

To: Western Energy Markets Governing Body (formally known as Western EIM Governing Body)
From: Western Energy Imbalance Market Body of State Regulators
CC: California Independent System Operator Board of Governors
Date: July 25, 2024
Subject: Comments on the West-Wide Governance Pathways Initiative Step 1 Proposal

The Western Energy Imbalance Market Body of State Regulators (BOSR) appreciates the opportunity to provide comments to the Western Energy Markets (WEM) Governing Body on the West-Wide Governance Pathways (Pathways) - Step 1 Proposal dated May 24, 2024 (Step 1 Proposal).¹ The BOSR is a self-governing, independent body composed of one commissioner from each state regulatory utility commission in which a load-serving regulated utility participates in the Western Energy Imbalance Market, including the California Independent System Operator's (CAISO's) real-time market.² This includes the states of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming. The BOSR also currently includes two liaisons representing consumer-owned utilities and a liaison representing a federal power marketing administration. One of the BOSR's responsibilities is to express a common position, when possible, in CAISO stakeholder processes or to the WEM Governing Body on Western Energy Imbalance Market (WEIM) or Extended Day-Ahead Market (EDAM) issues.³

Background on BOSR's Positions on Governance in WEIM and EDAM

The BOSR has been actively involved in the development and enhancement of the WEIM since 2015, ensuring the alignment with state regulatory interest is considered in the governance and operation of the wholesale electricity market. In 2019, the BOSR strongly supported the creation of the Governance Review Committee (GRC), a temporary advisory committee charged by the CAISO Board of Governors and the WEM Governing Body to provide input and advice to both bodies on matters relating to the WEIM and subsequently the EDAM.⁴ Additionally, the BOSR had a representative to the GRC and was actively engaged in the development of the governance structure that exists today, ensuring the framework serves the public interest effectively. The BOSR supported the current governance model as sufficient for a day-ahead and real-time market,

¹ West-Wide Governance Pathways Initiative – Step 1 Recommendation, available at:

https://www.westernenergyboard.org/wp-content/uploads/Step-1-Recommendation_Final-Draft-Update-5.28.24-1.pdf

² Charter, Energy Imbalance Market Body of State Regulators (March 1, 2016, revised April 30, 2021) ("BOSR Charter"). See also, Charter for Energy Imbalance Market Governance (revised September 23, 2021), § 6.2

³ Wyoming and Idaho are abstaining from these comments. Additionally, advisory COU liaisons reflect a broad and diverse constituency of consumer-owned utilities and the input of the COU liaisons is not intended to reflect the positions of individual COU utilities.

⁴ Comments of the BOSR on the EIM Governance Review, available at:

<https://www.westernenergyboard.org/wp-content/uploads/2019/09/06-14-19-EIM-BOSR-Comments-Governance-Review-Committee-and-Charter-formation-1.pdf>; and

<https://www.westernenergyboard.org/wp-content/uploads/BOSR-Advice-to-WEIM-Governing-Body-on-EDAM-Market-Design-and-Governance.pdf>

acknowledging that the framework would need to continue to evolve as regional market expansion efforts evolve.

BOSR's Overall Position on the Step 1 Proposal

The Pathways Launch Committee has proposed an evolution of existing governance to the CAISO to enable further regional engagement in western market decision-making: the Step 1 Proposal. The Pathways Launch Committee has explained that the evolution of current decision-making is intended to move the market further down the path of shared regional responsibility. The BOSR has not engaged with the Pathways Launch Committee. However, the BOSR deems it appropriate to submit these comments given that CAISO is evaluating the Step 1 Proposal through a stakeholder process.

The BOSR supports the Step 1 Proposal. While the Step 1 Proposal does not constitute a truly independent governance structure, it is an appropriate incremental step that reflects the West-wide nature of the EDAM wholesale electricity market. As participation in that market grows, the Step 1 Proposal is triggered to reflect the changing proportional and regional makeup of the participating load, accurately reflecting participation in decision making. The BOSR understands that the Pathways Launch Committee envisions a governance structure beyond the Step 1 Proposal in order to establish an independent wholesale electricity market that respects all participating states' policies for their own loads and is independent of any one state's jurisdiction. The BOSR supports making further progress toward a west-wide market with an independent governance structure.

Public Interest Safeguards

The BOSR supports augmenting the WEM Governing Body Charter to embed the principle of the public interest and a responsibility to consider and balance individual state and local policies within the market footprint. Accommodating state-specific policies and regulations will ensure the WEIM and EDAM can operate more effectively, delivering benefits that align with both regional and state-level objectives. The statutory roots of the CAISO prioritize the public interest and customer benefits and it is appropriate to reinforce this duty for the WEM Governing Body as they take up more authority in decision-making.

The BOSR appreciates the Pathways Launch Committee addressing the continued role of the BOSR as the market may evolve, including addressing BOSR input before the Federal Energy Regulatory Commission (FERC). In response, the BOSR takes this opportunity to reiterate its continued advisory role to the WEM Governing Body. As a self-governing, independent body that represents the public interest by ensuring the protection of customers and promoting an equitable and reliable marketplace, the BOSR reserves the right to intervene in proceedings before FERC. Furthermore, positions taken by BOSR members or the BOSR are not binding on Commissioners in state proceedings, before FERC, or in any other forum. As this initiative continues to develop, the BOSR is aware its role in the market may evolve and looks forward to engaging in the process.

Delegation of Authority

The BOSR supported the current Joint Authority model for the WEIM and EDAM, which requires both the WEM Governing Body and the CAISO Board of Governors to jointly approve any market design element that would be filed at FERC if the filing involves CAISO Tariff provisions that apply to the WEIM and EDAM Entities in their capacity as WEIM and EDAM participants. Under the prior regime of the Primary Authority model, some important policy matters were decided by the WEM Governing Body and went to the CAISO Board of Governors' consent agenda, receiving little to no discussion by the Board of Governors. Other important policy matters were taken up by the CAISO Board of Governors, but the WEM Governing Body was limited to providing advice only. The BOSR agreed with the GRC that the 'but for' test utilized to decide which body held primary authority was unworkable for the scale and complexity of the day-ahead market. To resolve this challenge, the GRC recommended adopting Joint Authority for both boards across a much broader scope of issues. The Joint Authority construct retained the CAISO Board of Governor's sole right to file tariff changes at the FERC, but substantially expanded the WEM Governing Body's ability to engage as full partners with the CAISO Board of Governors on important policy issues facing the regional markets. This has proven an effective change and has led to the 10 board members both understanding the breadth of market issues more fully and building collaborative, problem-solving relationships.

If the Primary Authority model, as presented in the Step 1 Proposal, is implemented, the BOSR recommends that the collaborative decision-making fostered under the Joint Authority construct be maintained under the new Primary Authority paradigm. While voting may change, there have been real benefits for customers and the markets in the boards hearing the same briefings, stakeholder comments and staff proposals.

Dispute Resolution Process

The Step 1 Proposal would retain the current dispute resolution process for regional market issues, with a modification requiring that if the dispute resolution process fails and either body votes in favor of a proposal opposed by the other, the CAISO Board of Governors must make a "dual filing," also known as a "jump ball" with FERC under its Section 205 filing rights, except in exigent circumstances to preserve reliability or market integrity. The jump ball is a beneficial mechanism to resolving disputes as it promotes fairness and balanced decision-making and will support the WEM Governing Body and CAISO Board of Governors collaborative engagement in the extensive dispute resolution process, aiming to find mutually acceptable solutions before resorting to the jump ball process at FERC. Furthermore, the BOSR agrees the concept of a dual filing will create a more equal footing for the WEM Governing Body at FERC as a backstop to the dispute resolution process. This is appropriate when considered alongside the load requirements of the 'trigger' proposal. It will allow the WEM Governing Body to present their proposal directly to FERC, thus ensuring that all perspectives are considered, promoting a balanced and impartial outcome.

Trigger for Step 1 Implementation

The BOSR supports the trigger requirement proposed. The BOSR agrees execution of implementation agreements by utilities representing non-CAISO BAA load equal to or greater than 70 percent of CAISO BAA load is a reasonable and a sufficient threshold to instill enough confidence to transition to the proposed governance changes in the Step 1 Proposal.

Additional Comments

As an independent, self-governing body that plays a crucial role in advising and ensuring the collective states perspectives are effectively communicated to the WEM Governing Body, the BOSR appreciates the opportunity to provide consensus comments on the Step 1 Proposal. Furthermore, as the current formal standing state committee for the WEIM and EDAM, the BOSR looks forward to offering its expertise and guidance as this initiative continues to develop.