

## Stakeholder Comments Template

Submitted by	Company	Date Submitted
Gifford Jung <a href="mailto:Gifford.Jung@powerex.com">Gifford.Jung@powerex.com</a>  (604) 891-6040	Powerex Corp.	November 27, 2013

Please use this template to provide your comments on the Energy Imbalance Market Draft Final Governance Proposal and Draft Charter posted on November 7. Submit comments to [EIM@caiso.com](mailto:EIM@caiso.com). **Comments are due November 25, 2013 by 5:00pm**

Draft Final Governance Paper:

[http://www.caiso.com/Documents/DraftFinalGovernanceProposal\\_EnergyImbalanceMarket.pdf](http://www.caiso.com/Documents/DraftFinalGovernanceProposal_EnergyImbalanceMarket.pdf)

Draft Final Charter:

[http://www.caiso.com/Documents/DraftFinalTransitionalCommitteeCharter\\_EnergyImbalanceMarket.pdf](http://www.caiso.com/Documents/DraftFinalTransitionalCommitteeCharter_EnergyImbalanceMarket.pdf)

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

- 1. Do you support the change in the schedule for the sector nomination and ranking process and for establishing membership of the Transitional Committee? Please explain the basis for your views.**

Comments:

- 2. Do you support the clarification of the ranking process and the qualifications for the Transitional Committee membership? Please explain the basis for your views.**

Comments:

### 3. Do you have any comments on the draft final charter? Please explain.

#### Comments:

The introduction of the charter indicates that the EIM advisory committee will be a committee of the “California Independent System Operator Corporation” and that it is part of the framework within which CAISO committees “direct the affairs of the ISO.” As the EIM and the EIM advisory committee are not charged with promoting any ISO-specific interests, this introduction sets a stage and tone that is problematic. ISO interests in the EIM should not be advanced over other interests, nor should the EIM advisory committee be an ISO-specific committee. Given the absence of existing infrastructure and with the agreement of EIM participants, CAISO may be permitted to convene a committee on behalf of the EIM on a transitional basis; however, the charter should state such rather than referring solely to ISO status. This committee should not be charged with acting on the ISO’s behalf in light of the western market matters with which the committee is charged with responsibility. Importantly, CAISO is a single-state ISO while the EIM will be a multi-state market system, and one that will operate entirely outside of the CAISO footprint.

An example may help facilitate understanding the enormous implications of this threshold gating issue to the EIM’s success. PJM Interconnection, L.L.C. coordinates the movement of power across 13 states and the District of Columbia in the Northeast United States. Any EIM proposal that puts California in the driver seat – even a backseat driver seat - on governance would be like a PJM governed by a board appointed by the state of New York. None of the 13 states or the District of Columbia within the PJM footprint likely would be active participants in such an entity. Moreover, the CAISO should recognize that an EIM that is governed or influenced in core matters by the CAISO Board, in whole or in part, in the short-term or the long-term, will be viewed with skepticism by participants outside of the state and this will serve to deter robust participation and act as an impediment to success. It is clear that CAISO’s charge is to look out for California interests, as evidenced by its state-appointed board. It is also clear that any organization that puts one state’s or class of participants’ interests above the others should not be expected to attract the full support and commitment of classes that perceive their interests as subservient.

Powerex agrees with the sector representatives listed in Section II.C. and is opposed to the addition of California Load Serving Entities as an additional sector category. The EIM will operate outside of the footprint of the CAISO and should not be beholden to its interests. Any consideration of California Load Serving Entities as a representative group in the EIM governance model in the future must be commensurate with the CAISO amending its own governance model to include representation from entities outside of the state of California.

As Powerex commented in its September 6, 2013 submission on the EIM Governance White Paper, the restriction that non-public information “not be disclosed outside of the Transitional Committee and the ISO without authorization” is insufficiently circumscribed. The provision appears in Section II.F. of the Charter. Such information

not only should not be disclosed, but should not be *used* to the commercial or other advantage of its recipients, whether they be the members of the Transitional Committee or ISO.

The CAISO recognizes in Section IV. B. of the Charter that the proposed governance structure for the EIM ultimately must satisfy FERC's independence criteria. Any advisory committee that exists during the interim period before a final governance structure is implemented should to the greatest extent possible also meet FERC's criteria. The importance and impact of the role of the advisory committee should not be underestimated. It will be charged with developing and proposing the ultimate governance structure for the EIM. This committee's actions will have a long-lasting impact on the EIM and the need for its actions to be driven by sound and self-less principles rather than self-interest is absolutely critical to the success of the EIM.

While the EIM is not an RTO, the EIM should take heed of the requirements for RTO independence set forth in the FERC Order No. 2000 series of orders, for ISO independence in the FERC Order No. 888 series of orders and the guidance that further elaborated on these requirements in the FERC Order No. 719 series of orders. These are highly applicable to EIM governance. FERC explained that the decision-making processes of these entities must be independent of control of any market participant or class of participants and that such independence remains fundamental, and must be preserved. Four guiding principles to ensure independence were as follows:

- Inlusiveness - The business practices and procedures must ensure that any customer or other stakeholder affected by the operation of the RTO or ISO, or its representative, is permitted to communicate its views to the RTO's or ISO's board of directors.
- Fairness in Balancing Diverse Interests - The business practices and procedures must ensure that the interests of customers or other stakeholders are equitably considered and that deliberation and consideration of RTO and ISO issues are not dominated by any single stakeholder category.
- Representation of Minority Positions - The business practices and procedures must ensure that, in instances where stakeholders are not in total agreement on a particular issue, minority positions are communicated to the RTO's or ISO's board of directors at the same time as majority positions.
- Ongoing Responsiveness - The business practices and procedures must provide for stakeholder input into RTO's or ISO's decisions as well as mechanisms to provide feedback to stakeholders to ensure that information exchange and communication continue over time.

Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 556-57. FERC continued on to state that "any board that includes market participants should be structured to ensure that no one class would be allowed to veto a decision reached by the rest of the board, and that no two classes could force through a decision opposed by the rest of the board."

As to Section IV.B, Powerex agrees with several of PacifiCorp's comments from its November 25, 2013 comment submission. That is the independence requirement stands on its own and should not be a requirement that "enables the ISO Board" to delegate authority. This prematurely assumes the ISO Board will have any authority to delegate. As PacifiCorp aptly notes, participation by entities in the west outside California may be limited by any real or perceived limitations of long-term governance alternatives.

Powerex also shares PacifiCorp's concerns as to the fourth bullet of Section IV.B. Avoiding the "potential for dueling filings at FERC" should not be memorialized in the Charter. If agreement cannot be reached, then it may be necessary and optimal for FERC to decide as between competing proposals. Indeed, there are examples in which an RTO files one proposed set of market rules at FERC, whether pursuant to Federal Power Act Section 205 or 206, and market participants file alternatives for FERC's consideration. This is fully acceptable and respects the role of FERC as the final arbiter of just and reasonable terms and conditions in its regulated markets, not the ISO Board.

**4. Do you have any additional comments not covered above on the changes made in the draft final governance proposal?**

Comments: