (RSC), until recently, was the only state regulatory organization that had Section 205 filing authority – i.e., the ability to direct an RTO to make FERC Section 205 filings. According to the SPP Bylaws, the RSC has authority over cost allocation for transmission upgrades, allocation of market transmission rights, and regional resource adequacy. As the RSC reaches decisions on the methodology that will be used to address any of these issues, SPP will file this methodology under Section 205. The RSC has historically maintained a collaborative relationship with SPP and has never filed comments adverse to SPP's FERC filings.

Originally, MISO's Organization of MISO States (OMS) served merely as an advisory body to MISO and lacked Section 205 filing rights. According to the OMS Articles of Incorporation, the OMS provides a means for MISO states to act in concert on activities such as data collection,

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<sup>1</sup> See: *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002) (“utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under Section 205”). See also: *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 218 (approving, subject to compliance filing requirements, Section 7.2 of the SPP bylaws providing enhanced role for the RSC in cost allocation and other matters). See also: *Entergy Ark., Inc.*, 133 FERC ¶ 61,211, at P 15 (2010) (approving tariff revisions that would give the Entergy-Regional State Committee certain transmission planning and cost allocation authority).

issue analysis, policy formulation, advice and consultation, decision-making, and advocacy. Unlike the RSC, the OMS has filed adverse comments to MISO's FERC filings on a number of occasions.

However, OMS' authority has recently changed. On January 4, 2013, MISO and the MISO Transmission Owners filed a request at FERC that would create the right for OMS to direct certain Section 205 filings by MISO (i.e., Section 205 filing rights), through an OMS Committee, in the area of transmission cost allocation.<sup>2</sup> As part of this filing, MISO and the MISO Transmission Owners entered into an agreement – the Transmission Owners' Agreement – to legally enable the utilities to delegate their Section 205 filing rights to MISO and OMS. However, based on OMS' intervention and comments on this matter, filed with FERC on February 8, 2013, it is clear that OMS and MISO have been in disagreement on just how this authority should be interpreted (with MISO seeking less authority than OMS originally requested).<sup>3</sup>

On May 23, 2013, FERC ruled on this issue by accepting the proposed revisions to Appendix K of the MISO Transmission Owners' Agreement and thereby rejected the arguments made by OMS in its February 8 filing. In its ruling, FERC noted the benefit of conferring Section 205 filing rights to state commissions, finding that Section 205 filing rights "can facilitate state consensus on certain regional issues, as well as a partnership between this Commission and state commissions". FERC additionally found that granting these filing rights to the OMS did not contradict FERC Order 2000 by violating MISO's independence, since MISO "retains the right to file its own proposals independent of the OMS Committee's direction". FERC did not agree with OMS' request that its Section 205 filing rights should not be contingent upon MISO making a filing or upon the integration of Entergy into MISO. In so ruling, FERC stated the following: "these requests would grant the OMS Committee Section 205 filing rights that go beyond the scope of the Filing Parties' (i.e., MISO and the MISO Transmission Owners) proposal and are thus beyond the scope of this Section 205 proceeding". FERC's ruling becomes effective upon the final integration of Entergy into MISO, which is still ongoing, but is anticipated to be complete by December 2013.

### ***CAISO's Potential Delegation of Section 205 Authority***

Regarding the CAISO's proposed delegation of Section 205 authority, FERC's primary concern seems to be with regard to independence and, specifically, maintaining the independence of the ISO or RTO, pursuant to FERC Order 2000. Another potential concern relates to FERC's finding in Order 719 regarding the need to balance stakeholder interests.<sup>4</sup> However, in its most recent ruling on Section 205 delegation authority, FERC found no issue with either Order 2000 or Order

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<sup>2</sup> OMS' request for increased authority under Section 205 was not only related to the FERC Order 1000 compliance process at MISO, but also related to Entergy joining MISO. More specifically, as a condition of approving Entergy's bid to join MISO, the Arkansas Commission required that the OMS be provided full legally recognized Section 205 filing rights with regard to several regulatory activities.

<sup>3</sup> Specifically, the language in MISO's tariff that OMS takes issue with is: "If the Midwest ISO does not file changes to the Tariff, no OMS alternative cost allocation methodology will be filed with FERC by the Midwest ISO." The OMS argues that it should be able to direct the filing of a cost allocation methodology, and such authority should not be conditional on MISO's decision to change or not change its tariff.

<sup>4</sup> In Order 719, the Commission's stated goal was to enhance the "avenue for customers and other stakeholders to present their views on RTO and ISO decision-making, and to have those views considered."

719 in approving the delegation of Section 205 filing authority from MISO to OMS. Additionally, it is important to note the high level of deference that FERC gave to MISO in its final determination – rejecting the arguments of stakeholders like AWEA, as well as the arguments of OMS itself. It is likely that FERC would give a similar level of deference to the CAISO, depending on the nature of the proposal and assuming that the CAISO’s independence is maintained. Additionally, it seems relatively easy to succeed on any Order 719-based argument, as long as stakeholders have some preexisting avenue for expressing their views (CAISO’s stakeholder process is notorious for its high level of involvement and will most certainly clear the Order 719 “hurdle”). It is also important to note that any such filing by the CAISO would have to pass muster under FERC’s “not unduly discriminatory” test. However, without a formal proposal from the CAISO, it is impossible to conclude how FERC would rule on such a filing.