

**Comments
of the
California Municipal Utilities Association
on the EIM GRC Scoping Paper**

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to submit these comments in response to the questions posed in the Energy Imbalance Market (“EIM”) Governance Review Committee (“GRC”) Scoping Paper (“Scoping Paper”) dated January 29, 2020.

CMUA has organized these comments around the headings and questions presented in the Scoping Paper, and looks forward to continued dialogue around key governance issues.

- 1) *The Delegation of Authority for Market Rules to the EIM Governing Body and the Decisional Classification Process*
 - a. *The Scope of Delegation to the Governing Body*
 - i. *Are there any changes that should be made to the scope of delegation even if EDAM is not established? If so, what changes would stakeholders propose?*
 - ii. *Assuming EDAM does go forward, what impact does this have on the scope of market rules that should be delegated by the Board?*
 - iii. *Whether or not EDAM goes forward, should the scope of the Governing Body’s primary authority be defined with an objective “bright-line” rule that provides more definitive instructions than the current rules? (As structured today, a determination is based on whether a market rule is “EIM-specific” and on whether EIM is the “primary driver” for a proposal to change market rules.) If so, what should the more objective criteria be?*
 - iv. *Should there be a separate category of market rules for which the Board and the Governing Body both have equal authority to review and approve? Currently, rules that fall within the Governing Body’s primary authority go first to the Governing Body for review and, if approved, are then placed on the Board’s consent agenda for what is typically a more cursory approval process. Are there any types of rules that should instead require full consideration and approval by both the Governing Body and the Board? If so, what types of market rules should fall into this “joint approval” category?*

CMUA Response to 1.a.i-iv.: First, CMUA is impressed with and supportive of the manner in which the EIM Governing Body has executed its duties to date. The depth of discussion on key topics, the balanced viewpoints of the Governing Body members, and the outreach and engagement at the Regional Issues Forum and in other key policy arenas by Governing Body members has been appreciated.

Assuming EDAM moves forward, it seems clear that the GRC should delve into two basic and possibly alternative models: (1) modifying the current delegation of authority model to fit the expanded market functionality contemplated under EDAM; and (2) develop a joint authority model in which the EIM Governing Body exercises joint authority with the CAISO Board on issues which affect the Day Ahead and Real Time Markets. CMUA urges the GRC to explicate both options in detail, including, for example, voting mechanisms that would be used in joint authority scenarios.

At this early juncture, CMUA would lean toward a joint authority model. California load serving entities, including CMUA members, will continue to have a vital interest in Day Ahead Market design choices, and are not free to exit the market if a tariff provision is modified and that modification is adverse to their interests. A joint authority model will also force the Board and Body to collaborate and jointly discuss complex issues. This level of buy-in would be helpful as the new market expands to include the vast majority of load in the Western Interconnection.

While under the delegated model the Board retains veto authority, in practice this authority has never been exercised. On issues of such import, it is appropriate to require the Board to affirmatively act on market design issues before it.

CMUA supports a “bright-line” rule to determine the scope of any delegated or jointly exercised authority. Portions of the current process are opaque and subject to discussion that occasionally lacks transparency. A “bright-line” rule would provide more clarity and structure to any jointly exercised or delegated authority. This could be as simple as identifying applicable Tariff provisions and determining how they will be treated. CMUA urges the GRC to explain in detail how this might work in any initial straw proposal.

b. *The Decisional Classification Process*

- i. *Are there any changes that should be made to the process through which ISO staff develops and seeks comment from stakeholders on preliminary classification determinations?*
- ii. *Are there any changes that should be made to how the Governing Body is kept apprised of these preliminary determinations?*
- iii. *Are there any changes that should be made to the decisional classification dispute resolution process set forth in the Guidance Document?*
- iv. *What, if any, specific changes should be made to this process to enhance its transparency to stakeholders?*
- v. *Are there concerns with how the decisional classification rules have been applied to any particular initiative or the process through which a determination was reached?*

CMUA Response to 1.b.i.-v. As noted above, CMUA supports a “bright-line” rule which would establish the Governing Body’s primary or advisory authority. This would allow for greater transparency and certainty on how authorities are being exercised on an issue by issue basis.

As this question from the Scoping Paper makes clear, a bright line test would also have the benefit of simplicity. It would eliminate the need for a dispute resolution or other potentially contentious and lengthy processes.

- c. *The Process for Changing the Scope of the Delegation*
 - i. *Would EDAM require enhancements to the durability of the delegation or are the existing requirements set forth in the Charter for EIM Governance sufficient?*
 - ii. *If enhancements are warranted, what form should those enhancements take?*
 - iii. *Are any changes warranted even if EDAM is not ultimately established?*

CMUA Response to 1.c.i-iii: CMUA supports durability of governance provisions. Against that designed trait must be balanced practicality and the need to respond to changed circumstances. Thus, it is appropriate that the GRC consider provisions, such as supermajorities or other mechanisms that would require enhanced consensus to approve governance changes. At this juncture CMUA would not, for example, support embedding governance provisions in the Tariff, thus triggering Federal Energy Regulatory Commission (“FERC”) review. If we cannot work through these types of issues at Board and Body level, this would likely be indicative of much broader and bigger problems in the market. FERC review and the consequent proceedings also have no forcing function behind the ultimate decisional authority of a distant regulator; indeed CMUA’s experience is that the FERC process generally leaves parties free from the need to reach compromise and consensus, which is not a good foundation for overall governance of the market.

2) *The Process and Criteria for Selecting Governing Body Members*

- a. *Are there any changes that should be made to the nominating committee structure or the process that it follows to identify and evaluate candidates for the Governing Body?*
- b. *Are there any changes that should be made to the qualifications and criteria that the Selection Policy directs the executive search firm and the nominating committee to consider when identifying and evaluating candidates for the Governing Body, including more explicit requirements of geographic diversity or diversity of sector experience among the members?*
- c. *Are there any changes that should be made to the process for reviewing and approving the slate of nominees that the nominating committee brings forward?*

CMUA Response to 2.a-c: CMUA strongly supports the current nominating committee structure and process. The current process has clearly selected individuals that are qualified and committed to ensuring the success of the EIM. We see no compelling need to make changes to this process. While we support geographic diversity within the structure of the EIM Governing Body, we are not anxious to hardwire specific sector or geographic location requirements. The Nominating Committee should be free to consider all candidates and select based on a variety of considerations, including qualifications, temperament and demeanor, experience, geographic and other diversity factors, and other considerations. It would be imprudent to hardwire granular characteristics as preconditions for service when a seat opens on the Governing Body.

- d. *Are there any other changes that should be made to the composition of the Governing Body, such as to the length of terms or the overall size of the body?*

CMUA Response: CMUA supports an increase in the size of the Governing Body to at least seven members. We have seen that when Governing Body members term out or leave for other purposes, continuity and simple “critical mass” can be challenging. Plus, market issues are complex and having additional Governing Body members with a variety of skill sets will aid decision-making. With the growth of the market footprint, CMUA believes seven would be a more appropriate number and would allow for a more accurate representation of the entities within the EIM.

CMUA recognizes that in conjunction with consideration of the size of the Governing Body, if the GRC recommends joint exercise of authority of the Body and the Board, some accommodation will need to be made in the voting mechanisms to ensure one group cannot structurally “outvote” another. However, solutions seem apparent, such as requiring a majority of each, without making statutory changes to expand the CAISO Board of Governors.

3) *Governing Body Meetings and Engagement with Stakeholders*

- a. *Are there any changes that should be made to the Governing Body’s standard meeting processes?*
- b. *For example, should any changes be made to the frequency or timing of Governing Body meetings or to the subject matter covered in those meetings?*
- c. *Should any changes be made to the location of Governing Body meetings? Are meetings located outside Folsom helpful?*

CMUA Response to 3.i-iii: CMUA supports the Governing Body’s current standard meeting processes. CMUA commends the Governing Body’s efforts to foster dialogue on complex market issues. As market design issues affect a broader footprint, there may be a need for the CAISO Board of Governors itself to consider meetings outside of its Folsom headquarters. This may particularly be the case if a joint authority model is pursued.

- d. *Should there be a Stakeholder Advisory Committee?*
- i. *Should a representative stakeholder advisory committee be created? Please explain your reasoning*
- ii. *What would the role of the committee be? For example, an ongoing matter of discussion at the RIF is whether the RIF could, as a body, take positions on issues or produce written work products. We would like stakeholder feedback on these and related questions such as:*
1. *Should such a committee vote on positions?*
 2. *What other mechanisms might a committee use to take positions?*
 3. *What role should the committee have in providing input to the Governing Body and the Board of Governors?*
- iii. *Who would be eligible to serve as members of that body, and how would its membership be established?*
- iv. *What range of issues would the committee address?*

- v. *What would be the role of the committee in relation to the ISO's current process for obtaining stakeholder input on proposed initiatives, and how would that process change to accommodate a committee?*
- vi. *Should a stakeholder advisory committee be formed even if EDAM is not ultimately created?*

CMUA Response to 3.d.i.-vi.: CMUA generally supports the creation of a stakeholder advisory committee. This position harkens back to our views on stakeholder engagement dating back to the discussions that resulted in governance proposals surrounding PacifiCorp's consideration of becoming a Participating Transmission Owner ("PTO"). Direct and organized engagement of stakeholders through an advisory committee benefits understanding of market issues and engagement surrounding solutions and improvements to the market. Further, having an advisory committee will provide a vehicle to communicate views directly to the Board and Governing Body. The robust attendance at the Regional Issues Forum ("RIF"), and high degree of engagement at this very informal level represented by the current RIF, illustrate that there is a demand for stakeholder dialogue that is not directly facilitated by the CAISO.

Clearly, details will be key. CMUA does not support some administratively burdensome, multi-level committee structure that may be beyond the resources of many stakeholders to engage in effectively. Nor do we believe affirmative majority votes by the advisory committee in order to move a Tariff change forward well fits the West. At this early juncture of discussion, we believe the market would be well served by an advisory committee made up of senior and knowledgeable representatives from various sectors, that will discuss issues, provide a forum for education, produce position papers or other documents, and be a resource for decisionmakers when complex issues come before them. This type of structure would not inhibit the ability of any stakeholder to take individual positions on issues irrespective of the views of their sector representative, nor bar exercise of rights to intervene at FERC. It would be an augmentation to the current stakeholder process.

- vii. *If a stakeholder advisory committee were created, should it replace the RIF? If not, what should its relationship with the RIF be?*

CMUA Response: To the extent an advisory committee is established, CMUA believes this committee should replace the RIF.

- e. *Possible Funding for the BOSR*
 - i. *Is the ISO an appropriate source of funding for the BOSR? What other sources of funding could be available to the BOSR?*
 - ii. *How should the amount of funding be determined, initially and over time?*
 - iii. *For what specific activities should funding be available?*
 - iv. *What kind of oversight should be required?*
 - v. *Should funding be available even if EDAM is not ultimately created?*
 - vi. *Should the GRC make a recommendation about this funding issue?*
- f. *The Role of Public Power and Federal Power Marketing Agencies*

- i. *Should there be formal representation of the governing bodies that oversee public power and the federal power marketing agencies to the Governing Body? If so, what form should such representation take?*

CMUA Response to 3.e-f.: First, CMUA supports the GRC teeing this issue up for discussion. This is a novel issue for the West and all would benefit from increased dialogue.

It is easy to anticipate issues that may be contentious. First, public power entities in the West are not subject to state commission ratemaking jurisdiction. Therefore, the BOSR as currently constituted cannot speak for public power, and this leaves a void as public power is roughly 1/3 of the market footprint load. To date, BOSR representatives have objected to a role for public power on the BOSR.

Second, funding support for the BOSR through and CAISO-administered charge is concerning. The absence of a public power role on the BOSR, considered against the backdrop of a CAISO charge type that may be allocated to all market participants, is problematic. Further, the precedent of funding subsets of interests, even if they are state regulators, through a market charge, sets a troubling precedent. It is predictable that many other interests groups (consumer advocates, other policy advocates) will seek similar treatment. This has happened both in the context of the CAISO market, and in discussion surrounding the PacifiCorp PTO application. A funding mechanism would also require FERC approval.

CMUA recognizes that other RTOs have regional state committees of varying forms and functions. As generally constituted (for example, the MISO Organization of MISO States and the Southwest Power Pool Regional State Committee), the bodies have formal delegations of authority for key issues such as common resource adequacy rules and transmission cost allocation. None of these design elements is contemplated in EDAM. Thus, state structures in other RTOs are not analogous to the BOSR.

The Scoping Paper tees up the concept of a separate BOSR-like structure for public power including power marketing administrations. CMUA does not object to the GRC fleshing this issue out for further consideration. If considered, we would anticipate that it would be very analogous to the BOSR, including its role in the decision-making process, rules of engagement and constitution, and funding. Anything less would be unacceptable. CMUA would be more inclined to focus attention on public power's role in the BOSR, which was discussed at length and memorialized in the governance documents surrounding the PacifiCorp PTO efforts in 2016.¹

¹ *Second Revised Proposal Principles for Governance of a Regional ISO*, October 7, 2016, available at: <https://www.caiso.com/Documents/PrinciplesForGovernanceofaRegionalISO-Clean.pdf>.

4) *Other Potential Areas for Governing Body Involvement*

- a. *What role, if any, should the EIM Governing Body have in establishing the annual policy initiative roadmap or with respect to the market monitoring function?*
- b. *Should additional resources be available to the Governing Body to assess market design and performance issues, such as a new market expert that is separate from DMM or MSC? Should any new resources be permanent or as needed? How should such resources be funded?*
- c. *Do the answers to these questions depend in any way on whether EDAM is implemented, and if so how?*

CMUA Response to 4.a.-c.: CMUA has no positions on these matters at this time.

5) *Guiding Principles*

- a. *Should the GRC have guiding principles, beyond fulfilling its charter from the Governing Body and the Board?*

CMUA Response: CMUA believes a list of guiding principles would be a useful tool in gauging the direction and work of the GRC moving forward.

- b. *If so, should the guiding principles from the Transitional Committee, as stated above, be supplemented or modified?*

CMUA Response: If the GRC develops guiding principles, it is likely that a fresh look is needed as the EIM has grown so substantially beyond the expectations, frankly, of many five years ago, and the character of the EDAM market differs from the EIM.

6) *Request for Comments on Other Potential Topic for Consideration*

CMUA Response: CMUA has no further comment at this time.