



California ISO

EIM Transitional Committee

Straw Proposal

Long-Term Governance of the Energy Imbalance Market

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Table of Contents

| | |
|---|----|
| I. Introduction..... | 1 |
| II. Background..... | 3 |
| III. Discussion of Conceptual Models Identified in the Issue Paper and the Basis for the Transitional Committee’s Recommended Model | 4 |
| A. The Pure Advisory Committee Model has Minimal Support and Appears Unlikely to Provide a Positive Incentive for the Growth of EIM..... | 5 |
| B. Governance through an Autonomous Separate Entity would Introduce New Challenges that Undermine the Benefits of the Existing EIM Model | 6 |
| C. The Delegated Authority Model Would Offer Stakeholders Significant Influence over Market Rules and Promote Close Collaboration Among all Interests | 11 |
| D. The ISO Should Commit to Re-evaluate EIM Governance..... | 12 |
| IV. Straw Proposal for EIM Governance | 13 |
| A. Overview of the Straw Proposal | 13 |
| B. Basics of the EIM governing body | 14 |
| C. Selecting Members of the EIM Governing Body..... | 14 |
| D. Scope of Authority..... | 19 |
| E. How Will the Delegation Work in Practice? | 22 |
| F. Advisory Body of State Regulators and Comparable Representatives of Publicly-Owned Utilities | 24 |
| G. Commitment to Re-evaluate Governance..... | 26 |
| V. Next Steps | 27 |
| Appendix A: Criteria for Evaluating Governance Proposals..... | 29 |
| Appendix B: Two Versions of Model 3..... | 32 |

I. Introduction

Consumers in the West would gain substantial benefits from markets that make efficient use of both electric generating units and the transmission grid. The Energy Imbalance Market (EIM) is a tool to potentially unlock some of those benefits. This straw proposal lays out a governance framework for a market that has already commenced operations, with the goal to provide a governance structure that will help the EIM deliver on its promised value.

For the past year, the EIM Transitional Committee (Transitional Committee or Committee) has worked to develop a proposal for the governance of the market. The necessity of that work is obvious. The independent system operator (ISO) that runs the market is established by California law. Its policymaking body is a five-member board appointed by California's governor and confirmed by the state's senate. Yet, the EIM is no longer confined to the boundaries of the political unit to which it owes its existence. By the end of this year, the EIM's footprint will span seven states. The governance status quo is not tenable.

Ironically, the single most challenging feature of the EIM – that this multi-state market is operated by an ISO that is a statutory creation of a single state – has made it easy for new participants to join. The initial creation of organized markets requires years of effort and hundreds of millions of dollars. The ISO has operated for almost 20 years and has been enhanced substantially over that period, the result of the investment of California's consumers who have been paying for it since the mid-1990s. The cost to join its EIM represents only the incremental cost to add to the existing network model. Moreover, there is no fee to exit. The ease of entry and exit from the market is unique in the realm of organized markets, and is central to EIM's value proposition.

Additionally, EIM represents only a part of what the ISO does. EIM participants¹ are otherwise unengaged in the ISO's markets for ancillary services, day-ahead energy, and congestion revenue rights, or the ISO's transmission planning function, among other things. Herein lies the challenge: establishing a new governance structure for a market that is functionally narrow but geographically diverse in a manner that effectively complements governance of a market that is functionally diverse but geographically narrow.

¹ This paper uses two different terms to refer to entities involved in the EIM. The term "EIM Entity" refers exclusively to the utilities whose balancing authority areas have joined EIM – namely, PacifiCorp and, in the future, NV Energy and Puget Sound Energy. The term "EIM participant," or just "participant," is meant to encompass a broader range of entities, including not only EIM Entities but also the owners of resources within the balancing authority areas of EIM Entities that participate in the EIM, as well as any of their scheduling coordinators.

Creating a proper governance structure for EIM requires a balance between the imperative of regional governance for a regional market and the practical considerations resulting from the imbalance market's existence within a much wider market managed by the ISO. In the course of its work, the Transitional Committee has reached several conclusions that lead to the recommendation it makes in this straw proposal:

- A regional EIM should be governed by a regionally oriented body with members who are free from conflicts of interest.
- Creating a new market, legally separate from the ISO, could jeopardize the co-optimization that is a key feature of EIM. The existence of two entities, moreover, would require investments that could undermine the easy-entry/easy-exit that is central to the EIM's value proposition.
- Changing the way the ISO's Board of Governors (ISO Board) is constituted would require changes in California law. It is unclear whether the change could occur and how long it would take to achieve. At this time, we have mixed opinions about changing the overall ISO governance. On one hand, if the ISO continues to expand in its geographic reach, such a change seems both fair and inevitable. At this time, however, a change may be premature because the ISO's functions still are largely confined to serving the customers of that state, the EIM is by design an adjunct to the remainder of the ISO market, and EIM is just beginning.

These conflicting observations lead the Transitional Committee to a pragmatic solution that incorporates the ideal of regional governance. The Committee's proposal is one which should give non-California parties necessary comfort about the market's ability to act in the interest of the regional EIM, and not just in the interests of one state. It is also a solution that allows the EIM to remain nimble in the present day, expanding and delivering value to consumers immediately, with an eye toward the future as Western electricity markets evolve.

In this straw proposal, the Transitional Committee describes a framework where the ISO Board delegates authority to an EIM governing body that: (1) serves as the primary decision-maker on market rules that are specific to participation in the EIM; (2) occupies a key advisory role on other market rules that affect but are not unique to EIM participation; (3) is comprised of individuals who are financially independent of stakeholders; (4) has an obligation to promote the success of the EIM and ensure that the interests of all its participants are represented.

To assist the EIM governing body and to engage regulators whose states may be affected by the EIM, the Transitional Committee also proposes establishing a separate advisory body of regulators from the states in which EIM operates. This advisory body would include both state commissioners and comparable representatives from publicly-owned utilities that participate in the EIM.

Finally, we acknowledge that this governance model is likely not an end state for the evolution of the ISO's governance. Further development of the EIM, or the ISO's other

markets, may necessitate a more comprehensive governance change, as some of the stakeholders have already suggested. Accordingly, the proposal includes a trigger mechanism that would lead to consideration of further revisions to governance as circumstances warrant.

II. Background

As part of its proposal to offer EIM services to other balancing authority areas in the West, the ISO committed to establish a governance structure for the EIM that would enhance the ability of industry and public stakeholders from outside of California to have appropriate input. To that end, in May 2014 the ISO Board of Governors appointed the EIM Transitional Committee, which is an advisory committee of eleven individuals including representatives of market participants, state regulators and public interest groups.² The Committee's primary function is to develop through a public stakeholder process a proposal for the governance of the EIM.

The ISO Board issued a [charter](#) that gives the Transitional Committee wide discretion to explore potential governance arrangements for EIM, while establishing several broad guidelines and parameters that should be factored into the design. Specifically, the charter directs that the Committee should propose a structure that:

- Consists of members that are independent from EIM market participants to enable the EIM body to best exercise authority over EIM rules;
- Provides a meaningful and clear role for the EIM governing 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 efficient and meaningful market oversight.

The Transitional Committee has met regularly since July 2014 and has received briefings from ISO staff intended to aid the Committee in formulating a governance proposal, including relevant legal and regulatory background, and the governance arrangements of RTOs with regional markets. As explained during its public meetings, the Committee has divided itself at different times into various working groups, which has enabled small

² Members of the Transitional Committee include the Chair, Rebecca Wagner (Public Utilities Commission of Nevada), Stephen Beuning (Xcel Energy, Inc.), Tony Braun (Braun Blasing 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). As the Committee's charter states that the Board will appoint one additional member from the next entity that commits to participate in EIM, the Committee anticipates that in the near future the Board will appoint a twelfth member affiliated with Puget Sound Energy, which announced its commitment on March 5.

groups of Committee members to focus on discrete topics related to the governance proposal and the stakeholder process. More information about the Committee's meetings is available on the ISO's [website](#).

On January 5, 2015, the Transitional Committee posted an issue paper titled "[Conceptual Models for Governing the Energy Imbalance Market](#)." The paper describes three models that represent potential relationships between the EIM governing body and the ISO's existing governance structure, and also criteria the Committee had developed for evaluating governance proposals.

Twenty-eight stakeholders submitted written comments on the paper. The Transitional Committee has carefully reviewed and discussed these comments, and also is separately developing a stakeholder matrix that summarizes and categorizes the comments received and responds to those comments. This matrix will be posted shortly after this paper.

Many of the stakeholders focused their comments on the criteria that should be used in evaluating governance proposals, the relative merits of the three models, or both topics. Although there were some substantive proposals for revision to the criteria, there seemed to be a fair amount of agreement on that topic. The Committee has attached as Appendix A to this paper a more detailed discussion of those comments, along with a proposal to streamline and simplify the criteria to make them easier to use.

Not surprisingly, the commenters had more varied and divergent views on the relative merits of the three general models presented in the paper. In the following Section, the Committee discusses that issue, before moving on to present the substance of its governance proposal in full detail in Section IV.

The concluding section of this paper includes questions that the Committee asks stakeholders to address in comments, as well as a schedule for stakeholder comments and further Committee action to refine its proposal.

III. Discussion of Conceptual Models Identified in the Issue Paper and the Basis for the Transitional Committee's Recommended Model

The January 5 issue paper asked for comment on three governance models spanning a broad spectrum of arrangements. Broadly speaking, those models were:

- (1) An EIM committee with only an advisory role to the ISO Board on EIM matters;
- (2) An EIM governing body that holds delegated primary decision-making power over certain EIM-related issues and provides formal advisory input on other matters; and

(3) Development of a wholly separate and autonomous EIM organization that has its own EIM tariff, its own governing body, and contracts with the ISO for EIM services.³

The Committee has concluded that a modified version of model two is the best option for governance of the EIM because it will promote a balanced consideration of regional interests throughout the EIM footprint, and is consistent with the current EIM value proposition, while facilitating close collaboration between the ISO Board and the governing body charged with promoting EIM.

This section explains the trade-offs and considerations that have led the Transitional Committee to this recommendation. Specifically, the Committee discusses each of the three general models presented in the issue paper, some of the stakeholder input received on each, and the Committee's perspective as informed by that input and its own analysis of the issues.

A. The Pure Advisory Committee Model has Minimal Support and Appears Unlikely to Provide a Positive Incentive for the Growth of EIM

The Transitional Committee has decided not to propose model one, the purely advisory committee, because it does not seem likely to foster the degree of confidence in EIM governance needed to drive broad entry into the EIM market.

To maximize the value of EIM, the ISO should, where possible, eliminate potential barriers to attracting new entrants, including from the broader region outside of California. An advisory committee with a regional focus could be helpful in ensuring the ISO Board receives focused input from entities beyond California, and the ISO Board would have a strong incentive to seriously consider the advice that it receives from such a committee – particularly given that EIM participation is voluntary and EIM Entities⁴ and their participating resources are free to exit the market if they are displeased. This model, however, would not ensure that the committee's input plays a central role in ISO Board decision-making because, at the end of the day, the input would be entirely advisory.

The Transitional Committee believes a substantial commitment to shared decision-making is important to foster the confidence needed for broad regional participation. The comments on the issue paper generally provide support for this conclusion, given that most parties from outside California express a preference for a governance model that gives greater deference to the new governing body than would be afforded under a purely advisory model.

³ For details on each model, see the January 5 Issue Paper at 8-12.

⁴ For the definition of "EIM Entity," see n.1 above.

To the extent some commenters expressed qualified support for the advisory committee model, their positions appeared to be based at least in part on a concern that the other models may face an insurmountable obstacle, in that it may be too difficult to define the boundaries of decisional authority between the EIM governing body and the ISO Board.⁵ The Committee believes this challenge can be addressed through a model that promotes collaboration between the ISO Board and the EIM governing body, as explained below in Section IV.D.

B. Governance through an Autonomous Separate Entity would Introduce New Challenges that Undermine the Benefits of the Existing EIM Model

The model at the other end of the spectrum – the autonomous separate entity set forth in model three – would vest authority for EIM market rules in a new company outside the ISO that would determine the EIM market rules and contract with the ISO to provide the market operator service. This separation is an appealing feature for some commenters who highly value autonomy. Although the Transitional Committee understands and acknowledges these concerns, it does not support the autonomous separate entity model because it would be fundamentally incompatible with the EIM as it currently exists and would undermine the value proposition that is at the core of EIM.

To understand the Transitional Committee’s reasoning on this issue, it is necessary to discuss both the way in which the EIM currently operates and two of the potential ways in which an autonomous separate entity might conceivably function.

Turning to the first issue, it is critical to understand that the ISO’s EIM is not its own separate market, but rather is an extension of the real-time market the ISO was operating prior to the development of the EIM. The EIM allows other balancing authorities to participate in the real-time market to satisfy their needs for imbalance energy. For balancing authorities that participate in EIM, the ISO incrementally modifies its existing market systems and models to incorporate the topology of the joining balancing authority’s transmission system, loads, and resources, as well as real-time flow and other data, all of which is done to establish a wider geographic footprint over which the ISO existing systems can be used to perform an ongoing security constrained economic dispatch on rolling 15- and 5-minute intervals. This structure allows the ISO to run a market that automatically co-optimizes resource bids across the entire EIM footprint every few minutes, producing a unified dispatch that uses the lowest cost mix of resources available to meet consumer demand throughout the footprint, while respecting all applicable transmission, reliability and other operating constraints.

This unified market structure also has allowed the ISO to keep the incremental cost of providing EIM service low by leveraging its existing platform of systems and market

⁵ See, e.g., Southern California Edison Comments at 2-4.

processes to the greatest extent possible. Rather than incurring large, initial capital costs, the ISO charges new EIM Entities on a “pay-as-you-go” basis, with a modest, one-time up-front fee to cover the cost of the limited modeling, licensing, and other preparatory work needed to incorporate a new entrant, and an ongoing fee that is based on the new entrant’s level of participation. The model also does not impose any exit fees on an EIM Entity that later chooses to leave the EIM, instead requiring only that the party will remain responsible for charges and financial obligations incurred during the term of its participation.

The autonomous separate entity model is problematic because it does not take account of the tight integration between the EIM and the broader ISO market. This integration raises serious obstacles to any option that would give a separate entity absolute control over a separate set of real-time market rules, as discussed below.

Turning to the scope issue, the first question that would arise in evaluating an autonomous separate entity model would be the scope of the rules that fall within its purview. Although there are many potential nuances to that issue, a key dividing point would be whether the separate entity has authority over the entirety of what are currently the ISO’s real-time market rules or instead would have authority only over rules relating to EIM that are applicable to entities outside of the ISO’s balancing authority area. In other words, would the autonomous separate entity have the ability to dictate all aspects of how the ISO’s real-time market operates within all balancing authority areas in the EIM footprint (both inside and outside California), or would it instead act as, in effect, a governance organization for EIM market rules only for the portion of the overall EIM footprint that is extraterritorial to the ISO balancing authority area?⁶

The former scenario – where the separate and autonomous governing entity would have responsibility for all real-time rules including those governing the ISO’s balancing authority area – is unworkable as a legal and practical matter.

A transfer of governing authority would require legislative changes to the California statutes that establish the ISO’s current governance structure. The California Public Utilities Code states in Section 337 that the ISO shall be governed by a five-member independent board of directors appointed by the state Governor and subject to confirmation by the Senate. Meanwhile, Section 345.5 specifies that the ISO shall manage the transmission grid and operate bid-based electricity markets. A model that would transfer the tariff that controls the ISO’s current real-time market rules to supervision by a wholly separate and independent governance entity is difficult if not impossible to reconcile with California law as it exists today. A legislative change is not inconceivable. Indeed, in Section 359, the legislature declared its intent for the ISO to evolve into a regional transmission organization with board members appointed by states other than California. However, the Transitional Committee is charged with creating a

⁶ A depiction of the two scenarios can be found in Appendix B.

workable governance model for the immediate future and for one market of the ISO's several markets. Therefore, it is not prudent to make a recommendation that is contingent on a legislative change, even while anticipating possible broader changes is useful. *See* Part IV.G, below.

Even if this legal hurdle was somehow overcome, transferring complete control of the existing real-time market to a wholly separate and autonomous entity would require creation and operation of a new EIM company. From an operational perspective, disentangling the ISO's real-time market from all other aspects of its current function presents a challenge. This alone would be a difficult and uncertain undertaking. Moreover, the possibility that the autonomous entity could at some point decide to appoint a different market operator is deeply problematic because it means that hundreds of millions of dollars of investment in the ISO's existing systems and infrastructure potentially could become stranded.

Most problematic of all, however, a new EIM company would involve substantial up-front and ongoing costs, which in turn would undermine the low-cost entry/easy exit model that the EIM currently offers potential market entrants.

More specifically, this approach would impose three broad new types of costs:

1. Up front and ongoing costs to establish, staff, house, equip, and operate a new stand-alone company, separate from the ISO, that would serve as the ISO's contracting counterparty and hold the responsibility for developing and overseeing its own tariff with a complete set of market rules. From an administrative standpoint, the ISO houses many central services (its executives, market design professionals, and accounting and settlement staff). A separate organization either would have to hire its own staff, risking the loss of efficiency that such shared services provide while also possibly increasing costs on the ISO's other markets, or would have to contract with the ISO for these professional services, risking an outcome that made the EIM autonomous on paper only.
2. New and unexpected one-time costs for the ISO and the EIM Entities that have already joined or are in the process of joining the EIM to modify their respective current systems, processes, and open access tariffs to accommodate this fundamental change in structure.
3. Ongoing costs for the ISO to modify or potentially redesign entirely its platform, systems, personnel, and processes to accommodate whatever changes in market rules the new and autonomous EIM company may decide to establish over time.

It is not possible to quantify these costs with any certainty at this time, in part because their magnitude would depend largely on unknown future decisions that the new entity would make, both initially and over time, regarding the content, scope and structure of its market rules.

The Transitional Committee believes these costs could be quite substantial, which is itself a reason to avoid this model. But the Committee is even more concerned about the inestimable nature of the future costs. Giving the autonomous separate entity the ability to impose unspecified changes in market rules and thus fundamentally unknowable future costs on the ISO and existing participants in the EIM would necessarily require a change to the low-cost entry and easy-exit features that are a hallmark of the existing EIM offer.

The ISO and its existing market participants have invested large amounts of capital over many years to build and develop the platform of systems, personnel, and processes currently used to operate its real-time market, including the EIM. If the autonomous EIM governance entity were entitled to unilaterally impose market rule changes that could result in significant platform changes, we would expect that the ISO would need to either substantially increase the up-front cost for entering EIM, increase its ongoing charge to address such changes, impose a longer-term commitment that encumbers market exit to avoid stranded cost issues, or quite possibly make all of these changes in order to protect the investment that its existing market participants have made.⁷

Based on the early attractiveness of the EIM, the Committee believes the low-cost entry/easy exit aspect of EIM is an important feature that provides a strong incentive for the growth of EIM. It thus seems wise to avoid changes that would imperil this basic aspect of EIM.

The second scenario under an “autonomous EIM scenario” – where the governing entity would have authority over only EIM market rules that apply to non-ISO balancing authority areas – is also problematic, though for somewhat different reasons.

Cost concerns would remain a paramount issue. But more fundamentally, such a structure is problematic because its long-term viability effectively depends upon an assumption that EIM and real-time market rules could diverge substantially without any negative consequences. This assumption is incorrect. In order for the ISO to be able to maintain the ability to co-optimize all resources across the footprint, the EIM and broader real-time market rules must be kept compatible.

At some level, this need for close compatibility is intuitive. For example, if the autonomous EIM company and the ISO were to establish different timelines or intervals for evaluating system operating information, it would not be possible as a practical matter to co-optimize loads and resources across their respective balancing authority areas because the balancing authority areas’ respective systems would be out of sync. Instead, one market would need to complete sequentially before the other one can complete in

⁷ Although it may be possible as a theoretical matter to avoid this outcome by giving the ISO, as the contracting counterparty, contractual authority to reject any changes that it deems too costly to undertake, that approach would defeat the fundamental premise of this model by effectively ceding authority over market rules to the ISO.

consideration of the results of the first market, thus causing the market as a whole to miss efficiency opportunities that can only be captured through simultaneous co-optimization.

But this need for compatibility extends far beyond mere timing and instead involves a wide array of rules governing how the market works. Co-optimization depends on having a coherent and compatible set of rules across all key aspects of market operation. This includes rules involving short-term unit commitment, outage reporting, load forecasting, market pricing, and settlements, to name just a few of the key areas. This does not mean that the EIM and broader real-time market rules in these areas necessarily must be identical in every respect for co-optimization to be possible. It does, however, mean that attention must be paid to maintaining close compatibility in these areas – a condition that could be extremely difficult to achieve if there were two separate and autonomous entities who each had independent governance authority over their own set of market rules.

The risk, moreover, of losing the ability to continuously co-optimize on rolling 15- and 5-minute increments is not a minor seams issue in the context of EIM.⁸ Co-optimization is the mechanism through which efficient resource dispatch determinations are made in real-time, ensuring that the optimal mix of generation resources is used in light of all transmission and reliability constraints. It enables the greatest benefit for participants and consumers by, for example, providing access to the lowest cost generation available at any moment. If the ISO's balancing authority area had to be co-optimized separately from other balancing authority areas due to a divergence between "ISO real time" and "EIM" market rules, it would not be possible to ensure an optimally efficient resource mix across the entire footprint, meaning that a key economic benefit of EIM would be lost.

Renewable resource integration could also be undermined because it would not be possible to take full advantage of counterbalancing fluctuations in these resources across the entirety of the footprint. A brief and intermittent decrease in solar production due to cloud cover in the ISO's balancing area for a few 5-minute intervals, for example, could not be automatically offset by a concomitant increase in wind production (or other resources) in other balancing authority areas because there may not be an automated way to perform the continuous market and reliability analysis necessary to determine that such marginal dispatch decisions are appropriate. On the whole, the EIM would lose the ability to maximize the use of intermittent renewable resources and thereby achieve the greatest possible associated reduction of carbon emissions.

In addition, separate dispatch optimization between the ISO's balancing authority area and other EIM balancing authority areas would undermine the reliability benefits of EIM

⁸ Compare the comments of the Northwest Public Power Association and Chelan County P.U.D. ("Overlapping rules are not unique – seams issues exist with all market structures, and are addressed through cooperation amongst market operators, and through regulatory oversight.").

because the footprint of resources that could be automatically dispatched through the co-optimization process to address emerging grid conditions in real-time would be smaller. System operators across the separated balancing authorities would instead need to manage their imbalance and rely on their own flexibility reserves without resorting to the broader range of reliable options available beyond their borders, much in the same way as has historically occurred in the bilateral context.

For the foregoing reasons, the Transitional Committee concludes that the autonomous separate entity model does not provide a suitable model for governing an EIM operated by the ISO.

C. The Delegated Authority Model Would Offer Stakeholders Significant Influence over Market Rules and Promote Close Collaboration Among all Interests

The Transitional Committee believes that the most viable way to address the difficult issues that stem from interaction between markets would be to govern EIM through a body that, while independent, works closely with the ISO Board and has certain decision-making authority over EIM market rules delegated to it by the ISO Board, along the lines generally set forth in model two in its January 5 issue paper. As discussed in more detail in the next Section, this proposal would vest the EIM governing body with tangible authority to shape market rules within its primary authority while directly influencing other rules through a formal advisory role.

The Transitional Committee believes there are two key benefits to this structure. First, by giving the EIM governing body more than advisory power in its area of primary authority, it ensures that regional interests beyond California will be heard on those particular issues that are of unique or special interest to participants in EIM, which should in turn enhance regional confidence in the EIM. Second, because this authority will require the ISO Board and the EIM governing body to work together closely, it will foster a collaborative relationship between the two bodies that should ultimately enhance the EIM governing body's expertise and influence on all areas relevant to its mission, including in areas where its formal authority is advisory in nature.

Put simply, this model will require each body to respect and consider the input of the other, as well as the input provided by all stakeholders, whether located within California or outside it. This feature is important given the highly interrelated nature of EIM and other real-time market issues as discussed above and in greater detail in Section V below. It also avoids the serious problem of potentially diverging market rules that arises under the autonomous approach discussed above.

It also bears mention that model two had significant support in stakeholder comments on the issue paper, either as an end state or as an initial step from some commenters who

ultimately support more fundamental governance change.⁹ Although this support was by no means universal, it does assure the Transitional Committee that this model would enhance regional acceptance of the EIM, even if it does not provide a satisfactory ultimate solution for all parties.

The Transitional Committee believes, moreover, that this acceptance can be increased by taking steps to ensure that the EIM governing body is constituted in a manner that ensures it is fully responsive to stakeholders throughout the EIM footprint, composed of a diverse and highly qualified membership with appropriate background and experience, has a clear and well-articulated mission to promote the interests of EIM, and holds tangible and well-documented responsibility and influence.

The proposal set forth in Section IV seeks to meet each of these objectives.

D. The ISO Should Commit to Re-evaluate EIM Governance

Although the Transitional Committee recommends a delegated authority model at this point, it agrees with comments suggesting that EIM governance should be re-evaluated and potentially adjusted in the not-too-distant future as circumstances may warrant. Some of these commenters recommend that the ISO should both immediately adopt governance consistent with the “delegated authority” model, because it would be an improvement over the current situation, and also consider or commit to working toward governance consistent with the “autonomous separate entity” model.¹⁰ A broader set of commenters makes the related point that any governance structure that is adopted for EIM must be evaluated and reconsidered over time.¹¹

Regardless of one’s views on the various models, the concept of providing explicitly for a subsequent re-evaluation as conditions change has great appeal. The Transitional Committee recognizes that the EIM is in its early stages and what makes sense for governance now may not continue to be optimal over time. Arguments for establishing a different scope of authority for the EIM governing body – or perhaps other more fundamental changes to the ISO’s overall governance structure – may grow stronger over time as the number of EIM Entities increases or to the extent non-California entities otherwise increase their participation and involvement in the EIM or the ISO’s broader markets. To account for these possibilities and other factors, the Committee is proposing for comment a variety of potential triggers that could give rise to evaluating the

⁹ See, e.g., the comments of Arizona Public Service Company; the comments of Eugene Water & Electric Board; the comments of the Interwest Energy Alliance; the comments of PacifiCorp; the comments of Renewable Northwest; the comments of the “Six Cities”; the comments of the Sonoran Institute; the comments of Vote Solar.

¹⁰ See, e.g., Eugene Water and Electric Board Comments, Southwestern Power Group Comments.

¹¹ See, e.g., the comments of the Public Utilities Commission of Nevada; the comments of the California Municipal Utilities Association; the comments of the California Office of Ratepayer Advocates.

possibility of more fundamental governance changes as circumstances warrant. This trigger concept is discussed further in Section IV.G., below.

IV. Straw Proposal for EIM Governance

A. Overview of the Straw Proposal

The Transitional Committee proposes that the ISO Board modify its bylaws to establish an EIM governing body that would exercise certain delegated authority over EIM market rules. The essential points of the proposal are as follows:

- The EIM governing body would be comprised of five independent (non-stakeholder) members who serve staggered three-year terms;
- The EIM governing body would be charged with promoting the success of the EIM, and have certain delegated authority over EIM market rules;
- Any proposed changes to EIM market rules that are unique to the EIM, as opposed to rules that apply to the real-time markets generally, must be approved by the EIM governing body before they can be filed with FERC. These proposed changes also must be approved by the ISO Board, and would be designated for the ISO Board's consent agenda;
- The EIM governing body would have a formal advisory role to provide input to the ISO Board on potential modifications to other market rules that may have an impact on EIM;
- Members of the EIM governing body would be identified by a nominating committee that consists mainly of stakeholders from a variety of sectors that are presently represented within the EIM footprint, and through a process designed to ensure that each member is a consensus choice of these stakeholder representatives;
- Potential nominees for the EIM governing body would be selected after the conclusion of a nationwide search by an executive recruiting firm, and the nominating committee should ensure that the body as a whole is diverse, including geographically and in terms of expertise;
- The ISO would compensate EIM governing body members for their service; and
- The ISO Board would also establish a committee of state regulators, which would include comparable representatives of participating publicly-owned utilities, to advise the EIM governing body and the ISO Board on matters of interest to the committee, and also to serve as a vehicle for the ISO Board and the EIM governing body to inform regulators about the activities of the ISO and the EIM.

This proposal is explained in detail below.

B. Basics of the EIM governing body

The Transitional Committee proposes that the EIM governing body, in addition to having certain delegated authority over EIM market rules to be described in the ISO bylaws, would have a charter from the ISO Board detailing its role and responsibilities. The most fundamental principle, which would be articulated in this charter and other foundational documents, is that the EIM governing body's duty is to promote, protect and expand the success of the EIM by ensuring that its participants benefit, with due consideration given to the interests that all parties who participate in the EIM have in decisions about the future direction of EIM. The charter would further define the responsibilities and goals of the EIM governing body along the lines described in the criteria for governance discussed in the issue paper. Among the goals to include are that the EIM governing body should make decisions and recommendations that would:

- Control costs to ensure that favorable cost/benefit ratios are maintained;
- Protect the EIM, its participants, and consumers against the exercise of market-power and otherwise further the establishment of just and reasonable market outcomes;
- Allow EIM Entities to withdraw from EIM prior to any action that would cause or create an exit fee;
- Allow options to expand the functionality of the market to provide additional services as requested by EIM Entities or directed by FERC; and
- Facilitate and maintain compliance with other applicable legal requirements, including but not limited to environmental regulations and states' renewable energy goals.

The members of the EIM governing body, who would be selected through the process described below, would serve three-year staggered terms. They would be compensated by the ISO at a level that would attract talented and dedicated members, generally consistent with the compensation of the ISO Board. As a part of the ISO, the EIM governing body would act through open meetings and be subject to other ISO policies that are generally applicable to board committees.

This EIM governing body would be supported by ISO staff, including one full-time ISO staff member who would have a dedicated responsibility to serve the needs of the EIM governing body and ensure that it receives the support from other ISO staff.

C. Selecting Members of the EIM Governing Body

Nominees for the EIM governing body would be identified by a nominating committee comprised predominantly of stakeholders, both when the EIM governing body is established initially and over time as vacancies occur. Four stakeholder sectors would be represented:

- EIM Entities (as defined in the ISO tariff);

- Participating Transmission Owners (as identified in the ISO’s Transmission Control Agreement) and other entities that serve load in the ISO’s balancing authority area (except publicly-owned utilities);
- Suppliers of generation within an EIM footprint, including the ISO’s balancing authority area; and
- Publicly-owned utilities located within an EIM footprint (including the ISO’s balancing authority area).

The stakeholder representatives for each sector would be selected through a process controlled by members of that sector, similar to the processes that were used to establish the membership of the Transitional Committee and that are used in connection with the Nominee Review Committee for the ISO Board. Essentially, this means that members of each sector would be responsible for organizing themselves and selecting their representative to the nominating committee.

As explained below, the stakeholder representatives would be the voting members of the nominating committee, which would have non-voting members as well. The nominating committee would act by consensus of the voting members, which should inspire confidence in the selection process because it will yield only nominees who are acceptable to and endorsed by representatives of all four stakeholder sectors.

In addition to voting members, the nominating committee would also include non-voting members who would play an important advisory role. These members would include one representative of each of the following:

- The EIM Transitional Committee (for the initial establishment of the EIM governing body, but not afterwards);
- The ISO Board;
- The EIM governing body (after it has been established);
- The Chief Executive Officer of the ISO – *i.e.*, the CEO or his designee,
- The body of state regulators and comparable representatives of publicly-owned utilities;¹² and
- Public interest groups.¹³

Although these members would not vote on the nominees, they would otherwise participate fully in the vetting process and would be expected to share their views with the voting members.

For varying reasons, the Transitional Committee believes it is preferable for these six representatives to have an advisory role rather than a voting role. The EIM Transitional Committee representative would primarily assist in the transfer of knowledge to the

¹² This committee is discussed in more detail in Section IV.F, below.

¹³ The public interest group representative would be selected through a sector-based selection process similar to that used for the four direct participant sectors.

nominating committee about how the Transitional Committee envisioned the nomination process should function. Given that limited role, it does not seem appropriate for the Transitional Committee member to vote. The ISO Board and EIM governing body members and the ISO CEO would be on the nominating committee principally to help ensure that the nominating committee and the candidates have a full understanding of, and familiarity with, the workings of the ISO and its governance, which is a role that likewise does not seem to warrant a formal voting role. Finally, the Transitional Committee is concerned that placing the regulators and public interest representatives in a formal voting role may prove untenable in light of the extremely broad spectrum of policy interests that members of their respective groups may have. Because their respective “constituencies” are likely to have substantially disparate interests, it seems problematic to have one representative formally vote on behalf of each of those two groups.

The nominating committee’s main role would be to work with an executive search firm charged with identifying potential candidates for the EIM governing body. The firm would conduct a nationwide search for qualified individuals with expertise in relevant areas, including utility operations, utility regulation, commodities markets (including electricity), or expertise in general corporate strategy or governance. The candidates would need to be independent of entities that participate in the ISO market, including EIM, or that advocate positions in ISO stakeholder processes. This means that candidates could not hold financial interests in, or receive compensation from, any of those entities, with the exception of retirees who receive only defined-benefit pensions from market participants.

The search firm would identify at least two candidates for each available slot (*i.e.*, at least ten candidates for the initial creation of the body and at least two candidates for each subsequent vacancy), who would be reviewed and interviewed by the nominating committee. The nominating committee would then carefully review candidates and develop a consensus slate of the most qualified candidate(s) for the available slot(s). The nominating committee would also be charged with ensuring that the EIM governing body overall reflects diversity of geography and expertise, such that it is not dominated by members who specialize in one area, such as operations or utility regulation.

For the initial selection of the EIM governing body, the nominating committee’s slate of five candidates would be submitted as a whole to the ISO Board for approval or rejection. The requirement that the initial slate must be approved by the ISO Board would add some transparency to the selection process. Although the details of the process have yet to be determined, the Transitional Committee is assuming, based on advice from an executive search firm, that the work of the nominating committee in sifting through and comparing potential candidates would be largely confidential, and at a minimum not generally available to the public, because a confidential search process would encourage a broader range of candidates and thus a stronger candidate pool. Accordingly, the ISO Board’s vote on whether to approve a slate of nominees would establish an opportunity for

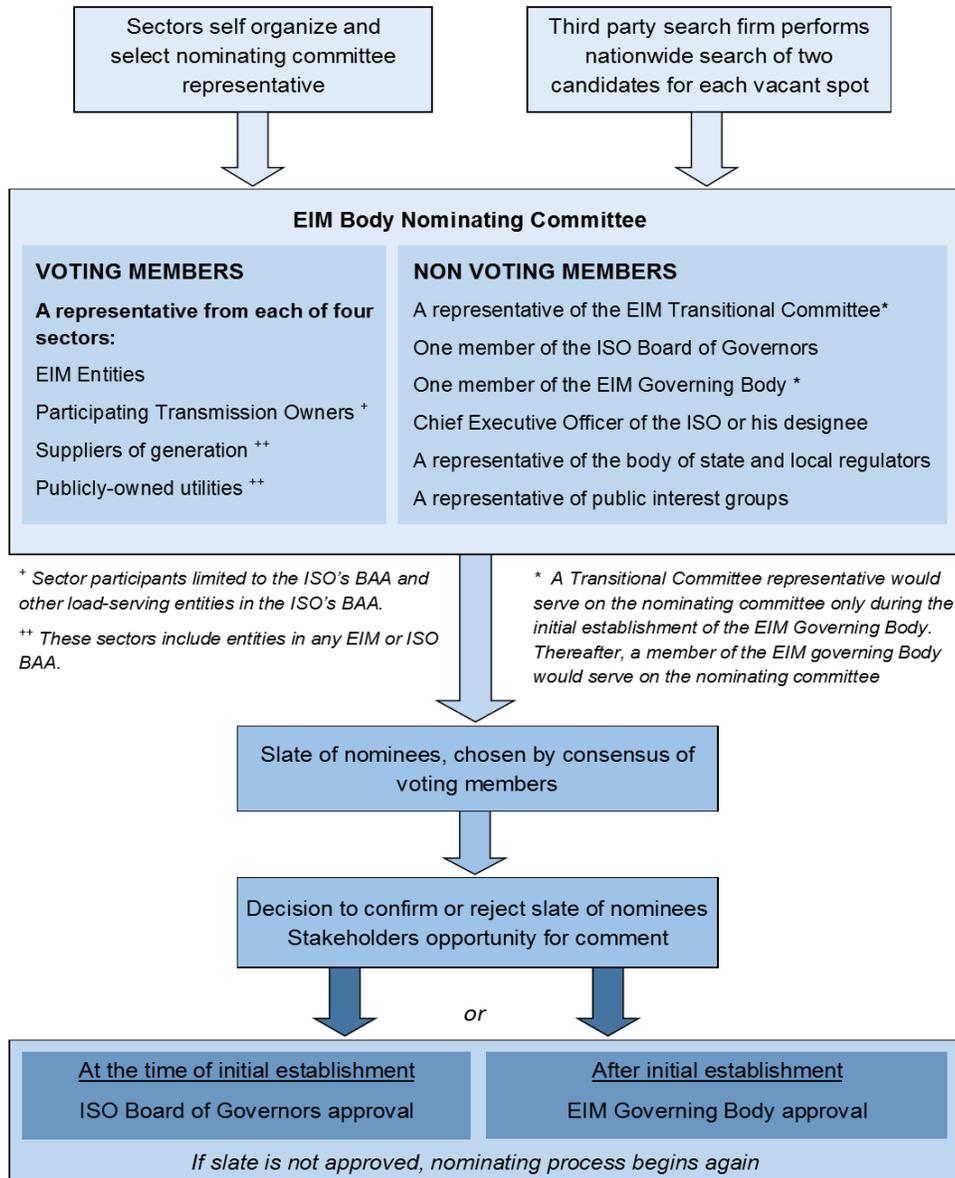
members of the public and for many stakeholders to provide direct input on the nominees. The Transitional Committee would not expect the ISO Board to reject the slate of nominees – a situation that is quite unlikely because the nominees presumably would have broad support given the consensus-based process involving the stakeholder representatives used to identify them. However, the Committee anticipates that the *opportunity* for any member of the public to voice objections or concerns before candidates become members of the EIM governing body would be important to acceptance of the overall process.

For filling a later vacancy, the consensus candidate(s) would be submitted to the EIM governing body, rather than the ISO Board, for a similar “up or down” vote on approval. At both the initial and vacancy stages, the approving body would not have the authority to appoint anybody other than the slate or candidate that the nominating committee puts forward. Rather, in the unlikely event that a majority of the approving body rejects the consensus slate, the matter would go back to the nominating committee for further consideration. The Transitional Committee understands that similar nomination processes are used by other ISOs/RTOs, and that such non-approval would be very unlikely.

Once appointed and approved, members of the EIM governing body would serve the entirety of their terms unless they resigned voluntarily or were removed for reasons such as conflict of interest or other inability to perform their function. The charter for the EIM governing body or the ISO bylaws would include more specific provisions governing such removal.

The overall process for selecting members is depicted below.

EIM Body Nominating and Selection Process



D. Scope of Authority

The EIM governing body would have a role in any changes to tariff rules that are applicable to the EIM market – either revisions to existing rules or adoption of new rules – including both:

- (1) market rules that are EIM-specific insofar as they apply uniquely to the EIM and its participants or differently to the EIM and its participants than the ISO's generally applicable rules, and
- (2) tariff rules that apply generically to participation in the ISO's real-time market, including rules that specifically govern the real-time market or rules that generally apply to any participation in ISO markets.

The role of the EIM governing body would differ depending on which of these two categories an issue falls in, with the EIM governing body serving as the primary decision-maker for rules in the first category and playing a key advisory role for rules that fall with the second category, as explained in more detail below.

Although the ISO would be required to develop a set of guidelines for delineating between the two categories of rules, some examples may help illustrate how it would work.

Market rules that likely would fall within the first category (apply uniquely or differently to EIM) include:

- Access charge and rate design for EIM transfers (reciprocity);
- Rate design for cost recovery of EIM service charges;
- Basis for GHG bid adder costs;
- Under- and over-scheduling penalties;
- Resource sufficiency requirements (downward ramping);
- EIM participation requirements; and
- Economic bidding on EIM external interties.

Examples of market rules that likely would fall within the second category (apply generically to real-time market) include:

- Real-time market timelines and optimization, such as hour-ahead scheduling process, 15-minute market or real-time dispatch;
- Settlement calculations for the real-time market, such as instructed imbalance energy, uninstructed imbalance energy, real-time imbalance energy offset costs, or real-time congestion offset costs;
- Flexible ramping capacity product requirements;
- Creditworthiness; and

- Settlements and billing timelines and procedures.

In both areas, the Transitional Committee believes that a consensus-based approach to the tariff approval process is essential in light of the close functional integration between the EIM and the ISO's broader 5- and 15-minute markets, both of which share market rules running on a common platform of IT systems, as well as common staff and overlapping operational protocols. Given this relationship, changes to rules that apply uniquely to EIM can be expected to impact the ISO's broader real-time market, which suggests that both the EIM governing body and the ISO Board must have some role in establishing or revising such market rules, even though the ISO Board's involvement should be limited in most cases.

Primary Authority

For rules in the first category – which may also be thought of as rules that would not exist but for the existence of EIM – the EIM governing body would have the primary, and in most cases the sole, authority for considering and approving any proposed tariff amendment that involves a change in policy requiring Board approval. The EIM governing body's approval would be required before ISO staff could move forward with any tariff amendment proposal in this category. After receiving approval from the EIM governing body, ISO staff would also need to include the proposal on the consent agenda for the next meeting of the ISO Board. The matter would require no further action unless a majority of the ISO Board votes to further consider the matter. Absent such a vote, ISO staff would be authorized to proceed with any FERC filing that is required to implement the tariff change solely on the basis of the EIM governing body's approval.

If ISO staff does not receive approval for the rule change from the EIM governing body, or if it does but the ISO Board fails to approve the matter through its consent agenda and, after considering the matter on its merits, the Board votes against the proposed change, then staff would be required to develop a new or revised proposal for the consideration of both bodies. After the development of a revised proposal, staff would follow the same process of bringing the matter first to the EIM governing body for approval and then to the ISO Board, presumably through its consent agenda. Approval from both bodies would be required for the proposal to go forward. This structure is analogous to the governance arrangements that PJM and NYISO, for example, have with their members, in which a proposed filing under Section 205 of the Federal Power Act to change market rules must be acceptable to both the board of directors and the committee of members.

This process would normally apply to any rule change that falls into the areas covered by the EIM's Governing Body's primary approval authority. The only exception to this would be a narrow provision to deal with "exigent circumstances" requiring expedited action that could not be accomplished with the two-board review process. In that context, the ISO staff, in emergency circumstances, after receiving only EIM governing body approval, would be allowed to file a temporary amendment or waiver at FERC. To qualify as temporary, the amendment or waiver would need to have an effective period

no longer than 90 days. This would allow staff to act quickly to address an emergency, and then proceed to develop and propose a longer-term solution with time for the full consultative process with approval from both bodies.

The overall process where decision-making is primarily in the hands of the EIM governing body, though subject to consent of the ISO Board, is meant to ensure that the EIM governing body has a clear and meaningful role in developing and establishing any new or revised rules that specifically affect EIM. It is also intended to promote and achieve collaboration and consensus-based decision-making while avoiding the potential for dueling FERC filings, as identified in this Committee's charter.

The staff of the California Public Utilities Commission suggested in its comments that the ISO should review the legality of any delegation arrangement to ensure that it is consistent with existing law or determine whether the arrangement may require legislation to modify relevant sections of the California Public Utilities Code. The Transitional Committee agrees that the governance model that it ultimately proposes must rest upon a solid legal foundation, which will require a full legal analysis of the proposal. The Committee has formulated its straw proposal with the benefit of input and advice from the ISO's legal counsel. Legal counsel advised the Committee that the straw proposal appears to comply with applicable law because it is consistent with the ISO's tariff and because it leaves ultimate authority over any proposed tariff changes in the hands of the ISO Board. The Committee has, moreover, asked ISO staff to provide further analysis of this issue, as may be appropriate, as the stakeholder process on the proposal continues.

Formal Advisory Role

For rules in the second category – modifications to the generic rules of the ISO's real-time market or rules applicable to all ISO markets – the EIM governing body would have an advisory and consultative role. ISO staff would be required to keep the EIM governing body informed of all potential rule modifications throughout the ISO's stakeholder process by sharing stakeholder materials and through briefings when requested by the EIM governing body. The EIM governing body would have the right to submit an advisory opinion to the ISO Board on any such issue, and the ISO Board would be required to consider that opinion in deliberating on the amendment. The substance of the EIM governing body's opinion also would be included in any FERC filing that ISO staff makes to implement the proposed rule change.

This consultative process and formal advisory role would ensure that the EIM governing body is able to identify and advise the ISO Board on any potential changes to the ISO's generic real-time market rules or other market rules that the body believes will have an important impact on the EIM. As discussed below, the EIM governing body's charter would focus specifically on promoting the success of the EIM. The EIM governing body thus could be expected to provide an opinion on generic tariff changes that it concludes could significantly promote or negatively impact the success of the EIM. Assigning the

EIM governing body this responsibility will elevate such matters and ensure that potential EIM impacts are carefully considered before any such rule changes are pursued at FERC.

Documenting the Delegation in Durable Bylaws

The delegation of authority to the EIM governing body described above would be formally documented and established through an amendment to the ISO's corporate bylaws. This would require the ISO Board to vote in favor of amending its current bylaws to effectuate this change.

One issue the Transitional Committee has considered is whether to recommend provisions that would limit the ISO Board's authority to amend or remove the delegation in the bylaws, in order to provide greater assurance to market participants that the delegation will be durable. There is a substantial argument that no such provision is necessary here in light of the way that the ISO has structured its EIM to allow EIM Entities to withdraw from the EIM with minimal limitations. The potential for easy exit from the market should provide the ISO Board with a very strong incentive to refrain from voting to amend the bylaws to revoke the delegation, absent circumstances where there is broad agreement that revocation is appropriate.

If, however, the durability of the arrangement proves to be a serious concern for parties who are actually contemplating joining the EIM, one potential way to address that would be to add a provision to the bylaws that constrains the ability of the ISO Board to amend the delegation provision. An option would be to add a provision that allows the delegation to be revoked only if a majority of both bodies vote in favor of revoking it or if a supermajority of either body votes for revocation. The Transitional Committee seeks stakeholder input on whether such a provision would be advisable.

E. How Will the Delegation Work in Practice?

The proposed governance model is intended to give the EIM governing body not only the ability to presumptively approve, but also the ability to fully block any proposed market rule changes within its "primary" area of authority by declining to approve a proposed change. This authority would give EIM participants greater assurance of stability in EIM rules such that they will not change without widespread support. The Transitional Committee expects this structure would be preferable, from participants' point of view, to a rule, under which either the ISO Board or the EIM governing body could approve a tariff amendment filing, with disagreements to be resolved by FERC. The governance model envisioned in this straw proposal would preclude the ISO from filing permanent rule changes in an area subject to the EIM governing body's primary authority without approval from the Body. This aspect of the proposal is also consistent with the Transitional Committee's charter, which asks that the governance structure for EIM avoid dueling filings at FERC.

The Transitional Committee expects that the ISO Board would typically give great deference to the EIM governing body's decisions in the areas within the latter body's

primary authority. Situations in which a change approved by the EIM governing body is not approved through the consent agenda of the ISO Board would occur, if at all, only very rarely. Indeed, given the importance of fostering broad confidence and support for EIM, the ISO Board would have a strong incentive to apply such deference as its normal course of business. In the unlikely event, however, that such a conflict were to develop, the Transitional Committee envisions that the two bodies would have a jointly established process for resolving such a disagreement. The Committee is not currently inclined to prescribe the specifics of this process and is uncertain whether this process should be prescribed in advance or rather left to the ISO Board and EIM governing body to jointly establish.

The Transitional Committee also is inclined to leave the two governing bodies to jointly resolve questions about the precise scope of the EIM governing body's primary authority as such questions arise. While the general rule establishing the scope of primary authority must be specified in advance, the details can be left to practice. Because the EIM governing body will receive information about all proposed changes to market rules, it will be in a position to offer input on whether ISO staff has classified issues correctly. If the EIM governing body concludes that the established general rules actually grant it primary authority over a proposed rule change that was instead brought to it for consideration of a possible advisory opinion, the EIM governing body would inform the ISO Board of this conclusion. The two bodies could then address the particular issue as they see appropriate and, if necessary, correct the guidance to staff going forward.

The Transitional Committee believes that the dual-body approval structure will promote close collaboration and cooperation between the EIM governing body and the ISO Board, and will create a strong incentive for ISO staff to help foster and support such collaboration. A close and collaborative relationship between the two bodies will be necessary for proposed rule changes in the primary authority area to go forward, and should enhance and facilitate the process when the EIM governing body decides to provide an advisory opinion on a generic market rule that is within the ISO Board's purview to approve. Because the EIM governing body will develop an intimate understanding of the interests and concerns of EIM market participants through its role as primary decision-maker on EIM-specific issues, it will be in a good position to provide carefully considered input on generic market issues where it has an advisory role. The close relationship that can be expected to develop between the two bodies also should ensure that the ISO Board gives serious and careful consideration to any advisory positions that the EIM governing body chooses to offer.

F. Advisory Body of State Regulators and Comparable Representatives of Publicly-Owned Utilities

In the issue paper, the Transitional Committee suggested that a body of regulators be constituted from the states in which the EIM operates. Several commenters supported the idea¹⁴ and none objected. The Committee recommends that the ISO Board establish such a body for purposes of EIM governance, and also recommends that it include representatives from the public- and consumer-owned power community that are not regulated by state utility commissions.

The wholesale electricity markets in the United States are jurisdictional to the federal government. However, state regulators have authority over a wide range of issues, including rates and numerous policies that are directly affected by the operation of wholesale markets, including the EIM. Further, it is state regulators who are responsible for oversight over the question of whether an investor-owned public utility's power plants are being prudently operated and managed. That plants must be "used and useful" in order for a utility's captive consumer base to contribute to their costs is a fundamental precept of public utility regulation.

Examples of such committees in other regional organized markets are numerous.¹⁵ Some are highly active. The Organization of PJM States, Inc. (OPSI) has been a leader in asking that RTO to conduct complex modeling of the EPA's proposed regulation of carbon-dioxide from existing sources. The Regional State Committee (RSC) of the Southwest Power Pool largely decides that body's approach to transmission cost allocation. The Organization of MISO States (OMS), meanwhile, is also involved on transmission cost allocation, and meets almost weekly.

The purpose of the regulators committee proposed here is narrower, because the EIM is not an RTO. Unlike the RSC or OMS, it would not have delegated powers to file with FERC revisions to parts of the ISO's tariff, although this concept of delegation that is central to the MISO-OMS and SPP-RSC relationship is similar to the delegation that the Transitional Committee is proposing for the ISO-EIM relationship. Instead, the purpose of the regulators committee would be to ensure that the EIM governing body and the ISO Board have advice and input on issues of interest to those regulators. Absent such a body, the Transitional Committee is concerned that *ad hoc* efforts to involve individual states' regulators would fall short of the full range of participation that would be useful for a regional marketplace.

¹⁴ See the comments of the Sonoran Institute, Vote Solar and Interwest Energy Alliance, among others.

¹⁵ The Regional State Committee of the Southwest Power Pool; the Organization of MISO States; and the Organization of PJM States are examples. See [Table of Stakeholder Committees of Other ISOs and RTOs](#) (pages 16 and 55), which is a background document prepared that was prepared for the Transitional Committee.

To further this goal, the regulators committee would have periodic meetings to inform representatives about the EIM and ISO markets generally, with a focus on upcoming issues in which they may have an interest. When regulators do in fact have an interest on a given issue, this advisory committee would offer a vehicle through which the regulators could express any common position. When jurisdictions have different positions, it could forward those positions to the ISO Board as a composite document, and interested regulators or commissions would be able to participate directly in the ISO's stakeholder processes.

The Transitional Committee envisions that the ISO would provide assistance and support, as appropriate and necessary, to the regulators committee in connection with performing its function. The Committee also recommends that the ISO reimburse the travel expenses of representatives to the extent such reimbursement is permitted by state ethics rules. While it is envisioned that the ISO would provide human and financial resources to give effect to the advisory committee's mission, forums already exist in the Western Interconnection that might be willing to host its meetings in conjunction with their own. For instance, the Western Interstate Energy Board's Committee on Regional Electric Power Cooperation or the Western Conference of Public Service Commissioners would appear to be natural convening bodies. Holding meetings side-by-side with these organizations could maximize participation and allow for broader participation of regulators, while minimizing costs.

The regulators committee would consist of one representative from each state public utilities commission in which load-serving utilities participate in EIM (including the ISO real-time market). Some commenters suggested that the committee should also include representatives of publicly-owned utilities.¹⁶ The Transitional Committee agrees, and recognizes that in certain parts of the West public power utilities serve a significant percentage, or even a majority, of customers. The Committee therefore recommends including representation from publicly-owned utilities located within the EIM footprint, meaning within a balancing authority area of an EIM Entity or the ISO.

Commensurate with the important role of the regulators committee, participation by state regulators and public power entities must be from high levels of the organizations. For state regulators, only commissioners themselves would be eligible for regulatory committee service, while the involvement of staff from those commissions would be welcome but not entitled to vote in those instances the committee took a position on a matter. For public power entities, only elected or appointed officials (such as a city council member, public utility district commissioner, or electric co-operative trustee), or the utility's chief executive officer, would be eligible to serve. This requirement for public- and consumer-owned power entities ensures that personnel comparable to a "regulator" or executive, and not those who personally interact with the market in their day jobs, would be seated on the EIM regulators committee.

¹⁶ See, e.g., the comments of Seattle City Light.

Today, the EIM footprint includes portions of seven states. The Transitional Committee proposes that, in addition to regulators from those seven states, two public power representatives be eligible for seats on the regulators committee. Public power entities would self-select representatives, consistent with the eligibility restrictions described above.

G. Commitment to Re-evaluate Governance

As explained above in Section III.D, the Transitional Committee believes that EIM governance should be re-evaluated after a period of time in light of accumulated experience and changing conditions.

The timing of such a review is important, but the Transitional Committee has struggled to recommend precisely when this review should begin. While the ISO should not wait too long to start the process, there are also some downsides to starting too soon. One purpose of reconsidering governance would be to weigh whether an increase in the number of EIM Entities, as the Committee anticipates, would make a case for a more fundamental governance change. To consider this question, however, the EIM would first need a critical mass of membership.

Because it is not clear when this might occur, the Transitional Committee is recommending that the review begin in a set number of years, or sooner if certain conditions are met. The proposal that the Committee is considering would involve committing to review EIM governance five years after the EIM governing body is established, or sooner if any one of a number of trigger conditions were satisfied. The Committee would appreciate stakeholder comments on potential triggers for earlier review. Possibilities include:

- 1) A certain number of EIM Entities have entered the market, regardless of the size of those entities (the Committee contemplated as a possibility seven entities);
- 2) A certain number of very large utilities have entered the market as EIM Entities (a number less than any trigger proposed along the lines of number 1);
- 3) the EIM includes a certain overall load, or load from a certain number of states;
- 4) the ISO adds additional functionality to the EIM, beyond a real-time market for imbalance energy;
- 5) One or more large entities located outside of California decides to join the ISO as a Participating Transmission Owner; or
- 6) The decision of a similar energy imbalance market elsewhere in the western interconnection to join or merge into the EIM of CAISO, PacifiCorp, NV Energy and Puget Sound.

After receiving comments on these potential triggers or any others identified by stakeholders, the Committee expects to offer a more specific proposal for the trigger in its revised straw proposal.

V. Next Steps

The Transitional Committee will discuss this issue paper with stakeholders during a meeting on March 31, 2015 at the California ISO in Folsom, California. Stakeholders should submit written comments by close of business April 16, 2015 to EIM@caiso.com.

The Committee would appreciate feedback on the following issues:

Structure - please comment on the proposed

- composition of the Nominating Committee,
- composition of the EIM governing body, and
- process for selecting members.

Scope of authority – please comment on the proposed

- scope of authority, including whether it is appropriate and workable,
- the examples of issues that would fall within the primary and secondary authority of the EIM governing body, and
- process for resolving disagreements about the particular proposed rule changes or the scope of authority generally.

Documentation – please comment on the proposed

- documentation of these arrangements in the ISO's bylaws and a charter from the ISO Board of Governors, and
- mission of the EIM governing body that would be identified in its charter.

Committee of Regulators – please comment on the proposed

- composition, including the balance of representation between state commissions and public power, and
- role of the committee.

Trigger for re-evaluating EIM governance – please comment on the proposed

- triggers for re-evaluating EIM Governance.

Criteria for Evaluating Proposals – please comment on the proposal

- to revise and simplify the criteria for evaluating governance proposals, as reflected in the appendix.

Comments on these and other issues will help inform the Committee’s next iteration of its proposal, which also will be subject to stakeholder review and comment. The tentative schedule for further development of the proposal is as follows:

| Date | Event |
|-------------|---|
| March 19 | Committee straw proposal posted |
| March 31 | Committee to host meeting on straw proposal |
| April 16 | Stakeholder comments due |
| May 21 | Committee to post draft final straw proposal |
| May 28 | Committee to host webinar on draft final straw proposal |
| June 11 | Stakeholder comments due |
| August 18 | Committee to post draft governance proposal |

The Committee appreciates and encourages a broad set of perspectives on the proposal and the issues underlying it.

Appendix A: Criteria for Evaluating Governance Proposals

The issue paper identified a preliminary set of criteria important to successful implementation of the EIM for current and future market participants, which the Committee planned to use in evaluating EIM governance proposals. The Committee asked stakeholders to provide input on the list of criteria and, where appropriate, to consider these criteria in their written comments.

The criteria identified by the Committee were:

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,¹⁷ 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

¹⁷ These requirements are summarized above at page 3.

- Ensure that the EIM complies with other applicable legal requirements, including but not limited to environmental regulations and states' renewable energy goals.

The criteria appear to have been received favorably by stakeholders in that only a few comments were directed to the criteria and those comments generally suggested only refinements to the criteria. On the whole, those comments lead the Committee to believe the criteria should be phrased more generally, and that the issues that underlie the proposed refinements should be addressed in connection with the straw proposal itself. This is explained further below.

Some of the stakeholder comments offered proposals to define the responsibilities of the EIM body more precisely. Others propose that the requirement to “[p]rotect the integrity and reliability of current ISO operations” should be expanded to include protecting the integrity and reliability of the ISO and its partner EIM entities/BAAAs. Another comment recommends that the EIM governing body not focus on expansion as such, but more narrowly on ensuring the EIM is efficient and benefits its participants, which the commenter observed should lead to expansion.

Although these comments have merit, the Committee is not inclined to address them by adding further detail to the criteria it has developed. The comments on details of specific criteria have instead led the Committee to conclude that it may be more useful to articulate the criteria at a more general level that is sufficiently broad to encompass the concepts set forth above and address the underlying concerns raised with specific principles in the straw proposal itself, particularly in connection with the charter of the EIM governing body. Raising the level of generality in the criteria may also make them more useable in connection with evaluating potential governance proposals because it requires analysis of a smaller number of more fundamental principles.

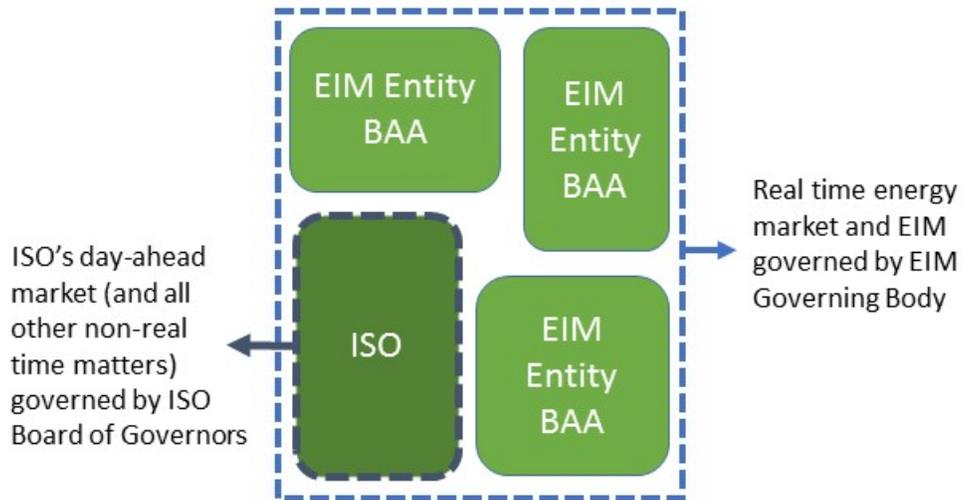
The comments of the American Wind Energy Association (AWEA), which stated general support for the criteria set forth in the issue paper, seemed to anticipate this need by framing those criteria in the form of the following six more general fundamental criteria:

- Ensuring that all EIM participants have the opportunity to benefit from the EIM over time;
- Controlling costs to ensure favorable cost-benefit ratios;
- Providing decision [makers] and stakeholders confidence that the EIM governing body is pursuing the best interests of all participants and the market as a whole, and is not unduly influenced by a single state, sub-region or stakeholder group;
- Providing a strong foundation for entrants to participate in the EIM, which will further provide benefits from increased diversity of resources across a broader geography;
- Allowing flexibility for the governing body to expand the scope and functionality of the market to provide additional services as requested by EIM entities; and
- Ensuring that the EIM complies with legal requirements and policy goals, including federal and state environmental regulations and renewable energy goals.

The Committee believes these reframed criteria may be both easier to use than the more detailed list in the issue paper and responsive to the concerns expressed by various commenters on certain more specific criteria.

Appendix B: Two Versions of Model 3

Autonomous entity governing entire ISO real time energy market and EIM for entire EIM footprint



Autonomous entity governing only EIM outside of California ISO BAA

