

California ISO EIM Governance Review
Straw Proposal for Formation of an EIM Governance Review Committee and
Draft Governance Review Committee Charter

Comments of Public Interest Organizations

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Submitted by	Company/Organization	Date Submitted
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I. Introduction

Public Interest Organizations (“PIOs”) appreciate the opportunity to provide comments to the California ISO (“CAISO”) on its [Straw Proposal for Formation of an EIM Governance Review Committee](#) (“Straw Proposal”) and [Draft Governance Review Committee Charter](#) (“Draft Charter”). The comments that follow are submitted on behalf of the following PIOs: the Center for Energy Efficiency and Renewable Technologies (“CEERT”), Environmental Defense Fund (“EDF”), Natural Resources Defense Council (“NRDC”), NW Energy Coalition, Renewable Northwest, Western Grid Group (“WGG”), and Western Resource Advocates (“WRA”).¹

II. Comments & Recommendations

PIOs strongly support the formation of a stakeholder-based Governance Review Committee (“GRC”). As stated in our previous comments, we believe the formation of a GRC is the appropriate model for addressing EIM governance changes, as well as changes necessary to accommodate the potential offer of day-ahead market services to EIM participating entities.²

As currently proposed, the GRC will be established through a nomination and approval process, modeled after the existing EIM Nominating Committee process for selecting a slate of

¹ The public interest organizations joining in these comments are represented by the following individuals: Liz Anthony Gill, Grid Policy Director (CEERT); Michael Colvin, Director, California Energy Policy (EDF); Carl Zichella, Director of Western Transmission (NRDC); Fred Heutte, Senior Policy Associate (NW Energy Coalition); Cameron Yourkowski, Senior Policy Manager (Renewable Northwest); Kate Maracas, Managing Director (Western Grid Group); and Jennifer Gardner, Senior Staff Attorney (WRA).

² PIO Comments, p. 5, <https://www.westerneim.com/Documents/PublicInterestOrganizationsComments-EIMGovernanceReviewIssuePaperandStrawProposal.pdf>.

candidates for appointment to the EIM Governing Body. PIOs believe the Nominating Committee process has worked well in the context of appointing members to the EIM Governing Body and further, that this process is particularly effective in terms of soliciting stakeholder input. Therefore, PIOs support using this existing model for purposes of organizing stakeholder sectors and nominating candidates for the GRC, acknowledging that the final decision regarding appointments to the GRC will be jointly determined by the CAISO Board of Governors and the EIM Governing Body.

In the interest of ensuring diverse stakeholder representation on the GRC, PIOs support the 13-member option for the GRC. According to the Straw Proposal and Draft Charter, the GRC will have a total of 11 to 13 members.³ A total of 13 members on the GRC is more likely to ensure that each of the eight stakeholder sectors feels adequately represented, particularly in the case of the Public Interest/Consumer Advocate Groups sector, which actually represents two distinct stakeholder groups with often varying viewpoints and priorities.⁴

While generally supportive of the use of the existing Nominating Committee model to nominate and finalize a candidate slate for appointment to the GRC, PIOs have also identified a number of concerns that we recommend be addressed in the next iteration of both the Straw Proposal and Draft Charter. These concerns are further outlined below.

(1) Requirements Regarding Sector Nominations

Presently, the Straw Proposal and Draft Charter require each stakeholder sector to identify at least three nominees for consideration by all stakeholders. Instead, PIOs recommend that the final determination regarding the number of nominees should be left to the discretion of each stakeholder sector. By removing this requirement, it would provide necessary flexibility in the nomination process – particularly in those circumstances where a stakeholder sector may only be able to nominate one or two interested and available candidates.

(2) Ensuring Diverse Stakeholder Representation on the GRC

According to the Straw Proposal and Draft Charter, following the determinations by stakeholder sectors regarding their nominees for the GRC, all sector nominees are then aggregated into a comprehensive list of nominees, which is then presented to the stakeholder sectors for final ranking. An aggregated version of the sector rankings will next be provided to the EIM Governing Body and the CAISO Board of Governors. In making a final determination regarding the membership of the GRC, both boards are required to take into account a number of factors, including the aggregated results of the sector rankings, as well as the need for diverse stakeholder representation, geographic diversity, proven leadership capabilities, familiarity with

³ Straw Proposal, pp. 4-5; Draft Charter, pp. 3-4.

⁴ PIOs recognize that three of the eight stakeholder sectors – the CAISO Board of Governors, the EIM Governing Body, and the Body of State Regulators – will self-nominate (and therefore not be included in the final sector ranking process).

CAISO markets, and commitment to the success of the EIM.⁵ Importantly, the Draft Charter requires that all members of the GRC be selected from the list of candidates developed by the stakeholder sectors.⁶ PIOs strongly support these required considerations by both boards in seating the GRC.

While PIOs are entirely confident in the ability and commitment of the EIM Governing Body and the CAISO Board of Governors to seat a GRC that results in diverse stakeholder representation, as the process is currently conceived, there exists a lack of information available to the sectors about how their respective nominees are ranked by the other sectors. For example, nowhere is there a requirement that the final aggregated slate of nominees be publicly posted by the CAISO. Normally, PIOs would not advocate for such a public posting requirement, particularly in those circumstances where each stakeholder sector is guaranteed at least one “seat” on the advisory committee (as is the case today with the composition of both the Nominating Committee and Regional Issues Form). However, in this proposed process, there is no such guarantee. Rather, the final composition of the GRC (and to what degree each stakeholder sector is represented) is a decision entirely within the discretion of the EIM Governing Body and the CAISO Board of Governors.

An example can help to illustrate this concern. It is not inconceivable that a number of candidates nominated by various stakeholder sectors for the GRC will have diverse backgrounds (including perhaps a mix of regulatory, utility and public interest experience). Let us assume that the aggregated slate of candidates presented to both boards contains at least three candidates with this diversity of experience. Out of those three, let us now assume that two of these candidates have been recommended by the EIM Entities sector and only one has been recommended by the Public Interest/Consumer Advocate Groups sector. In this example, the CAISO Board of Governors and the EIM Governing Body would arguably be in compliance with the “diversity of representation” requirement of the Straw Proposal and Draft Charter if they appointed the two candidates recommended by the EIM Entities sector, but did not appoint the candidate recommended by the Public Interest/Consumer Advocate Groups sector. After all, there is no guarantee that the Public Interest/Consumer Advocate Groups sector has a dedicated “seat” on the GRC and therefore, no guarantee that one of their preferred candidates is appointed to the GRC.

PIOs are also sensitive to the fact that the work of the GRC is not sector-specific, but rather, will focus on collaboration to produce a final work product that is responsive to the interests and input of all stakeholders, including those who are not on the GRC.⁷ However, the fact remains that the GRC is a stakeholder-comprised advisory committee. Therefore, to ensure that this committee’s final work product is truly responsive to all stakeholders, the first step is to ensure that the GRC’s membership adequately reflects the preferences of all stakeholders. It will then be

⁵ Straw Proposal, p. 6.

⁶ Draft Charter, p. 5.

⁷ Straw Proposal, p. 6.

up to the GRC to oversee a stakeholder process that is truly transparent and both open and responsive to stakeholder input.

Therefore, to instill confidence in stakeholders that the process to seat the GRC is fair and thus, that the final composition of the GRC is adequately representative, there are a number of potential process improvements that the CAISO could consider in its next iteration of the Straw Proposal and Draft Charter. One option is to require that the GRC have *at least one* representative from each stakeholder sector, unless the CAISO Board of Governors and the EIM Governing Body jointly determine that extraordinary circumstances preclude such representation. Such a requirement is more likely to ensure adequate stakeholder representation on the GRC, while also providing flexibility and avoiding the complications inherent in prescribing a particular number of “seats” per sector.

If a sector-specific approach is not desirable, another option for alleviating concerns about adequate stakeholder representation on the GRC is to infuse additional transparency into the decision making process. There are a number of ways to increase transparency. One option would require CAISO to publicly post the aggregated final slate of nominees (but not the rankings) at the time the slate is made available to the CAISO by the stakeholder sectors, and well before the EIM Governing Body and CAISO Board of Governors seat the GRC. Another option is to require the Nominating Committee sector liaisons to share the results of their sector deliberations with the other sectors. Yet another option could involve a reporting requirement placed on both boards, justifying their appointments to the GRC and specifically, how those appointments satisfy the requirements established by the GRC’s final charter, including the need for diverse stakeholder representation.

Because any of these aforementioned options will help to ensure that stakeholders are satisfied with the final outcome of the nomination and appointment process for seating the GRC, PIOs are not recommending one option over another, but rather, are providing these options as examples of process improvements that CAISO should consider as a means of instilling stakeholder confidence in the decision making process used to seat the GRC.

(3) Decision Making Process for Approving the GRC’s Final Recommendations

Following the conclusion of the GRC’s work, it will presumably present a final governance proposal, outlining necessary governance changes to accommodate the growing EIM (and potentially, the addition of EDAM) for approval by both the CAISO Board of Governors and the EIM Governing Body. At that time, however, it remains unclear what decision making authority the EIM Governing Body will have over the final governance proposal. Pursuant to the EIM Governing Body’s charter, it has advisory authority over substantive changes to its own charter.⁸

PIOs request clarification on this point, but also recommend that rather than making a hybrid, primary or advisory determination regarding the EIM Governing Body’s role in approving the

⁸ EIM Governing Body Charter, p. 9.

GRC's final recommendations, that the EIM Governing Body and the CAISO Board of Governors have joint decision making authority over the GRC's final recommendations (just as both boards will jointly decide on the final composition of the GRC). Under this scenario, PIOs envision that approval of the GRC's final recommendations would require a simple majority vote of both boards.

III. Conclusion

PIOs greatly appreciate CAISO's responsiveness to stakeholders in proposing the establishment of a Governance Review Committee to address EIM governance changes as part of the comprehensive governance review required by the EIM Governing Body Charter. We generally support the framework for the GRC, as outlined in the Straw Proposal and Draft Charter, and recommend that the GRC include the maximum 13 members to ensure diverse stakeholder representation. Additionally, PIOs request a minor change to the requirements for the sector nomination process that will provide necessary flexibility, as well as additional transparency in the decision making process used to seat the GRC. Finally, we also seek clarification regarding the EIM Governing Body's authority to decide on the GRC's final governance proposal. PIOs appreciate the opportunity to provide these comments and look forward to our continued engagement in this important stakeholder process.