

**WESTERN RESOURCE ADVOCATES  
COMMENTS ON THE JANUARY 5, 2015, ISSUE PAPER  
“CONCEPTUAL MODELS FOR GOVERNING  
THE ENERGY IMBALANCE MARKET”**

**January 26, 2015**

On January 5, 2015, the EIM Transitional Committee issued the paper “Conceptual Models for Governing the Energy Imbalance Market.” The paper provides three governance approaches representing a range of autonomy of the EIM governing body from the California ISO Board of Governors. Each model represents a different trade-off between operational integrity, benefits and costs to participants, and incentives to participate. The Committee seeks input in three areas: (1) the criteria the Committee proposes to apply in developing a straw proposal, (2) the degree of autonomy the EIM governing body should have from the ISO, and (3) additional factors and questions specific to each governance model.

Western Resource Advocates (WRA) appreciates the opportunity to participate in this critical endeavor. We believe that the governance model developed by this Committee (if approved by the ISO Board), could strongly influence the degree of expansion of the EIM effort and how the Western Interconnection will ultimately be organized.

We support the formation of a single west-wide market that includes all Balancing Areas (BAs) in its footprint. A single EIM would maximize economic and environmental benefits, eliminate potential seams issues, significantly enhance visibility, and strengthen reliability. Therefore, we believe the goal of this Committee should be the development of a governance structure that will meet the needs of all Western entities. We offer the following comments with this goal as our guide.

**1. Evaluation Criteria/Tradeoffs**

The issue paper identifies four criteria for evaluating EIM governance proposals: operations, benefits and costs to participants, confidence in governance, and compliance with legal requirements and the Committee Charter.

- *Protecting the operational integrity and reliability of current ISO operations while providing for efficient interactions between the EIM and the ISO’s other market functions*

We agree that protecting the operational integrity and reliability of current ISO operations is essential. Providing efficient interactions between the EIM and the CAISO’s other markets is necessary.

- *Maintaining positive net benefits for market participants*

We agree. However, without specific analyses of different arrangements, the effect of any one governance model on net benefits (benefits minus costs) may be hard to assess. With a larger EIM footprint will come greater economic and reliability benefits as well as greater costs. If a single EIM can be formed that includes most BAs in its footprint, even at a substantially higher cost than an EIM whose footprint covers only portions of the Western Interconnection, this cost may be justified by the resulting benefits.

- *Providing confidence that the 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*

This criterion is critical to the geographic expansion of the EIM and its potential provision of other services, if desired by market participants.

- *Compliance with legal requirements and the Transitional Committee Charter.*

We agree that the ability to comply with legal requirements is essential. However, we believe the Committee's Charter should not limit the Committee's consideration of alternatives that meet all other criteria.

## **2. Degree of Autonomy From the ISO and Degree of Influence Over Market Rules**

In addition to providing criteria for evaluation, the criteria discussed above represent the tradeoffs between alternative governance structures. Governance structures with less autonomy from the CAISO and less control over market rules more clearly allow the CAISO to maintain operational integrity and control cost but may not engender confidence in the EIM's governance, thereby limiting expansion of the EIM, and vice versa. We address these tradeoffs in the following discussion.

### ***Advisory Committee to the California ISO Board of Governors***

The Advisory Committee model provides for the establishment of a committee to provide advisory input to the CAISO Board on EIM matters.<sup>1</sup> The CAISO Board would approve nominations to the committee and would "have the ultimate responsibility and accountability for decision making, after giving due consideration to the recommendations made by the EIM committee."<sup>2</sup>

The Advisory Committee model admirably achieves three of the four evaluation criteria. Because the Board of Governors would remain the ultimate authority, the Advisory Committee model would "protect the integrity and reliability of current ISO operations [while providing] for efficient interactions between the EIM and the ISO's other market functions."<sup>3</sup> No possibility of tariff conflicts and dual filings before FERC raised by the alternative governance models could occur. The CAISO's current business model proving low cost entry and costless could be

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<sup>1</sup> The issue paper states that the committee would be "established and empowered through contracts between the members and the ISO." What is contemplated here is unclear without additional background.

<sup>2</sup> Issue Paper: Conceptual Models for Governing the Energy Imbalance Market, January 5, 2015, p. 9

<sup>3</sup> Ibid., p. 5

maintained and upward cost pressure would be unlikely. Finally, the CAISO could meet its legal obligations as is done currently.

However, the Advisory Committee model appears to be a non-starter as a model for a region-wide EIM because it does not provide confidence in the EIM's governance. Many operating entities have indicated their unwillingness to participate in an EIM whose governance is under the ultimate authority of the CAISO Board of Governors. Because the CAISO is an entity created by California pursuant to its statutes, and because California statute provides that the Board of Governors be appointed by California's Governor subject to confirmation by the California Senate, many entities have voiced distrust of the Board's ability, legally or otherwise, to "pursue the best interest of the market as a whole"<sup>4</sup> over that of California entities, if the two were in conflict. For these reasons, WRA does not support the Transitional Committee's further consideration of an Advisory Committee.

In the event that California legislation allowed for a regionally-selected Board of Governors, independent of the California political structure and independent of financial interests, the Advisory Committee model could and should be considered given its benefits. In this case, WRA would also support consideration of stakeholder representatives similar to the current Transitional Committee.

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

The Delegated Authority model lies between the Advisory Committee model and the far end of the autonomy spectrum, the Autonomous Entity model, in its degree of autonomy from the CAISO and degree of influence over market rules. Under the Delegated Authority model, An EIM Board would be established through an amendment to the ISO Bylaws and approval by the CAISO Board of a detailed EIM Board Charter that would delegate to the EIM Board certain decision-making authority within a defined scope of responsibilities, including authority to approve tariff amendments for submission to FERC. The EIM Board would have primary authority over EIM matters and advisory authority over matters that might impact the EIM. The EIM Board would be supported by CAISO staff. Its members would initially be approved by the CAISO Board and then by the EIM Board thereafter.

This governance model appears to strike a good balance between the competing criteria. By providing the EIM Board primary authority over the portion of the CAISO tariff that addresses the EIM and advisory authority over other aspects of the tariff, the structure encourages coordination between the two Boards and should protect "the operational integrity and reliability of current ISO operations [while providing] for efficient interactions between the EIM and the ISO's other market functions"<sup>5</sup> and avoiding dueling filings at FERC. In the event that the defined duties and legal obligations of the two Boards provided insufficient structure and motivation to work through potential disagreements, it appears FERC would necessarily be the final decision maker.

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<sup>4</sup> Ibid., p. 5

<sup>5</sup> Ibid., p. 4

With the Delegated Authority model, the CAISO could continue its policy of low-cost entry and a costless exit, thereby controlling EIM costs. While staffing would need to increase to support the activities of the EIM Board with legal as well as administrative support, other upward cost pressures appear limited. This is significant since the current low-cost of receiving EIM services is a strong incentive to participate. In addition, the CAISO could meet its legal obligations as is done currently.

Whether the Delegated Authority model would generate sufficient confidence in EIM governance is less clear. With primary authority over the EIM portion of the tariff, and advisory authority over portions of the tariff that impact the EIM, the EIM Board would have the ability “to protect the best interest of the market as a whole.”<sup>6</sup> However, the EIM Board would still be part of ISO governance leaving it vulnerable to changed ISO or California policies. Therefore whether the Delegated Authority model will generate adequate confidence to overcome the higher cost of the Autonomous Entity model and facilitate EIM expansion is currently unknown. Hopefully this comment process will provide greater insight.

### ***Governance through an Autonomous Separate Entity with Authority over Market Rules***

The Autonomous Entity model provides for an EIM organization and governing board completely separate from the ISO, with its own staff, facilities and tariff. The organization would be governed by an independent Board selected by a nominating committee and approved by the EIM stakeholders. EIM optimization services would be provided by the CAISO through a negotiated contract. Whether this is practically feasible is currently in review. The approach would require extensive modifications to the CAISO’s current tariff and software. Close coordination between the CAISO and the EIM entity on an ongoing basis would be necessary to avoid conflicting tariff filings at FERC.

The sole advantage of the Autonomous Entity model over the Delegated Authority model appears to be in its potential appeal to operating entities who are otherwise reluctant to participate in an EIM whose governance is embedded within the CAISO’s. However, this potential advantage comes with higher costs and the risk of still higher costs to the EIM participants and the CAISO if the EIM rules and the CAISO’s other market operations diverged significantly enough.

This model does not directly “protect the integrity and reliability of current ISO operations or provide for efficient interactions between the EIM and the ISO’s other market functions.”<sup>7</sup> The model relies on CAISO staff to provide this protection through negotiation. Whether or not, the outcome would be significantly different from that achieved through the Delegated Authority model is unclear, but the processes would be different, and the risk that negotiation would not achieve the same outcomes is greater. And loss of integration comes with the potential that the CAISO would need to change the terms of service rendering participation less attractive.

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<sup>6</sup> Ibid., p. 5

<sup>7</sup> Ibid., p. 4

Costs would necessarily be higher in a separate entity. In addition to legal and administrative staff which we believe is necessary to support the EIM Board in both the Delegated Authority and Autonomous Entity models, the Autonomous Entity model would likely require facility space, tariff management costs, costs of contracting with the ISO, potential costs to current EIM participants to modify software, and ongoing negotiating costs.

### **3. Additional Factors and Questions Specific to Each Model**

Section III.E of the issue paper asks specific question directly pertaining to the three proposed governance structures. Some of our responses are embedded in the discussion above, but not all. We address the questions raised in Section III.E below.

#### ***Questions with regard to the Advisory Committee Model***

As explained above, WRA does not support the Advisory Committee model because we do not believe it provides sufficient confidence that the ISO's governance will "pursue the best interest of the market as a whole and not be unduly influenced by a single state or a narrow set of entities or states."<sup>8</sup> Adding some degree of authority over market rules or a stakeholder committee would not change our reasoning.

However, as we discussed previously, if California statute were to change such that the CAISO was governed by a regionally-selected Board of Governors, independent of financial interest and the California political structure, we would not oppose the Advisory Committee model and would encourage consideration of including stakeholders on an advisory committee.

#### ***Questions with regard to the Delegated Authority Model***

The paper asks whether the Delegated Authority model "offers enough autonomy to maximize the overall benefits of the EIM."<sup>9</sup>

By delegating authority over the EIM portion of the CAISO tariff to the EIM Board and providing it with a structured method of providing advisory input to the CAISO Board on aspects of the tariff that could impact the EIM, the model appears to offer enough autonomy and structure to maximize the overall benefits of the EIM footprint. However, as discussed above, the EIM Board would still be part of CAISO governance. This could leave it vulnerable to the unlikely possibility that the EIM's governance could be modified in the future as a result of changed ISO policy or California statute.

So the question is not the ability of this model to maximize the benefits of the EIM footprint but to maximize the benefits that could develop if the Western Interconnection were organized with a single EIM that included all BAs in its footprint. Whether this governance model has the ability to bring all western entities into a single EIM is unknown at this point. WRA hopes potential EIM participants respond favorably to Delegated Authority governance approach.

#### ***Questions with regard to the Autonomous Entity Model***

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<sup>8</sup> Ibid., p. 5

<sup>9</sup> Ibid., p. 13

The issue paper identifies a number of additional costs that would be incurred with the Autonomous Entity model and asks, “Would these types of costs, or other potential costs be worth incurring in order to have the EIM governed through an autonomous entity?”<sup>10</sup> We believe the answer is wholly dependent on whether establishing a separate EIM entity would result in a single EIM effort.

If the efforts of the Transitional Committee could be merged with the Northwest Power Pool (NWPP) Market Assessment and Coordination Committee (MC) Security Constrained Economic Dispatch (SCED) Initiative, establishing a separate entity may indeed be worth the additional cost. The potential economic and environmental benefits would grow with the larger market footprint, potential seams would be reduced, and reliability enhanced. Most significantly, this would greatly increase the likelihood that the Western Interconnection would be organized with but one EIM. However, if the NWPP MC utilities continue down a separate path such that at least two EIMS will operate in the Western Interconnection, then we do not see the benefit of the CAISO pursuing this model over the Delegated Authority model, and we see potential harm from the potential for multiple seams that could grow in significance over time.

The paper asks, “Would negotiation with the ISO over proposed market rule changes be sufficient to avoid the risk of dueling filings at FERC, or would additional steps be necessary?”<sup>11</sup> Only the Advisory Committee model provides safeguards against the risk of dueling filings. If irreconcilable disagreements arose under either the Delegated Authority model or the Autonomous Entity model, it appears FERC necessarily would be the decision maker.

The paper explains that a practical risk of granting control over the EIM market rules to a separate entity is the possibility that the “market rules could diverge to an unworkable degree from the ISO’s other markets” such that the ISO could no longer offer the service at the same terms that it does currently. The paper asks, “What is the significance of this risk...Does the model have additional value that would justify the risk.”<sup>12</sup>

It appears this is a risk of the Delegated Authority model as well as the Autonomous Entity model, although the risk may be less with the Delegated Authority model. Whether this risk is significant appears to be as much a function of personalities as it is of structures. Whether this is a risk worth taking depends on the probability it will result in one EIM. If the probability is high, then, yes, it has enough additional value to justify the risk. If it is low, then, probably not.

#### **4. Conclusion and Recommendation**

WRA believes the Transitional Committee is seeking the right information from potential market participants. Of the two competing incentives, low cost or autonomous governance, which is more important? We hope this process assists the Committee in discovering a clear answer to guide the development of the straw proposal.

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<sup>10</sup> Ibid., p. 14

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

WRA has two specific recommendations, the first regarding the autonomy of the EIM governing body from the CAISO Board and degree of influence over the market rules, the second specific to the Delegated Authority model.

### ***Recommendation Regarding Autonomy of the EIM Governing Body from the CAISO***

WRA does not fully understand how the NWPP MC Initiative may impact/interact with the CAISO EIM or the current Transitional Committee governance development process and/or whether an opportunity to develop one EIM is feasible.<sup>13</sup>

The NWPP MC Initiative utilities have identified the operation of a SCED as the best solution to address a number of operational issues facing their region and are on the path to form an EIM to be overseen through a separate corporation that will contract for services. The utilities issued an RFP for a market operator towards the end of last year. It is our understanding that the CAISO intended to respond.

It would seem that should the CAISO win the RFP, many of the legal and practical issues raised in this paper regarding the Autonomous Entity are in play, at least for the Northwest entities. Further, operating two EIMs separately makes little operational sense, particularly given the entwining of PacifiCorp's operations with other NWPP utilities. In any case, greater efficiency, visibility, and reliability could be achieved with one EIM and should be the goal.

If the CAISO did indeed submit a bid to operate a SCED for the NWPP EIM and wins the bid, WRA recommends the Transitional Committee pursue the Autonomous Entity model, unless, after consideration of the issue paper, the Northwest utilities express a preference for the Delegated Authority model. In that case, WRA recommends the Committee develop a Delegated Authority straw proposal.

If it is clearly known that the MC Initiative utilities will be moving forward with an EIM separate from the CAISO, WRA supports the Committee pursuing the development of Delegated Authority straw proposal.

### ***Recommendations Specific to the Delegated Authority Model***

With regard to the Delegated Authority model, WRA has the following comments and recommendations.

- In order to have sufficient autonomy, we believe the EIM Board should have its own dedicated legal as well as administrative staff;
- The confirmation of members to the EIM Board by the EIM Board could result in a form of cronyism, with the EIM Board becoming a self-perpetuating entity. WRA would prefer some sort of regional election process of EIM identified stakeholders. If the Committee develops a Delegated Authority straw proposal, we recommend the Committee consider a voting procedure for approving members to the EIM Board.

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<sup>13</sup> We recognize that the Transitional Committee conducted many hours of its efforts in executive session, and, so, for it, the answers to these questions may be clear.

- Provide a stakeholder process for the development of the detailed EIM Board Charter and Bylaw Amendment.