

Comments of the Staff of the California Public Utilities Commission on the EIM Transitional Committee Issue Paper on Conceptual Models for Governing the Energy Imbalance Market

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The Staff of the California Public Utilities Commission (CPUC Staff) appreciates this opportunity to submit comments on the EIM Transitional Committee Issue Paper on Conceptual Models for Governing the Energy Imbalance Market (EIM).

The CPUC staff supports development of an EIM governance structure that will facilitate expansive participation in and maximize the anticipated benefits of the energy imbalance market across a broad regional footprint. At this time the CPUC staff does not have a preference for any one of the proposed governance models as the superior solution for a long-term, permanent EIM governance structure. The CPUC staff is open to any of the proposals, including the second (Governing Board Established by California ISO Bylaws) or third (Governance through an Autonomous Separate Entity). But these two proposals should be further evaluated to determine if they could increase costs or introduce legal risks to operate the EIM governing board, which staff have outlined below. The CPUC staff believes these issues should be explored in more detail with stakeholders before the Transitional Governance Committee decides which governance model it will recommend. Accordingly, the CPUC Staff suggests that the Committee consider including an additional step at this point in the stakeholder process to garner more debate on the risks, costs, and benefits before it selects one proposed model over the others for a straw proposal.

- 1. The selected EIM governance structure should rest upon rock-solid legal foundation, which could require seeking amendments to the Public Utilities Code to implement the second or third models.**

It is in the best long-term interest to stabilize and facilitate expansion of the EIM to ensure the proposed governance structure is unquestionably consistent with and authorized by the CAISO's governing statutes and case law. But pursuing either the second (Governing Board Established by California ISO Bylaws with a Defined Delegated Scope) or third (Autonomous Separate Entity with

Authority over Market Rules) raises legal questions of whether such models are consistent with existing California law or would require legislation to modify relevant sections of the Public Utilities Code. Amending the CAISO's bylaws to create an EIM board and delegating to it "primary" decision-making powers may be inconsistent with Public Utilities Code § 347 and limitations on the powers of public agencies to delegate their exercise of judgment or discretion. A proposal to create an autonomous entity must be consistent with Public Utilities Code § 359.

The CPUC Staff believes that it is both possible and essential to eliminate any legal uncertainties about the validity of the governing board and thus build the governance structure for the EIM on a solid and unquestionable legal foundation. The issue paper does not flesh out issues relating to whether CAISO has the statutory authority to pursue the second or third governance models. The CPUC Staff has not concluded that the CAISO lacks such authority, but there are legitimate questions whether it would be necessary—or just wise—to seek modifications of the Public Utilities Code to eliminate any questions about the legality of the chosen governance structure. The CPUC Staff therefore recommends that the Transitional Committee's next paper include a review of relevant Public Utilities Code sections and other case law relevant to both proposals, or any other models the Committee is considering. Addressing if legislative action is or may be needed to support the legality of any proposed governance model will facilitate reaching a common agreement on the appropriate model and would reduce risks and uncertainty for all EIM participants in the long run.

2. Details and specific information on costs and how oversight of the tariff would be divided are critical to inform selection of an EIM governance structure that is nimble, durable, and cost-effective.

Instituting a separate or fully autonomous EIM governing board will increase the governance costs and raises questions of how authority over tariff provisions can be divided while maintaining a tightly integrated and efficient market. The Committee should also explore these issues in greater details with stakeholders before it selects one model to pursue for development.

First, as the Committee itself recognizes, instituting a fully autonomous or separate EIM board will increase the costs associated with EIM governance. At this point, the highest priority should be to achieve a high benefit/cost ratio for participants and maximum economic efficiency of the market; this will likely have a high impact on whether prospective participants seek to join the EIM. The Committee should flesh out and provide more details on what the required operating budget would be for an EIM governing board under *each* model so that stakeholders can make informed decisions about how the costs of each would affect the cost/benefit ratio for EIM participants.

Second, the devil will be in the details when it comes to dividing authority over different tariff sections. As experience with the initial “go live” of the EIM demonstrated, it is not clear if it will be possible to simply divide oversight of “the EIM tariff sections” from the other CAISO tariff sections, because they interact to affect market prices and efficiencies (and the potential for market dysfunction or manipulation). For example, the CAISO observed challenges shortly after the initial “go live” of the EIM with PacifiCorp, which the CAISO Board quickly acted to address by filing a Petition for Limited Tariff Waiver and Request for Expedited Consideration (Nov. 13, 2014). Notably, the CAISO sought a 90-day waiver of the applicability of pricing provisions that are administered through section 27.4.3.3 and the second sentence of section 27.4.3.4 of the CAISO tariff—not the EIM section of the CAISO tariff which is in section 29. Further, in order to be successful EIM must not create dysfunction or opportunities to exercise market power in the CAISO markets, to the detriment of California’s ratepayers. The CPUC Staff supports achieving close integration between the EIM and the CAISO’s 5- and 15-minute markets to enhance efficiencies, but such close integration increases the risk that changes to the EIM market rules could have an adverse and unforeseen impact on the CAISO markets and costs to ratepayers.

Once the scope of “EIM functions” is delegated or split off from the CAISO Board’s oversight it may be difficult to refine the delegation of authority later in ways that could mitigate adverse impacts. Additional experience with “live” market operations and the process of developing year-1 market enhancements could reveal valuable lessons on whether makes good sense and how to divide decisional authority over tariff provisions between two boards, while retaining the ability to act quickly to address issues as they arise. It could also shed light on the feasibility or processes for eliminating dual filings at FERC between a separate EIM board and the CAISO board. The Committee should provide additional details at this stage on how it would begin to address the issue of dividing oversight of the tariff without undermining market efficiency and performance. Fostering more discussion now will aid stakeholders’ assessments and decisions about which model(s) they can support.

3. The Committee should consider taking comments on a second “issue paper” that addresses questions of costs and legal issues before selecting a model to develop into a full-fledged governance proposal.

The CPUC Staff suggests that the Transitional Governance Committee could include a second “issue paper” that fleshes out details on the issues identified by the CPUC Staff and other stakeholders before it decides which model to pursue as the permanent EIM governance structure. There are real risks of moving too quickly to lock-in a governance structure because it will be difficult to amend once it is filed with FERC. Including another step in the process will not prejudice or harm any current or

prospective EIM participants and it could prove very worthwhile for ensuring the Committee selects the most durable, nimble, and cost-effective governance structure.

The Committee could use this additional step to develop and present detailed cost estimates for each model, explore legal issues, and determine how authority over the CAISO's EIM and other tariff sections can be feasibly divided between two decisional boards. The Committee and stakeholders would also benefit from seeing more "live" EIM operations to observe how the CAISO's EIM and other tariff sections interact and to evaluate EIM financial benefits.