



Submit comment on Revised straw proposal

Initiative: Western EIM governance review

1. Provide your organization's overall position on the EIM Governance Review Revised Straw Proposal:

Choose:

- Support
- **Support with caveats**
- Oppose
- Oppose with caveats
- No position

2. Provide a summary of your organization's comments on this proposal:

PPC represents the common interests of consumer-owned electric utilities in the Pacific Northwest. PPC's members range from small rural distribution utilities that do not own generation to very large urban utilities that own both generation and transmission facilities. All PPC members are statutory preference customers of the Bonneville Power Administration (BPA) and represent over 90 percent of BPA's Tier 1 sales. BPA is a self-funding agency and covers its costs by selling its products and services. Overall, Northwest public power is the largest purchaser of BPA's power products and services and is among the largest purchasers of BPA's transmission products and services, funding nearly 70 percent of the agency's total power and transmission costs.

PPC members are impacted by the CAISO's EIM, and are interested in the potential development of an EDAM, for several reasons:

- as load-serving entities in the current or planned EIM footprint, as well as in the potential EDAM footprint;
- as current, planned or potential EIM participants;
- as possible EDAM participants – either as EDAM Entities, owners of participating generation, or both;
- as active participants (both as buyers and sellers) in Western bilateral markets which are impacted by the EIM and would be impacted by an EDAM; and
- and as purchasers of preference power and transmission services from BPA, because BPA's transmission use and generation revenues will be impacted by BPA's planned EIM participation and stand to be impacted by an EDAM regardless of whether or not BPA becomes an EDAM participant.

PPC appreciates the Governance Review Committee's (GRC) consideration of the diverse perspectives offered in response to the GRC's July 31, 2020 Straw Proposal. PPC applauds the GRC's considered approach in developing the Straw Proposal and the refinements the GRC offered

in its December 14, 2020 Revised Straw Proposal. The GRC has developed important improvements to the current governance structure of the EIM. The GRC clearly intended for those improvements to provide as much certainty and protection to all market participants as is possible within the confines of the laws and restrictions that apply uniquely to the CAISO. In that regard, and with the caveats discussed below, PPC is generally supportive of the GRC's December 14, 2020 Revised Straw Proposal for the EIM and commends the GRC for its efforts.

PPC cannot support the proposed governance of EDAM until the market design of EDAM is completed so that those important components can be assessed together. PPC has consistently said that it will assess the final proposal for EDAM governance as part of an EDAM package, including market design and existing market dynamics that could impact the potential benefits and risks for those choosing to participate in EDAM, as well as existence of market oversight.

The concerns that continue to weigh heavily on PPC pertain to the CAISO Board's retention of ultimate authority and control over the functions delegated to the Governing Body, especially given the legal requirements that the State of California "must supervise or control" the CAISO and that the CAISO Board be appointed by the California Governor entirely at the Governor's discretion. The Revised Straw Proposal underscored the legal fact that the Governing Body can never have complete, irrevocable, independent authority over the rules pertaining to any CAISO market. Despite the Governing Body's best intentions, therefore, the net result might be a market governed by rules that are – or perceived to be – unduly influenced by the State of California.

PPC certainly appreciates the unique legal landscape confronting the CAISO and the encumbrances arising from the CAISO's special tax-exempt status. PPC thanks the CAISO legal staff for preparing helpful legal analysis pertaining to the CAISO's corporate authorities, and for clearly responding to the additional legal questions PPC posed in its last comments. Based on that legal analysis, it appears that any proposals intended to further buttress the durability of the Board's delegation of authority to the Governing Body and to strengthen the Governing Body's independent decision-making could run counter to CAISO's corporate laws and regulations. And so, for prospective market participants and their stakeholders, the question necessarily becomes one of risk assessment and whether the benefits of participating in a particular CAISO market outweigh the risks, including the potential risk of undue influence by the CAISO Board and the State of California. Each prospective market participant might evaluate that risk differently.

We acknowledge that without a legislative change to pursue regionalization more formally, the GRC is limited in its ability to address these concerns. We again commend the GRC for its efforts to address concerns expressed by stakeholders within the unique legal landscape discussed above. We appreciate the hard work of the GRC and CAISO staff throughout this process and look forward to continuing to work collaboratively with all the stakeholders.

3. Provide detailed comments including examples on Issue 1: The Delegation of Authority for Market Rules to the Governing Body, the Decisional Classification Process, and Durability:

Delegation of Authority to the Governing Body

PPC continues to support the GRC's proposed move to the "joint authority" model and is pleased that the GRC has retained this element in the Revised Straw Proposal. The joint authority model would foster greater collaboration between the Governing Body and the CAISO Board and provide the opportunity for various stakeholders to work together in pursuit of consensus. More importantly, changes to real-time and day-ahead rules will impact both EIM/EDAM Entities and entities in the

CAISO's balancing authority area. Providing a primary role for bodies representing the interests of both of those groups is appropriate.

Scope of Joint Authority

PPC also supports the GRC's proposal to realign the scope of joint authority for the Governing Body and the CAISO Board to ensure that the Governing Body has shared approval authority over all the market rules that govern participation in the EIM. Given the increasingly integrated nature of the EIM and the broader real-time market, it is appropriate for the Governing Body to have shared authority over all real-time market rules.

PPC appreciates the GRC's effort to better define what falls within the scope of joint authority in the context of the EIM and believes that this is an important refinement. PPC also recognizes that developing a definition for the scope of joint authority is a difficult task with no perfect solution. The GRC has developed two proposed definitions of the scope of joint authority,¹ and PPC understands the main difference between the two definitions to be the breadth of the exclusion of certain market rules from joint authority. Specifically, Option 1 excludes all rules that apply only to CAISO-controlled grid or only to the CAISO balancing authority area, and Option 2 limits the exclusion for the CAISO balancing authority area only to rules that relate to reliable operations. In other words, the exclusion of rules from joint authority under Option 2 is somewhat narrower, which means, at least in theory, that the scope of joint authority under Option 2 is somewhat broader.

PPC strongly prefers Option 2 because Option 2 would provide more assurance to EIM participants that rules affecting their market participation would be subject to joint authority. While Option 1 seems to have the appeal of establishing a brighter line that focuses on the entities directly subject to the rules, it fails to acknowledge the interconnected nature of the EIM and the real-time market and, in reality, the bright line suggested in Option 1 does not exist. PPC strongly believes that because the EIM and the broader real-time market are highly integrated, even rules that target only the CAISO balancing authority area could have substantial impacts on the EIM and its participants. Despite these impacts, under Option 1, the CAISO Board alone could have approval authority over these rules, which would undermine the protections and assurances the GRC has endeavored to create for all market participants. By adding a "reliability" limitation to the exclusion, Option 2 acknowledges the reality that rules directed only at the CAISO balancing authority area could have a significant impact on the EIM, and as such, the Governing Body should have a say in their review and approval. Option 2 goes further towards giving some assurance to all the market participants that they will be able to influence the rules that impact them.

That said, PPC is concerned that the "reliability" limitation to the exclusion in Option 2 is still very broad and will undermine the market participants' confidence in their ability to influence all the rules that impact them. Having considered potential scenarios, PPC believes it is difficult to wall off reliability from potential impacts to the EIM entities, and the GRC itself acknowledges that "[r]ules relating to the reliable operation of the CAISO balancing authority area have somewhat more overlap with the real-time market."² Depending on the specific rules that fall under the "reliability" limitation, PPC believes the impact on the real-time market could be much more significant than the "relatively limited [impact] in most instances"³ that the GRC suggests. The variety of rules and initiatives that

¹ Although this is not specifically stated in the Revised Straw Proposal, PPC understands that the decisional classification process will be used to determine whether a specific issue is subject to joint authority pursuant to the definition ultimately adopted. If this is not correct, PPC would appreciate that clarification, and an explanation of the process that will be used to determine whether an issue falls within or outside of the scope of joint authority.

² December 14, 2020 Revised Straw Proposal at 11.

³ December 14, 2020 Revised Straw Proposal at 11.

could be undertaken under the guise of “reliability” is broad, the judgment of whether the rules “are related to reliable operations” is subjective, and the limits of that category have not been tested. PPC believes that the illustrative list of excluded topics subject to Board-only authority is helpful and urges the GRC to consider developing an exclusive list of Board-only authority topics to be included as part of the definition in Option 2. We appreciate this might not be an easy list to develop, but it will improve transparency, reduce subjectivity of making case-by-case determinations, and offer all market participants additional assurances regarding the scope of the Governing Body’s authority. We also would like to understand how the Governing Body’s input may be considered if it is determined that a rule is related to the “reliability” of the CAISO balancing authority area.

Other Issues Related to Delegation of Authority to the Governing Body and Durability of the Delegation

PPC continues to support the GRC’s proposed resolution process for potential decision deadlocks and believes that the modifications the GRC offered in the Revised Straw Proposal are well-reasoned and appropriate. The GRC’s proposed dispute resolution process is clearly designed to encourage the Governing Body, the CAISO Board, and all the stakeholders to work together to resolve their differences in a constructive manner.

PPC appreciates the additional clarifications the GRC provided in the Revised Straw Proposal with regard to potential dual FERC filings, and specifically the discussion of the exception to the applicability of dual filings. In a potential dual filing situation, where the Governing Body has a proposal that it would support, but the Board does not support and has no alternative that it would support, a dual filing would not be permitted because it would negate the Board’s legal ability to manage or control the CAISO. While PPC understands the unique legal landscape confronting the CAISO and the restrictions arising from the CAISO’s special legal status, this exception to the applicability of dual FERC filings is significant because it epitomizes PPC’s fundamental concern regarding the strength and the durability the CAISO Board’s delegation of authority to the Governing Body.

CAISO’s unique legal considerations were also the reason for the GRC’s dismissal of suggestions to further enhance the durability of the Board’s delegation of authority to the Governing Body by requiring a majority of the Governing Body to approve changes to the delegation. The Revised Straw Proposal explained that to preserve its tax-exempt status, the CAISO Board must retain two levels of control in delegating authority to and sharing authority with the Governing Body: (1) the Board must have the unilateral ability to modify its delegation or sharing of authority with the Governing Body; and (2) the Board always needs to have a concurring role in decisions about changes to market rules. This retention of ultimate control by the CAISO Board will weigh heavily on PPC’s evaluation of the governance structure in the context of the bigger market package, especially for EDAM.

At the outset, PPC acknowledges and appreciates all the improvements that the GRC has developed to offer additional certainty and protection to all market participants regarding the durability of the governance model and the Board’s delegation of authority. The GRC’s proposals requiring a unanimous vote of the Board to make changes to the delegation, the advisory input of the Governing Body, the 45-day period for the Board and the Governing Body to resolve their differences, and the extended notice period are obviously intended to increase the durability of the delegation of authority and PPC supports these improvements. However, a natural question arises regarding whether these proposals will be sufficient to assure all market participants that the market will be fair, equitable, and free from undue influence.

For PPC, the central governance questions pertain to the role that the CAISO Board will play in approving policy initiatives to change the market rules, and how that role is defined and shared with the Governing Body. The role of the CAISO Board is important because of its legal connection to the State of California and the risk – or the perception of the risk – that the Board is not truly independent, may be reluctant to address concerns of all the market participants, and may be unduly influenced by the State and the State stakeholders in its initiatives and decisions that impact a broader regional market.

These questions surrounding the CAISO Board’s perceived lack of independence from the State of California are not new. In fact, the Federal Energy Regulatory Commission (FERC) has previously considered the governance issues surrounding the CAISO Board, and although FERC’s rulings were ultimately vacated by Federal court on the grounds that FERC exceeded its statutory authority under the Federal Power Act, its reasoning remains informative and its sentiment persists.⁴ FERC ruled that the CAISO was “not sufficiently independent” because of its Board.⁵ FERC explained that the “primary problem” with the CAISO Board “is the extent to which it and, in turn, the CAISO are controlled by the State,” given that all the Board members are selected by the California Governor and serve at his pleasure.⁶ This structure, FERC reasoned, “established a decision-making process that is heavily influenced, if not completely dictated, by one stakeholder (i.e., the State).”⁷ FERC noted that the Board’s lack of independence from the State, and the State’s potential influence over the market, resulted in the impression that the CAISO would not provide equal treatment to all market participants and ruled that “the Board’s lack of independence presents a significant impediment to a well-functioning Western energy market.”⁸ Specifically, “[c]ontrol of the Board by one state threatens the CAISO’s ability to treat in-state and out-of-state transmission users on a non-discriminatory basis, thus undermining the prospect of broader regional cooperation throughout the West.”⁹

Admittedly, some things have improved considerably since the challenges of the early 2000s, but the structure of the CAISO Board has largely remained. As explained in the legal analysis in Appendix A, IRS regulations require that the “supported organization” – in this case, the State of California – must supervise or control the supporting organization – in this case, the CAISO.¹⁰ This relationship is established by the fact that the CAISO Board is selected by the California Governor entirely at the Governor’s discretion.¹¹ An attempt to remove the Board from certain decisions by allowing the Governing Body to unilaterally direct changes to market rules or by irrevocably preventing the Board from changing any delegation or sharing of authority, could negate the showing of control and jeopardize the CAISO’s tax-exempt status.¹² PPC appreciates the restrictions arising out of the CAISO’s special status but also recognizes the practical reality that this governance structure retains the possibility and the perception of potential bias. And even if it is merely a perception of bias, it may be enough to undermine the confidence of market participants in the governance and other aspects of the market and prevent the proper market forces from working.

⁴ *California Independent System Operator Corp. v. FERC*, 372 F.3d 395, 304 (D.C. Cir. 2004).

⁵ *Mirant Delta, LLC*, 100 FERC ¶ 61,059, at P 49 (July 17, 2002), *vacated*, *California Independent System Operator Corp. v. FERC*, 372 F.3d 395, 304 (D.C. Cir. 2004).

⁶ *Id.* at P 50.

⁷ *Id.*

⁸ *Id.* at P 51.

⁹ *Id.* at P 57.

¹⁰ December 14, 2020 Revised Straw Proposal at 51.

¹¹ December 14, 2020 Revised Straw Proposal at 51 n. 98; *see also* <http://www.caiso.com/Documents/BoardSelectionPolicy.pdf>.

¹² December 14, 2020 Revised Straw Proposal at 51.

Again, PPC commends the GRC for the improvements it has developed in the Revised Straw Proposal to offer additional certainty regarding the durability of the governance model and recognizes the limitations on potential solutions that the GRC can identify through this process. Despite the protections offered in the GRC's Revised Straw Proposal, however, there is a risk that the CAISO's inherent structure will allow for the creation of a market governed by rules that are – or perceived to be – unduly influenced by the State of California. For example, PPC is not convinced that the exception to the applicability of dual filings is as “narrow” as the GRC suggests.¹³ PPC believes that there could be a number of contentious but important areas, for example, related to price formation, where the Governing Body and the CAISO Board would not be able to agree to market rule changes. The proposed exception to the applicability of dual FERC filings essentially enables the CAISO Board to veto the Governing Body's ability to advance any changes to the market. The CAISO continues to be the single largest beneficiary of the EIM,¹⁴ and the Board's opposition to certain rule changes could be perceived as an effort to preserve those benefits, even when done for unrelated reasons.

PPC acknowledges that besides adopting the improvements developed by the GRC, there is not much that the CAISO can do about the Board's legal relationship with the State, the Board's inability to cede its authority or control over the market rules, or the perception of bias that might go along with that. For prospective market participants and their stakeholders, the question will ultimately come down to whether the benefits of participating in a CAISO market outweigh the risks, including the potential risk of undue influence by the CAISO Board and the State of California. Certainly, as the CAISO staff points out, the Federal Power Act could offer a remedy for any allegations of undue preference, but that saddles certain market participants with the burden of litigation and uncertainty. And while competitive pressures presented by the Southwest Power Pool and PJM could help ensure equity, those pressures would likely dissipate after market participants make participation commitments.

Each prospective market participant might evaluate the risk presented by the CAISO governance structure differently; some may see it as a substantial risk while others may not see it as a risk at all, especially if the GRC's proposed improvements are adopted. The risks associated with market participation are also different depending on the nature of the market. Participation in the EIM, which is much more limited in scope and impacts a much smaller share of trading, has vastly different risks than participation in EDAM. For both markets, PPC will evaluate the final proposal for governance as part of a package, which also includes market design, independent market oversight, and existing market dynamics that could impact the potential benefits and risks for those choosing to participate in a CAISO market.

PPC is able to evaluate and support the majority of the GRC's proposed changes to the EIM governance structure as significant improvements over the status quo. As stated above, however, more information is needed on EDAM market design before PPC can further comment on the EDAM governance proposal developed by the GRC.

4. Provide detailed comments including examples on Issue 2: Selection of Governing Body Members:

No comment.

¹³ December 14, 2020 Revised Straw Proposal at 17.

¹⁴ <https://www.westerneim.com/Pages/default.aspx>

5. Provide detailed comments including examples on Issue 3: Governing Body Meetings and Engagement with Stakeholders:

No comment.

6. Provide detailed comments on the proposal for Modifying the Regional Issues Forum to Enhance Opportunities for Stakeholder Engagement:

PPC has previously supported the GRC's proposal to modify the existing Regional Issues Forum to allow the RIF to operate much like a stakeholder advisory committee. The RIF has worked well as a forum for diverse stakeholders to explore ideas and PPC has been in favor of enhancing and streamlining opportunities for stakeholder engagement. To that end, PPC supports the proposed revisions to the RIF sectors, including the addition of a sector specifically for the PMA. However, PPC would appreciate a clarification that PPC – a trade association that represents the common interests of the vast majority of consumer-owned electric utilities in the Pacific Northwest, but not a utility itself – could be included in sector 3, given that the definition for that sector specifically refers to consumer-owned “utilities.” In other words, PPC would like to confirm that the definition of sector 3 was not intended to exclude PPC on the grounds that it is not a “utility.”

7. Provide detailed comments on the proposal for Representation for Federal Power Marketing Agencies and Consumer-Owned Utilities:

PPC continues to support the proposal to create a new liaison role to the BOSR for representatives of consumer-owned utilities and federal power marketing agencies. We appreciate the BOSR's consideration and support for creating these new roles. While we understand the challenges of having too many representatives in this capacity, PPC continues to believe that two representatives for consumer-owned utilities may not be sufficient to adequately represent the diversity of consumer-owned utilities' interests. Because the number of consumer-owned utilities impacted by this market may change over time, we recommend against specifically limiting the number of representatives in the EIM Charter, which creates a higher-hurdle to allow more representation if appropriate. Instead, we recommend that the BOSR work with consumer-owned utilities to determine the suitable number of liaisons based on current market participation and interest.

8. Provide detailed comments including examples on Issue 4: Other Potential Areas for Governing Body Involvement:

No comment.

9. Provide detailed comments including examples on Issue 4.1: Annual Policy Initiatives Roadmap:

No comment.

10. Provide detailed comments including examples on Issue 4.2: Governing Body Role with Department of Market Monitoring, Market Surveillance Committee and Governing Body Market Expert:

PPC has consistently and strongly supported the GRC's proposal to make an outside market expert available to the Governing Body. Certainly, PPC has been a strong advocate of the Governing Body having access to additional and independent market expertise in the context of EDAM. However,

PPC has also been clear that “there would be significant benefits from having [a GBME] in the case of an EIM only market.”¹⁵

PPC is concerned that the Revised Straw Proposal seems to recommend that the Governing Body should be authorized to retain a GBME only “in connection with the EDAM policy development process.”¹⁶ PPC’s position on the need for and the importance of the GBME is well-established. PPC strongly believes that Governing Body’s access to a market expert is central to a good governance structure and that the market expert would serve as a useful resource in assessing ongoing policy discussion and to help market participants identify potential improvements for the existing EIM market.

As the EIM has grown the complexity in the market, particularly the interaction between EIM BAAs and CAISO BAA – including the existing CAISO day-ahead market – has increased. While an expert resource specifically available to the EIM Governing Body has not been required to date, as this complexity increases, along with the number of initiatives that CAISO is undertaking, the need for such a resource has increased. For example, the reliability events in California this summer have highlighted potential problems with the Resource Sufficiency test. At a recent EIM Governing Body meeting, the Governing Body raised concerns regarding the EIM RS test creating an uneven playing field between CAISO and non-CAISO BAAs. So far, the review of summer events has been focused almost exclusively on impacts to the CAISO BAA and the concerns raised by the EIM Governing Body, which have also been raised by a wide range of EIM participants, have not yet been assessed or addressed. A GBME could be very helpful to the Governing Body in analyzing the EIM RS test, identifying shortcomings, and developing suggested improvements to the current design from a neutral independent perspective. This independent analysis would also be crucial to both existing and potential EIM participants.

We urge the GRC to expand its recommendation to provide a clear authorization for the Governing Body to retain a GBME in connection with the EIM, in addition to the EDAM.

11. Provide detailed comments including examples on Issue 4.3: Possible Funding for the Body of State Regulators:

No comment.

12. Provide detailed comments including examples on Issue 5: Governing Body Mission Statement:

No comment.

13. Provide detailed comments including examples on Issue 6: Other Potential Topics for Consideration:

No comment.

14. Additional comments on the Revised Straw Proposal or EIM Governance Review initiative:

We appreciate the hard work of the GRC members in developing the revised proposal and look forward to future discussions on these issues.

¹⁵ PPC August 28, 2020 Comments on the Initial Straw Proposal (response to question 8).

¹⁶ December 14, 2020 Revised Straw Proposal at 39.