



## Comments on Straw Proposal

Initiative: Western EIM governance review

### Comment period

May 24, 2021, 04:30 pm - Jun 11, 2021, 05:00 pm

### Submitting organizations

Public Interest Organizations ("PIOs")

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Submitted on 06/14/2021, 05:13 pm

### Submitted on behalf of

Western Resource Advocates, Western Grid Group, Renewable Northwest, and Northwest Energy Coalition

### Contact

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### 1. Please provide your organization's overall position on the EIM Governance Review Straw Proposal – Delegation of Authority Issues:

PIOs support the GRC's Straw Proposal on Delegation of Authority issues.

### 2. Provide a summary of your organization's comments on this proposal and how it meets your interests related to delegation of authority for the EIM:

PIOs support the GRC's revised proposal for joint authority, including the application of the "does it apply" rule. We believe that this application of joint authority significantly expands the EIM Governing Body's decisional authority – something that PIOs have advocated for throughout this stakeholder process – and further, results in a bright line test that will be far easier to administer than the Option 1 and Option 2 approaches to joint authority included in the GRC's prior Straw Proposal.

Additionally, we strongly recommend maintaining advisory authority for the EIM Governing Body under the joint authority model for EIM governance. Advisory authority will be critical for empowering the EIM Governing Body to provide its opinion to the CAISO Board of Governors on critical matters that may not "apply" directly to EIM Entities, but that still "impact" EIM Entities.

Finally, PIOs support the GRC’s revised approach to dispute resolution under the joint authority model and believe that it is an improvement upon the prior proposal that created the potential for “dual” Section 205 filings at FERC.

### **3. Provide detailed comments on the scope of joint authority proposal:**

Under the current joint authority proposal, any proposal to amend the tariff in an area covered by joint authority would go to both the CAISO Board of Governors and the EIM Governing Body for discussion and approval before CAISO staff could move forward with a Section 205 filing at FERC. Approval would require a majority vote of both bodies. In contrast to the GRC’s prior proposal for joint authority, the current proposal creates a bright line test for defining joint authority – i.e., the “does it apply” rule. Specifically:

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 balancing authority areas in their capacity as participants in the 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 (“BAA”) or to the CAISO-controlled grid.<sup>[1]</sup>

PIOs appreciate the additional clarity embodied in the “does it apply” test for joint authority. In practice, this should be far easier to implement than the Option 1 or Option 2 definitions for joint authority provided in the December 14<sup>th</sup> Revised Straw Proposal.<sup>[2]</sup> Although not included in this latest version of the Straw Proposal, PIOs strongly recommend maintaining advisory authority for the EIM Governing Body under the joint authority model for governance. Advisory authority will be critical for enabling the EIM Governing Body to provide its opinion to the CAISO Board of Governors on critical matters that may not “apply” directly to EIM Entities, but that still “impact” EIM Entities. For example, recent changes made to CAISO’s load, export and wheeling priorities (addressed as part of CAISO’s Summer Readiness filings at FERC) constitute tariff changes that do not directly *apply to* EIM Entities, but that certainly *impact* EIM Entities.<sup>[3]</sup> As such, the EIM Governing Body should be able to continue advising the CAISO Board on such matters.

Finally, in concurrence with the GRC’s recommendations in the December 14<sup>th</sup> Revised Straw Proposal, PIOs continue to support both boards meeting whenever possible in a single joint session to consider matters that are within their joint authority. We continue to believe that enhanced communications and cooperation enabled by the joint authority model will resolve most issues.

<sup>[1]</sup> Governance Review Committee, EIM Governance Review: Straw Proposal on Key Aspects of the Delegation of Authority Issue, May 12, 2020, p. 1, available at: [Straw Proposal - Delegation of Authority Issues - EIM Governance Review.pdf \(caiso.com\)](#) (“GRC Delegation of Authority Straw Proposal”).

<sup>[2]</sup> Governance Review Committee, EIM Governance Review: Revised Straw Proposal, Dec. 14, 2020, p. 12, available at: [Revised Straw Proposal Western EIM Governance Review.pdf \(caiso.com\)](#).

[3] See, e.g., Public Comment Letter from Southwest Load-Serving Entities to the Western Energy Imbalance Market Governing Body (April 16, 2021), available at: [Microsoft Word - EIM GB Letter on Wheeling Priorities v\(1\) \(westerneim.com\)](#); Public Comment Letter from Bonneville Power Administration to the Western Energy Imbalance Market Governing Body (April 19, 2021), available at: [Portland HQ Letterhead \(westerneim.com\)](#); and Public Comment Letter from Powerex to the Western Energy Imbalance Market Governing Body (April 19, 2021), available at: [Public-Comment-Letter-from-Powerex-re-Summer-Readiness-Load-Export-Wheeling-Priorities-April-19-2021.pdf \(westerneim.com\)](#).

#### **4. Provide detailed comments on the dispute resolution and deadlocks proposal:**

Under this proposal, if the two bodies do not initially agree to approval of a proposal that is subject to their joint authority, the matter would be remanded to CAISO staff to identify, through the stakeholder process, a revised proposal for both bodies' consideration.[1] If the two bodies still cannot agree to approve the proposal, they could jointly decide to abandon the proposal or jointly agree, with input from CAISO management, on an alternative way to resolve the matter.[2] If the bodies continue to remain deadlocked and cannot agree on an appropriate next step, then the Board could, as a last resort and on its own, authorize a Section 205 filing at FERC, but only after meeting the following conditions:

1. The Board, by unanimous vote, makes both a finding that the two bodies are at an impasse and that exigent circumstances exist such that a revision to the tariff is critical to preserve reliability or to protect market integrity;
2. The CAISO would be required to include in its FERC filing whatever written opinion or other statement that EIM Governing Body may want to offer regarding the proposal; and
3. The EIM Governing Body would have a right, at its discretion, to retain outside counsel to assist in preparing any written opinion or statement on the proposal.[3]

PIOs support this approach and appreciate that it continues to include an iterative stakeholder process to provide opportunities for the bodies to work closely with stakeholders and CAISO staff and management to arrive at a mutually agreeable solution. Additionally, PIOs believe that this approach is preferable to the GRC's prior approach for dispute resolution – i.e., the “dual filings” approach – as it avoids the uncertainty created by permitting FERC to decide between the bodies' two competing positions in future 205 filings.

Additionally, PIOs strongly support the EIM Governing Body having the ability to retain outside counsel to assist it in preparing a written statement or opinion, should it choose to do so. This will enable the Governing Body to independently opine on 205 filings falling within joint authority where both an impasse and exigent circumstances exist. In this way, an accurate and complete picture can be presented to FERC when CAISO makes a 205 filing under such rare circumstances.

Regarding the EIM Governing Body's ability to retain outside counsel in preparing such opinions, PIOs request clarification from the GRC regarding how outside counsel will be compensated. PIOs find it reasonable that outside counsel for the Governing Body be compensated just as the outside market expert for the Governing Body will be compensated. In other words, because the role of outside counsel in this instance would be aligned with the Governing Body's mission to promote the success of the EIM for the benefits of all participants, including the interests of both the CAISO BAA and the EIM BAAs, the costs should be recovered from *all* market participants, including those in the EIM BAAs.[4]

[1] GRC Delegation of Authority Straw Proposal at 3-4.

[2] *Id.*

[3] *Id.*

[4] Specifically, this would result from applying the CAISO's current cost allocation methodology, which recovers from EIM market participants a pro-rata share of overhead costs associated with market operations. It is the same approach that currently applies to similar costs, such as the costs for both the DMM and the MSC. See: Governance Review Committee, EIM Governance Review: Governance Review Committee Part One Draft Final Proposal, April 12, 2021, pp. 20-21, available at: [PartOneDraftFinalProposal\\_EIMGovernanceReview.pdf \(caiso.com\)](#).

#### **5. Provide additional comments on the Straw Proposal or what the GRC should consider in the delegation of authority for the EIM:**

As previously noted, PIOs support the GRC's Straw Proposal on Key Aspects of the Delegation of Authority Issue, but also recommend that the GRC consider addressing the following items in its next iteration of the Straw Proposal:

1. PIOs strongly recommend that under the joint authority model for EIM governance, that advisory authority for the EIM Governing Body be preserved such that the Governing Body remains empowered to advise the Board of Governors on those issues that fall outside its joint authority, but that necessarily impact EIM Entities.
2. PIOs recommend that the GRC clarify the funding mechanism to enable outside counsel for the EIM Governing Body where agreement cannot be reached between the two bodies under joint authority and exigent circumstances exist such that the Board must move forward with a 205 filing at FERC. In these instances, where the Governing Body chooses to retain outside counsel to prepare a separate opinion (to be included in CAISO's 205 filing), PIOs recommend that the costs associated with outside counsel be paid in the same way that costs for the DMM, MSC and the Governing Body's outside market expert will be paid.<sup>[1]</sup>

[1] *Id.*