

**California Municipal Utilities Association  
Initial Comments  
EIM Governance Issue Paper**

The California Municipal Utilities Association (“CMUA”) appreciates the opportunity to provide input on the Issue Paper, dated January 5, 2015, developed by the EIM Transitional Committee.

CMUA is the statewide association of local public agencies in California that provide water, gas, and electricity service to California consumers. CMUA membership includes electric distribution systems and other public agencies directly involved in the electricity industry. CMUA members own or have rights to significant interregional transmission facilities, as well as local and regional generation assets. Certain CMUA members have executed the Transmission Control Agreement, have transferred Operational Control of their transmission facilities and entitlements to the California Independent System Operator Corporation (“CAISO”), and are Participating Transmission Owners. Other CMUA members operate their own Balancing Authority Areas (“BAA”) adjacent to the CAISO BAA. Most if not all CMUA members participate in CAISO administered markets, take service over facilities over which the CAISO has Operational Control, and pay CAISO charges. In total, public agencies provide electricity to approximately 25-30 percent of the population in California.

CMUA has organized these Comments by culling out specific questions posed by the Issue Paper. CMUA has not attempted to answer every question and looks forward to considering all of the stakeholder input in order to educate and shape its own final positions on this important matter.

1. First, the Committee seeks stakeholder input about the general relationship between the ISO and the EIM governing body, and the nature and degree of the influence the EIM body should have over the rules of the EIM. *Issue Paper at 3.*

In addition, the Committee would like feedback on a set of criteria it has developed for evaluating governance proposals. *Issue Paper at 3.*

*CMUA believes the set of criteria developed by the Committee is acceptable and reasonably balances the competing objectives. CMUA seeks certain clarifications. Already, the issue of how the EIM market functionality deals with California cap-and-trade requirements has arisen. In that regard, it is clear that the operation of the market may affect compliance with state regulatory requirements. The final criterion states that the “EIM complies with other applicable legal requirements, including but not limited to environmental regulations and states’ renewable energy goals.” The Committee should clarify that the EIM itself has no compliance obligation. Surely, the EIM should not*

*facilitate non-compliance by EIM Entities or other market participants, but the EIM itself has no compliance obligations under state law.*

2. At this time, these three conceptual models are offered without assurance that they would be workable in a practical sense; the Committee has not fully vetted this issue and strongly encourages comments on the workability or practicality of any of the models. *Issue Paper at 8.*

The Committee thus is not necessarily asking stakeholders to state a definitive preference for any of the illustrative models at this juncture. Rather, the Committee asks stakeholders to use these models as a starting point for providing input on the benefits and trade-offs that occur along the continuum of possible governance models. *Issue Paper at 8.*

*At this early juncture, CMUA is not sure it will have a consensus final position of its members on this issue. However, we are able to provide the following input. First, the purely advisory role of any EIM Board falls far short of providing the level of autonomy required if the EIM is envisioned as a robust regional market structure. This option simply does not address a host of the criteria that the Issue Paper sets forth largely in the area of providing a foundation for broader EIM Participation. CMUA urges the Committee to simply take this option off the table, primarily in the area of “confidence in governance to facilitate possible expansion.”*

*Second, arguments can be made for either of the remaining options. CMUA makes the following suggestion. As a core principle, the appropriate governance structure should be linked to the functions and breadth of the EIM itself. As currently constituted there are two contemplated EIM Entities, and the EIM is largely a “bolt-on” to the CAISO marketplace. If, for example, additional scope to the EIM is added, the “Governing Board with Defined Delegated Scope” may not be sufficient. Any additional scope could lead to the scenario where multiple tariff provisions will overlap, and it is difficult to see how anything other than broad reforms of the existing governance structure away from the current CAISO Board of Governors to a new entity would suffice.*

*The Committee may wish to consider linking governance models to expansion of the EIM scope. One of the criteria expressly indicates that appropriate governance should “allow options to expand the functionality of the market to provide additional services as requested by EIM Entities.” Therefore, this consideration of future scope is appropriate as the initial governance options are considered.*

3. With respect to the “Advisory Committee” model, is it necessary for the EIM body to have at least some degree of authority to change market rules, or

could it be sufficient to have only advisory authority over EIM matters (with the ultimate authority held by the ISO Board)? *Issue Paper at 13.*

*Yes. Some degree of authority to change market rules is necessary to meet the expectations of entities considering the EIM. Non-California entities, and perhaps others, will almost certainly insist on an independent voice of some sort wholly apart from the California political process, and it would be reasonable for them to do so.*

4. Could the “Advisory Committee” model involve a board that consisted of stakeholder representatives, like the Transitional Committee, instead of independent members? Would it be possible for such a stakeholder group to reach agreement concerning market rule changes given their conflicting financial interests? Would it matter if the body could not reach unanimity? The Committee notes its charter does not contemplate an EIM body that would include stakeholder representatives. The Committee nevertheless seeks stakeholder feedback on the issue because it understands that an important driver for having an EIM body comprised of members who are independent of stakeholders would be to enable the ISO to delegate types of authority to the body. Would it be preferable to have a body that includes stakeholder representatives even if that meant the body would have advisory authority only? *Issue Paper at 13.*

*At the outset, CMUA notes that it does not believe it is necessary for the EIM Board to be composed of non-affiliated persons. There are many examples outside of the energy industry where, for example, non-profit Boards include representatives of entities that have a financial interest in the decisions of the non-profit entity. For example, insurance executives, doctors, and others, are often found on hospital Boards. This does not obviate the fiduciary obligation of the Board member to the corporation. It would be permissible to have interested Board members in any of the three options identified by the Issue Paper.*

*CMUA, however, does not advocate the Advisory Committee approach, and believes it is insufficient to meet several important criteria identified in the Issue Paper.*

5. With respect to the model “Governing Board Established by California ISO Bylaws,” does it offer enough autonomy to maximize the overall benefits of the EIM? How might potential participants in the EIM react to this model (that is, in contrast to the model of an “Autonomous Separate Entity”)? And if so, how significant is this factor? *Issue Paper at 13.*

*Having an Autonomous Separate Entity may indeed be a condition precedent for certain entities to agree to become EIM Entities. However, the middle ground option may provide sufficient autonomy for some EIM Entities, but not others. The Committee must assess the degree of which the expansion of the EIM will hinge upon the establishment of an Autonomous Separate Entity, and whether or not certain of the benefits of the expanded EIM would support the additional expense, effort, and disruption of the Autonomous Separate Entity structure.*

*CMUA would note that if the Committee recommends the Governing Board option, a minimum criterion for separation from the CAISO Board is that there be complete autonomy. CMUA believes any residual veto authority would render the independence of such a structure illusory and lend itself to self censorship and impede the ability to the EIM Governing Board to exercise its fiduciary duty.*

6. Would these types of costs [autonomous entity costs], or other potential costs, be worth incurring in order to have the EIM governed through an autonomous entity? *Issue Paper at 14.*

*Without knowing specific details, the cost/benefit evaluation requested in this question is dependent upon several factors. If there was significant critical mass of potential EIM Entities that would insist that the Autonomous Separate Entity be formed as a precondition of participating in an EIM, and addition of these entities would significantly add to the diversity and production cost benefits of the EIM, then it may be that those benefits would justify additional system, legal, administrative, and other supporting start-up costs. This would be a factual inquiry. Again, as CMUA has noted above, the Committee may wish to consider whether market changes or expansion may trigger the need to develop an Autonomous Separate Entity.*

7. Would negotiation with the ISO over proposed market rule changes be sufficient to avoid a risk of dueling filings at FERC, or would additional steps be necessary? *Issue Paper at 14.*

*No. Authorities and decision-making processes must be clearly delineated with no vagueness and clear finality as to which entity would maintain final authority to make filings at FERC on particular issues. For certain of the models, this would have to be spelled out in contractual agreements between the EIM and the CAISO. If the EIM is an autonomous body within the CAISO, but isn't sufficiently autonomous to qualify as a "public utility" under the Federal Power Act, it would be reliant upon delegation of certain rights through contract.*

8. What is the significance of this risk for the “Autonomous Separate Entity” model? Does the model have additional value that would justify the risk?  
*Issue Paper at 14.*

*See Answer to Question 6 above.*