

Memorandum

To: ISO Board of Governors and Energy Imbalance Market Governing Body

From: Stacey Crowley, Vice President, External and Customer Affairs

Date: August 13, 2021

Re: Decision on EIM Governance Review Committee Part Two Draft Final Proposal

This memorandum requires EIM Governing Body action and, if so approved, Board of Governors action.

EXECUTIVE SUMMARY

Management presents for consideration the part two proposal of the Energy Imbalance Market Governance Review Committee (Committee) that was established to develop proposed refinements to EIM governance. The Committee arrived at its recommendations through an iterative stakeholder process conducted over the past twenty months. In May, the Board of Governors (Board) and EIM Governing Body approved the Committee's part one proposal. This part two proposal addresses the remaining issues the Committee identified, regarding the Board's delegation of authority to the EIM Governing Body.

The Committee has performed outstanding service to the ISO and its stakeholders as it carefully considered updates to the EIM governance structure. Upon approval of this proposal the Committee's work on EIM governance review is complete, though it may be asked to serve for the additional assignment of considering further governance changes should the extended day ahead market service move forward. Management recommends the EIM Governing Body and, if they approve, the Board of Governors, approve the changes recommended by the Committee in its proposal.

If approved by both bodies, Management will prepare necessary revisions to the relevant governance documents and will bring those revisions to the Board of Governors and EIM Governing Body at future public meetings.

Management proposes the following motions:

For the EIM Governing Body

Moved, that the EIM Governing Body approves the proposed changes recommended in the EIM Governance Review Committee's Part Two Draft Final Proposal, dated July 19, 2021.

For the Board of Governors

Moved, that the ISO Board of Governors approves the proposed changes recommended in the EIM Governance Review Committee's Part Two Draft Final Proposal, dated July 19, 2021

BACKGROUND: THE EIM GOVERNANCE REVIEW COMMITTEE

As adopted in 2015, the Charter for EIM Governance requires “a review of EIM governance in light of accumulated experience and changed circumstances,” to begin by September of 2020. In the fall of 2018, in response to the request of the EIM Governing Body and stakeholder feedback, Management recommended that the ISO form a temporary advisory committee to the Board and the EIM Governing Body, comprised of stakeholders and patterned after the EIM Transitional Committee, to conduct the governance review process. At a joint meeting held June 28, 2019, the Board and the EIM Governing Body adopted a charter for the EIM Governance Review Committee, directing the Committee to develop, through an iterative public stakeholder process, a proposal for potential refinements to the existing EIM governance.

As directed in the charter, stakeholder sectors nominated candidates for the Committee and ranked all nominees. The final Committee membership, as approved by the Board of Governors and the EIM Governing Body, is as follows:

- Tony Braun - Braun Blasing Smith Wynne, PC
- Andrew Campbell - Energy Institute at Haas, University of California, Berkeley
- Suzanne Cooper - Bonneville Power Administration
- Eric Eisenman - Pacific Gas and Electric Company
- Jennifer Gardner¹ - Western Resource Advocates
- Therese Hampton - Public Generating Pool
- Doug Howe - Independent Consultant
- Commissioner Kristine Raper - Body of State Regulators
- Rob Taylor - Salt River Project
- Rebecca Wagner - Independent Consultant
- Mary Wiencke - Pacificorp
- Cameron Yourkowski - EDP Renewables North America LLC

¹ In June of this year, Jennifer Gardner was nominated and appointed to the EIM Governing Body. Ms. Gardner stepped down from the Committee on June 30, 2021, so that she could assume her position as an EIM Governing Body Member beginning July 1, 2021.

- Angelina Galiteva (non-voting member) - ISO Board of Governors
- Valerie Fong (non-voting member) - EIM Governing Body

The Committee developed its proposals through a series of stakeholder papers that explored possible governance enhancements in six topics. These papers were published and discussed with stakeholders in a series of workshops and general sessions. The Committee also received extensive written stakeholder comments on each paper. These papers, and the stakeholder comments responding to them, are available on the stakeholder initiatives web page [here](#).

The Committee addressed five of the six topics in its Part One Draft Final Proposal, which the Board of Governors and the EIM Governing Body considered and approved on May 6, 2021.

Following a straw proposal published in May and a set of constructive comments in June, the Committee published its Part Two Draft Final Proposal on July 19, 2021, and the voting members of the Committee unanimously approved it on August 2, 2021.² The proposal addresses the remaining issues under the Committee's consideration, all of which involve the topic of the Board's delegation of certain decisional authority to the EIM Governing Body.

A copy of the Part Two Draft Final Proposal is attached to this memo as Attachment 1 for reference.

RECOMMENDED CHANGES

The Committee's proposals are summarized in the attached table at pages 19-22 of the Part Two Draft Final Proposal. As reflected in that table and discussed in more detail in the body of its paper, the Committee proposes changes to the ISO's currently effective governing documents in the following areas:

The Joint Authority Model

The Committee recommends several changes to the process the ISO currently uses to obtain Board approval to make tariff filings at the FERC. Specifically, the Committee proposes moving to a "joint authority" model that would enhance the collaboration between the Board and the EIM Governing Body and expand the scope of issues over which the EIM Governing Body holds shared approval authority.

Under the current Charter for Energy Imbalance Market Governance, the Board has delegated "primary authority" to the EIM Governing Body to approve proposals to amend certain provisions of the ISO's tariff. Under primary authority, relevant proposals currently go first to the EIM Governing Body for approval, and if approved, then to the Board for approval on its consent agenda, typically without discussion.

² The Committee voted 10-0 to approve the Part Two proposal. Although one voting member of the Committee was unable to attend the vote due to a scheduling conflict, that member stated support for the proposal at the beginning of the general session meeting at which the vote was held.

The Committee proposes to replace this approach with a joint authority model, whereby the Board and the EIM Governing Body would jointly meet to consider and approve such proposals after a full substantive discussion of its merits. This approach would enhance collaboration by providing members of both bodies a full opportunity to discuss the proposal with each other, with stakeholders, and ISO staff.

The Committee also recommends expanding the scope of the EIM Governing Body's approval authority. Currently, the EIM Governing Body has primary authority only for changes to real-time market rules that are EIM-specific, meaning that they apply uniquely or differently EIM Entity balancing authority areas, or for changes to generally-applicable real-time market rules where the primary driver for the change is an issue specific to the EIM Entity balancing authority areas. In practice, this has meant that some tariff proposals that apply to EIM Entities or to other market participants within EIM balancing authority areas in their role as EIM participants have been outside the EIM Governing Body's approval authority.

The Committee proposes to expand this scope, so that the applicability of a proposed tariff rule in the EIM context determines whether or not it is subject to approval by both bodies. Specifically, the Committee recommends that the joint authority scope be defined as follows:

“Joint authority extends to all proposals to change or establish any CAISO tariff rule(s) applicable to the EIM Entity balancing authority areas, EIM Entities, or other market participants within the EIM Entity balancing authority areas, in their capacity as participants in EIM. This scope excludes from joint authority, without limitation, any proposals to change or establish tariff rule(s) applicable only to the CAISO balancing authority area or to the CAISO-controlled grid.”

In addition to expanding the scope of the EIM Governing Body's approval authority, this proposed scope would avoid the potentially subjective step of evaluating what constitutes the primary driver for a proposed change to a generally applicable rule, making it more practical in its interpretation and application.

Process to Address Potential Deadlocks

Under joint authority, a majority of the members of each body must vote to approve a tariff proposal for ISO staff to proceed with a FERC filing. The Committee recommends a collaborative, three-step process for resolving any potential circumstance where the two bodies do not agree on whether to approve a proposal.

The first step would occur at the joint meeting held to consider the proposal. Those Board or EIM Governing Body members who do not support the proposal would articulate their concerns, and a discussion would ensue among the members of the two bodies, ISO staff, and stakeholders to explore the extent of their differences and discuss potential ways to address the areas of disagreement.

With the benefit of that guidance, the next step would be to remand the matter to ISO

staff, who would recommence the public stakeholder process in an effort to develop a revised proposal that would be brought back to the Board and EIM Governing Body for their joint review.

If after this process the two bodies remain deadlocked, they could jointly agree either to abandon the proposal, or with input from ISO management, remand for another round of the stakeholder process.

Alternatively, the Board alone could authorize a FERC filing if, and only if, three conditions are met: (1) the Board, by unanimous vote, makes a finding that the bodies have reached an impasse and that exigent circumstances exist such that a revision to the tariff is critical to preserve reliability or protect market integrity³; (2) the ISO would be required to include in its FERC filing any written opinion or other statement the EIM Governing Body may want to offer regarding the proposal; and (3) the EIM Governing Body would have the option to retain outside counsel to assist in preparing its written opinion or statement.

Short-Term Emergency Filings

The ISO's current EIM governance includes a provision that would allow ISO staff to seek approval for a temporary tariff amendment from only one of the two bodies on a matter within their shared approval authority under certain emergency circumstances. The Committee recommends eliminating this provision, which has never been invoked, as unnecessary in light of the ability to convene the two bodies jointly by teleconference when time is of the essence.

Advisory Authority

Under the current delegation of authority, the EIM Governing Body has the right to provide advisory input on proposals to change certain market rules that are outside of its approval authority. The Committee recommends that the EIM Governing Body continue to have advisory authority and proposes that this authority extend to all proposals to change or establish any tariff rules that apply to the real-time market but that are not within joint authority.

This proposal would ensure that the EIM Governing Body has an opportunity to provide formal input on all proposals to change or establish real-time market rules, including real-time market rules that do not directly apply to the EIM Entity balancing authority areas but may nonetheless significantly impact them. As is currently the case, the EIM Governing Body's advisory input would not be binding on the Board, which would retain sole authority in this context to determine whether to authorize ISO staff to move forward at FERC.

³ This finding normally would be made only after at least one remand has occurred in an attempt to reach a proposal that both bodies support. If, however, the circumstance is so time critical as to require more immediate action, the Board may by unanimous vote approve such a filing on an expedited basis without completing the remand process.

The Decisional Classification Process

The Committee proposes to retain the current “decisional classification” process the ISO uses to determine which policy initiatives fall within the EIM Governing Body’s approval authority, with one revision relating to the final step in that process.

If the chairs of the Board and the EIM Governing Body do not agree on a decisional classification, the existing process calls for a joint meeting of the two bodies to resolve the matter. The decision is made by a vote of the combined members of the two bodies, with the majority prevailing. The Committee recommends keeping this approach, but proposes to add a provision to ensure that each body has an equal voting share in a circumstance where either body has less than its full membership seated (i.e., five sitting members) at the time of the vote. In such a circumstance, the Committee proposes adjusting the weight of the votes of the members of the body that has fewer than its full membership such that each body effectively has five votes. For example, if one body has all five members seated and the other has only four members seated, each member of the body with four members would have a weighted vote worth 1.25 votes. As is currently the case, any tie in voting would be broken by the Board chair.

Durability of the Delegation of Authority

Many stakeholders expressed a desire to enhance the durability of the delegation of authority, given the importance of this delegation to their decision to participate in EIM. In response to these concerns, the Committee recommends four steps to enhance the durability of the delegation.

First, it proposes that a unanimous vote of the Board should be required for any changes to the delegation of authority, unless the change is also supported by a majority of the EIM Governing Body. Second, before adopting any such change, the Board should seek stakeholder input, including from the EIM Governing Body, the Regional Issues Form, and the Body of State Regulators. Third, if the EIM Governing Body does not support the change, there should be 45-day period during which the two bodies would attempt to resolve their differences. And fourth, if the Board approves to change, it would not take effect until after a 180-day notice period elapses. The Committee selected 180-days for the notice period because this is the same notice period that is required of an EIM Entity who gives notice of an intent to withdraw from the EIM.

The Committee also proposes one exception to the 45-day negotiation period and the 180-day notice period. If EIM Entities representing 75% of the highest total annual net energy for load in the participating balancing authority areas outside of the ISO balancing authority area have given notice of their intent to withdraw from EIM, then the Board can approve reverting the delegation of authority back to its current more narrow scope without waiting for the 45-day and 180-day periods to elapse.

STAKEHOLDER COMMENTS ON THE PROPOSED CHANGES

There is considerable stakeholder support for the Committee’s Part Two Draft Final Proposal. Most stakeholders support all or nearly all aspects of the proposal. Although

some commenters proposed refinements or did not agree with every detail within the proposal, there is broad support among stakeholders for the proposal overall, with many commenting that the proposal will enhance regional confidence and support for EIM.

The Committee has prepared a comprehensive matrix of stakeholder comments on each topic, which is attached for reference as Attachment 2.

CONCLUSION

Management greatly appreciates the enormous time and substantial effort the EIM Governance Review Committee has devoted in developing its proposals and recommends that both the EIM Governing Body and the Board of Governors approve the Committee's Part Two proposal. Upon approval, the Committee will have completed its current assignment.

If approved, Management will develop implementing revisions to the bylaws, the Charter for Energy Imbalance Governance, and the document entitled Guidance for Handling Policy Initiatives within the Decisional Authority or Advisory Role of the EIM Governing Body. Management will bring revisions to the EIM Governing Body for its advisory input and then to the Board for decision. Management currently contemplates bringing the revisions to the September meetings of the EIM Governing Body and the Board of Governors.

Finally, it bears mention that in its Part One proposal the Committee expressed a willingness to remain available to consider future changes to governance that may be warranted in connection with the establishment of an extended day ahead market. To preserve this as a potential option, Management recommends that the Board and EIM Governing Body refrain from formally dissolving the Committee at this time.