



EIM Transitional Committee

Issue Paper

Conceptual Models for Governing the Energy Imbalance Market

January 5, 2015

Table of Contents

| | | |
|------|--|----|
| I. | Introduction | 3 |
| II. | Plan for Stakeholder Engagement and Scope..... | 3 |
| III. | Description of Issues..... | 4 |
| | A. Background regarding Transition to EIM Governance and Work of EIM Transitional Committee | 4 |
| | B. Criteria for Evaluating EIM Governance Proposals | 5 |
| | C. Relationship between EIM Body and the ISO and Degree of Influence over Market Rules..... | 6 |
| | D. Three Models Representing a Range of Potential Relationships..... | 8 |
| | E. Additional Factors and Questions to Consider | 13 |
| IV. | Next Steps | 14 |
| | Appendix A – Links to Background Material..... | 15 |

I. Introduction

The EIM Transitional Committee is a body of stakeholders that has been appointed by the ISO Board of Governors for the purpose of advising on EIM and developing a recommended proposal for the long-term governance of the EIM. The Committee has been working to develop a straw proposal for stakeholder consideration and would benefit at this point from stakeholder input on two threshold issues.

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. As explained below, the Committee has developed three conceptual models that are meant to illustrate types of possible relationships and degrees of influence. One model is an advisory committee to the ISO Board of Governors, the second is a new type of committee to be established in the ISO's bylaws with certain delegated authority over EIM rules, and the third is a separate entity that would obtain EIM service from the ISO through contracts and have authority over EIM rules subject to negotiating the necessary agreements with the ISO to implement related systems changes. The Committee would like feedback about these conceptual models before it develops a complete straw proposal.

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

This paper begins with background about the work of the Committee to date, and then explains the criteria that the Committee has developed to evaluate governance proposals and the conceptual models for EIM governance. The paper concludes by seeking stakeholder input on these issues, suggesting a number of questions that the Committee is interested in having stakeholders address in written comments.

With this stakeholder feedback, the Committee plans to issue a full straw proposal for stakeholder review and input in spring 2015.

II. Plan for Stakeholder Engagement and Scope

The schedule for presenting this issue paper and receiving comments is as follows:

| Date | Event |
|-------------|--|
| January 5 | Issue paper posted |
| January 12 | Working group of the Transitional Committee will discuss the paper in Phoenix - stakeholders may also participate by phone |
| January 26 | Comments due |

The Committee will consider written comments on these issues as it prepares a straw proposal for overall EIM governance. The Committee plans to release its straw proposal

for comment on March 19, 2015, with the following tentative schedule for developing a draft governance proposal to present to the ISO Board of Governors:

| Date | Event |
|-------------|---------------------------------------|
| March 19 | Straw proposal posted |
| March 26 | Webinar on straw proposal |
| April 16 | Stakeholder comments due |
| May 21 | Draft final straw proposal posted |
| May 28 | Webinar on draft final straw proposal |
| June 11 | Stakeholder comments due |
| August 18 | Draft governance proposal posted |

A more complete schedule for the activities of the Transitional Committee and stakeholder engagement on its proposal is available on the ISO website [here](#).

III. Description of Issues

A. Background regarding Transition to EIM Governance and Work of EIM Transitional Committee

As part of its proposal to offer EIM services to other balancing authority areas in the west, the ISO committed to work with EIM stakeholders to establish a governance structure for the EIM that would allow stakeholders to have appropriate input on EIM matters. To that end, the Board of Governors in May 2014 appointed the EIM Transitional Committee, which is a body of representatives of market participants, state regulators and public interest groups. The Committee has eleven members at this time.¹ As stated in the Committee’s [charter](#), the Board will appoint one additional member from the next entity that executes an EIM implementation agreement.

One of the Committee’s primary functions is to develop a proposal for long-term governance of the EIM through a public stakeholder process. The charter allows the Committee wide discretion to explore potential models for EIM governance, while establishing several broad guidelines and parameters that should be factored into the design. Specifically, the charter states that the Committee should propose a structure that:

¹ Members of the Transitional Committee include the Chair, Rebecca Wagner, Public Utilities Commission of Nevada, Stephen Beuning, Xcel Energy, Inc., Tony Braun, Braun Blaising McLaughlin & Smith, PC, Dede Hapner, Pacific Gas and Electric Company, Natalie Hocken, PacifiCorp, Travis Kavulla, Montana Public Service Commission, Kevin Lynch, Iberdrola Renewables, Mark Smith, Calpine Corporation, Walter Spansel, NV Energy, Robert Weisenmiller, California Energy Commission, and Carl Zichella, Natural Resources Defense Council.

- Consists of members that are independent from EIM market participants to satisfy FERC independence requirements, in order to enable the EIM body to exercise authority over EIM rules;
- Provides a meaningful and clear role for the EIM body;
- Remains nimble, to allow for efficient decision-making;
- Avoids the potential for dueling filings at FERC, and includes a mechanism to resolve any disagreements between the EIM governance body and the ISO Board; and
- Allows for the efficient and meaningful EIM market oversight.

As part of its work toward this goal, the Committee has met six times since July 2014 and received briefings with information intended to aid it in formulating a proposal for governance, including relevant legal and regulatory background and governance models used by other regional markets. As explained during its public meetings, the Committee initially divided itself into two working groups, with one group focused on the scope of authority that the EIM body could exercise and the other considering the structure and selection of that body. Information about the Committee's meetings is available on the ISO's website [here](#). Links to relevant briefings and background materials can be found in Appendix A to this paper.

This issue paper proposes a list of criteria for evaluating proposals for EIM governance. In addition, the paper solicits stakeholder feedback on a threshold issue concerning the relationship between the EIM body and the ISO and the degree of influence that the EIM body will have over market rules.

B. Criteria for Evaluating EIM Governance Proposals

The Transitional Committee has identified a preliminary set of criteria that it believes are important to successful implementation of the EIM for current and future market participants. The Committee plans to use these criteria to evaluate proposals about how to govern the EIM. Accordingly, it asks stakeholders to provide input on the list of criteria and, where appropriate, to consider these criteria in their written comments to assess the competing models of governance that are described below. Stakeholders are also encouraged to identify any additional criteria that should be considered.

The criteria identified by the Committee are:

Operations

- Protect the integrity and reliability of current ISO operations;
- Provide for efficient interaction between the EIM and the ISO's other market functions;

Benefits and Costs to Participants

- Ensure that all participants in the EIM have the opportunity to benefit from it over time;
- Control costs to ensure that favorable cost/benefit ratios are maintained;

Confidence in Governance to Facilitate Possible Expansion

- Provide decision makers and stakeholders confidence that the EIM governing body is pursuing the best interest of the market as a whole and is not unduly influenced by a single state or a narrow set of entities or states;
- Provide the foundation for new entrants into the EIM market, allowing its geographic reach to broaden, as appropriate;
- Allow options to expand the functionality of the market to provide additional services as requested by EIM Entities;

Compliance with Legal Requirements and the Committee Charter

- Fulfill the requirements of the Transitional Committee Charter,² including the requirement that the EIM governing body be comprised of independent members, free from conflicts of interest;
- Protect the EIM, its participants, and consumers against market-power abuse;
- Clarify the rights and obligations of EIM participants under Federal Power Act Section 205;
- Ensure the duties and responsibilities for compliance with the Federal Power Act are clearly delineated between the California ISO and the EIM governing entity; and
- Ensure that the EIM complies with other applicable legal requirements, including but not limited to environmental regulations and states' renewable energy goals.

C. Relationship between EIM Body and the ISO and Degree of Influence over Market Rules

The core of the Committee's straw proposal for long-term governance of the EIM is expected to be a governing body that accommodates the diverse and regional nature of the EIM market footprint, consistent with the Committee's charter. This proposal will need to include many details about a range of subjects, such as the number of members of the governing body, a detailed process for selecting those members, the legal duties of the members, their compensation and terms of office, among other things.

Before the Committee decides on a complete proposal that includes all of these details, it is first seeking stakeholder feedback on a threshold issue concerning the general

² These requirements are summarized above on page 5.

relationship between the EIM body and the ISO and the degree of influence that the EIM body should have over market rules.

It is possible to imagine a range of possible relationships between the EIM body and the ISO's existing governance structure. At one end of the range would be an advisory committee to the Board of Governors, similar to existing ISO advisory committees such as the Market Surveillance Committee or the Transitional Committee itself. At the opposite end would be a new entity that is separate from the ISO, which would offer EIM service by contracting with the ISO. The EIM body could serve as the board of directors for such a new entity.

The various arrangements along this spectrum lend themselves to different degrees of influence over EIM rules. While the advisory committee would of course have a purely advisory role over EIM matters, it would be possible to create a different type of committee within the ISO that could exercise authority over EIM rules. Finally, an autonomous³ separate entity could have authority over market rules, subject to its ability to procure services from the ISO.

Each of these arrangements would present certain tradeoffs. By way of general illustration, if the EIM body had a high degree of separation from the ISO, this might be attractive to some prospective participants that wish to maintain a certain distance from the ISO's existing processes and governance structure. As a consequence, this approach could encourage such participants to join. Stated differently, if the EIM body were perceived as too tightly enmeshed with the ISO's existing governance, particularly its Board of Governors,⁴ or as having too little influence over EIM matters, some potential participants might be dissuaded from joining.

On the other hand, if the EIM body were autonomous, there would be a risk that it might change the EIM rules over time to a degree that would undermine the existing close integration between the EIM and the ISO's 5- and 15- minute markets. This tight integration is important not only for operational efficiency, but also because it allows the ISO to offer an EIM that has a low cost to enter and the option of relatively easy exit. This tight integration and the related exit option may be valuable to some participants and thus suggests a governance model with a closer relationship to the ISO's existing governance.

³ The Committee has decided to use the term "autonomy" to describe the relationship between the EIM body and the ISO's existing governance structure rather than the word "independence," because the latter term has a different meaning in connection with governance. The Committee intends to use the term "autonomy" to refer to the degree of authority that the EIM body can exercise on its own, without further action from the ISO Board of Governors. In contrast, the term "independence" is commonly used to refer to the relationship between a board of directors and market participants, with an "independent" director not having any financial ties to market participants.

⁴ The ISO's Board of Governors is selected in accordance with California statute, Public Utilities Code § 337. The ISO's Board Selection Policy, which implements this statute, is available [here](#).

The Committee seeks stakeholder feedback on these types of general considerations about the conceptual models, of which the foregoing examples are just two of many. To facilitate feedback, the Committee has developed conceptual models along a spectrum that reflect different relationships and degrees of influence over market rules. These models are only illustrative for purposes of this issue paper. They are not meant to suggest any limits on the straw proposal that the Committee will ultimately submit to stakeholders. The Committee recognizes there are other possible conceptual models for addressing the relationship between the EIM governance body and the ISO, remains open to all options, and invites submission of alternative conceptual models in this comment period. 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.

The models emphasize details that are most relevant to the high-level questions concerning the appropriate relationship between the EIM body and existing ISO governance. The Committee recognizes that the remaining details that are not specified in these models will be important factors to consider in connection with a complete straw proposal. 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.

D. Three Models Representing a Range of Potential Relationships

The following summaries of the three conceptual models focus on the differences between the models, and de-emphasize details that are common to all models. The central features that are common to each model include:

- Independence of members: Members of the governing body would be independent from market participants in the sense of no financial interests in ISO operations and, more broadly, from entities within the Western Interconnection including those active in policy development;⁵
- Process for selecting new members: Generally speaking, new members will be identified by a nominating committee that represents EIM participants, stakeholders, state regulators and public-interest organizations, which would nominate a slate of committee members. A similar mechanism would be created to fill vacancies. Nominees would be subject to confirmation by a governing body, as specified below; and

⁵ However, see the questions below in Section III.E about whether independence would be necessary under the first model in which the Committee would have advisory input only.

- **Organization of state regulators:** To support EIM governance, an organization of state regulators⁶ would be established to advise the ISO Board and the EIM body on EIM matters.

Except as specified below, readers should assume that the models are otherwise identical, such as in the number of members, their tenure and compensation, open meetings and availability of records, etc.

Advisory Committee to the California ISO Board of Governors

Establishment: An EIM committee would be established and empowered through contracts between the members and the ISO to provide advisory input to the ISO on EIM matters. Committee members would be independent from market participants and would be identified through a nomination process, as described above. The nominees would be subject to approval by the ISO Board.

Authority: The EIM committee would have authority to establish advisory recommendations for tariff filings and other matters relevant to EIM operations and design, for final action by the ISO Board. In this regard, the ISO Board would have the ultimate responsibility and accountability for decision-making, after giving due consideration to the recommendations made by the EIM committee. In contrast to the next model, in which the EIM body has primary authority delegated to it from the ISO Board to approve certain types of EIM-related tariff filings and oversee its implementation, the committee in this model would be solely advisory.

Resources: The EIM committee would be supported by the ISO, providing staff support and other resources necessary for the satisfaction of the duties of the EIM committee. The ISO Board would continue to have an obligation to manage and operate both the ISO and the EIM.

Governing Board Established by California ISO Bylaws with a Defined Delegated Scope

Establishment: An EIM board would be established by two mechanisms: 1) an amendment to the ISO's bylaws; and 2) a detailed charter for the EIM board that is approved by the ISO Board and delegates certain decision-making powers to the EIM board. EIM board members would be independent from market participants and would be identified through a nomination process, as described above. EIM board members initially would be approved by the ISO Board, and subsequently by the EIM board itself.

Authority: These bylaws/charter mechanisms would include a delegation of authority from the ISO Board to the EIM board based on a defined scope of responsibilities for the EIM board including the primary authority to approve tariff amendments for submission to the Federal Energy Regulatory Commission under Section 205, potentially subject to

⁶ Links to information about the governance of other ISOs and RTOs, including their committees of state regulators, can be found in Appendix A to this issue paper.

limited consultation with the ISO Board. The EIM board would have primary governing authority over the portions of the ISO tariff that address exclusively the EIM; it would have a secondary authority (advisory role to the ISO Board) over elements of the tariff that may impact the EIM. The EIM board would have an obligation to maximize the value of the EIM to its market participants, while the ISO Board would have an obligation to manage and operate of the ISO.

Resources: The EIM board would be supported by the ISO, providing staff and other resources necessary to the satisfaction of the duties of the EIM board.

Governance through an Autonomous Separate Entity with Authority over Market Rules

Establishment: An EIM organization and governing board that is separate from the ISO would be established by the ISO and EIM sector stakeholders, meaning stakeholders from the seven sectors identified and defined in the Transitional Committee's charter.⁷ Board members would be independent from market participants and would be identified through a nomination process, as described above. In this example, the nominating committee would also include a member of the ISO Board of Governors, and the EIM board nominees would be approved by a voting process of EIM sector stakeholders.

Authority: The EIM organization would administer a tariff for the EIM that would be separate and distinct from the ISO tariff, and have authority to file tariff amendments with the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act. It would also have authority to take other actions necessary to ensure the effective operation of the EIM consistent with applicable state and federal laws and FERC precedents. The EIM organization would have an obligation to maximize the value of the EIM to its participants. The organization would obtain services from the ISO, such as running the integrated market model, under a contract between the two entities. This model would require significant changes to the structure and operations of the ISO and the existing EIM.⁸

Resources: While the EIM would be optimized with the ISO's real-time market, the EIM organization may and would likely have its own staff that would be independent from the ISO and accountable exclusively to its board (which likely would delegate day-

⁷ The seven sectors are: investor owned utilities, publicly owned utilities, generators and marketers, alternative energy providers, EIM participants, government agencies and public interest entities.

⁸ This model would require revising the existing ISO tariff to disaggregate and produce wholly separate and free standing rules for the EIM. The Committee expects that this would require changes to the business procedures of the ISO and the EIM. For example, to avoid a significant risk of conflicting tariff filings, the EIM organization would need to do significant work with the ISO before it could change its tariff rules. Specifically, the ISO and the EIM entity would need to investigate the feasibility of the proposed change and negotiate an agreement to cover the services the ISO would perform to modify its software. Conversely, depending on the terms of the relevant agreements, the ISO may need to negotiate with the EIM entity before it could make certain changes to the rules of its real-time market. The ISO would have to agree that such a model is workable and otherwise acceptable.

to-day management responsibilities to an executive director). The EIM organization would be a non-profit organization regulated by FERC. The EIM organization would be funded by the EIM markets through its tariffs, and would charge new fees to cover the additional expenses of creating a separate organization. Any vendor services agreement with the ISO would address compensation to the ISO for the significant costs it incurs to develop its software and house the systems and support staff, as well as future costs of set-up and on-going services.

* * *

The following chart shows differences between the models:

| Model | Advisory Committee | Governing Board under Bylaws | Autonomous Separate Entity |
|---------------------------------|---|--|--|
| Nomination and Selection | Various stakeholder sectors identify nominees, subject to approval by the <i>ISO Board</i> | Various stakeholder sectors identify nominees, subject to approval by the <i>ISO Board</i> initially and, subsequently, the <i>EIM board</i> | Various stakeholder sectors and a member of the ISO Board identify nominees, subject to approval by <i>EIM Sector Stakeholders</i> |
| Scope of Authority | <i>Advisory role only</i> – Make recommendations to ISO Board about proposed tariff changes and other EIM-related matters | <i>Mixture of delegated authority and advisory role</i> - Have primary governing authority over the portions of the ISO tariff that address exclusively the EIM; secondary authority (advisory role to the ISO Board) over elements of the tariff that affect but are not limited to the EIM | <i>Complete rights under Section 205 to file changes to EIM tariff</i> Have full rights under Section 205 for a free standing tariff separate from the ISO tariff. To change the market rules, the EIM organization would need to file at FERC and negotiate contractual changes with the ISO |
| Relationship w/ISO | Members have contracts with ISO and collectively serve as advisory body to ISO Board, like the Market Surveillance Committee and the Transitional Committee | Through amendment, ISO bylaws establish role of EIM board and reflect delegation of authority | No governance relationship - ISO would provide services to the EIM organization, such as running the integrated market, pursuant to a contract with the ISO |
| Resources/ Funding | ISO staff available to meet needs of the committee; no additional funding needed | ISO staff available to meet needs of the committee; no additional funding needed | EIM organization hires staff, procures facilities, and pays the ISO for services under a contract. Recover costs through a new charge for EIM participation. |

E. Additional Factors and Questions to Consider

In addition to issues suggested by the criteria above, each model raises its own unique issues. The Transitional Committee solicits input on these issues but wishes to make clear that by no means do they exhaust the range of issues relevant to each conceptual model. Stakeholders are encouraged to raise additional issues.

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)?

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?

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?

The model involving an “Autonomous Separate Entity” raises questions related to additional costs. Those additional costs could undermine a key premise for the EIM business model – *i.e.*, low costs to enter and none to exit – and terms on which PacifiCorp and NV Energy entered the EIM. The additional costs would include:

- Staffing – the new entity would likely need to hire its own employees, contract with the ISO for support, or both;
- Facilities – the new entity presumably would need to obtain its own space, as we are advised that the ISO’s bond covenants may preclude a separate entity from using the ISO facilities;
- Tariff Management – an entity separate from the ISO would need to manage its tariff; that tariff likely would be more extensive than the current EIM tariff, because it could not be integrated into the larger ISO tariff and as such would need to carefully consider and address potential seams with other ISO markets and any other potential energy imbalance markets;
- Costs of contracting with the ISO – the ISO would charge this separate entity for use of its systems (at a price that reflects the ISO’s costs to develop and house

- those systems), and for any additional development that is necessary to accommodate subsequent rule changes;
- Costs to market participants – this model could require PacifiCorp and NV Energy to incur costs to change their own systems;
 - Transaction costs – the new entity might need to negotiate with the ISO about each market rule change in order to avoid a risk of dueling filings (i.e., conflicting filings between the EIM entity and the ISO).

Would these types of costs, or other potential costs,⁹ be worth incurring in order to have the EIM governed through an autonomous entity?

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?

The EIM co-optimizes with the real-time market for California, and thus is tightly integrated with the ISO's 5- and 15-minute markets. Accordingly, an overriding practical issue associated with granting control over the EIM market rules to a separate entity would be the risk that the EIM market rules could diverge to an unworkable degree from the ISO's other markets. After a certain degree of differences, the ISO (and in turn, the EIM entity) may not be able to offer the EIM on the same terms that the ISO does now – i.e., with low cost to enter, no exit fee or lengthy notice required. What is the significance of this risk for the “Autonomous Separate Entity” model? Does the model have additional value that would justify the risk?

IV. Next Steps

The Transitional Committee will discuss this issue paper with stakeholders at its meeting to be held on January 12, 2015 in Phoenix, Arizona. Stakeholders should submit written comments by close of business January 26, 2015 to EIM@caiso.com. The Committee appreciates and encourages a broad set of perspectives that will help inform the EIM governance proposal.

⁹ The ISO is currently tax exempt under Section 501(c)(3) of the Internal Revenue Code, which reduces its costs and, in turn, the GMC it charges market participants. This exempt status also restricts the ISO's scope of activities to those that further its exempt purpose. If providing services to the hypothetical separate entity were found to be inconsistent with the ISO's current exempt status, that could require changes to the ISO's exempt status, and thus additional ongoing costs, to ensure that the ISO remains in compliance with the law.

Appendix A – Links to Background Material

[Briefing on the Energy Imbalance Market and Relevant FERC Orders](#)

[Briefing on Tariff Framework](#)

[ISO – RTO Governance Structures](#)

[ISO – RTO Committee Structures](#)