



## **EIM Transitional Committee**

*Proposal*

# **Long-Term Governance of the Energy Imbalance Market**

**As Adopted August 19, 2015**

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## **EIM Transitional Committee – Final Proposal**

### **A. Overview of the Proposal**

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

- Be comprised of five independent (non-stakeholder) members who serve three-year terms that are staggered from the outset;
- Be charged with promoting the success of the EIM;
- Have certain delegated authority over market rules that would not exist but for the EIM, including rules that are unique to or different for EIM balancing authority areas, as opposed to rules that apply generally to the entire real-time market. All proposals to change such EIM-specific market rules must be approved by the EIM governing body. These proposed changes also must be approved by the ISO Board before they can be filed with FERC, and would be designated for the ISO Board's consent agenda;
- 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;
- Include members selected by a nominating committee of stakeholders from key industry sectors within the EIM footprint and the ISO's balancing authority area, and through a process designed to ensure that each nominee is a consensus choice of these stakeholder representatives; potential nominees would be identified after a nationwide search by an executive recruiting firm, with the nominating committee assigned to ensure that the body as a whole is diverse, including geographically and in terms of expertise; and
- Receive compensation for their service.

In addition, the ISO would establish a body of state regulators that would serve as a vehicle to inform the regulators about the EIM, and also for the regulators to express common positions they have, either in the ISO stakeholder process or to the EIM governing body.

Finally, the Committee proposes the creation of the Regional Issues Forum that would supplement (not displace) the ISO stakeholder process, and provide a vehicle for representation of neighboring balancing authority areas.

The ISO bylaws would be amended to implement this proposal.

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

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principle, which would be articulated in this charter, is that the EIM governing body's duty is to promote, protect and expand the success of the EIM as a whole and consider the interests of all participants in the ISO's real-time market, not just those in EIM balancing authority areas. The charter would further define the responsibilities and goals of the EIM governing body, specifying 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 ISO market, including EIM, its participants, and consumers against the exercise of market-power and otherwise further the rendition 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 would have the same legal duties as members of the ISO Board, to be established through agreements with the ISO. They would be selected through the process described below, and would serve three-year terms that are staggered from the outset, as described in Section C, below, p. 7. They would be limited to three full terms of three years – partial terms of less than three years would not count against this limit.

Members would be compensated commensurate with their duties, at a rate that would attract and retain talented and dedicated members, generally consistent with the compensation of the ISO Board. The nominating committee should recommend an appropriate compensation rate and structure to the ISO Board when it submits the initial slate. The ISO Board should closely monitor the actual work required from members of the EIM governing body and make any appropriate adjustments to ensure that the compensation is commensurate and reasonable in light of that workload and other relevant factors.

As a part of the ISO, the EIM governing body would follow the same procedures as the ISO Board, acting through open meetings and subject to other ISO policies that are generally applicable to board committees. It would rely on the existing process for obtaining stakeholder input on policy initiatives, though the Transitional Committee recommends that the ISO flag initiatives that could implicate the EIM, so that affected stakeholders can identify them more easily, and consider holding in person meetings about EIM-specific initiatives in locations that would be convenient for affected EIM participants. The EIM governing body would receive support from all ISO staff,<sup>1</sup> including one dedicated full-time ISO staff member who would be

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<sup>1</sup> Staff includes the independent market monitor. Like the ISO Board, the EIM governing body should have the benefit of its advice on market performance and design. In addition, assuming that members of the EIM governing body have agreed to protect confidential information, we recommend that the ISO Board consider sharing with the EIM governing body any information that it has received from the independent market monitor about any referrals to FERC of potential market misconduct involving the EIM.

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responsible to serve the needs of the EIM governing body and ensure that it receives needed support from other 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. Five stakeholder sectors would be represented by one person each from:

- EIM Entities (as defined in the ISO tariff);
- Participating Transmission Owners (as identified in the ISO's Transmission Control Agreement);
- Suppliers and marketers of generation (including financial marketers), as well as energy service providers, operating within an EIM footprint (including the ISO's balancing authority area);
- Publicly-owned utilities located within an EIM footprint (including the ISO's balancing authority area); and
- The body of state regulators.

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 also include non-voting members. 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 five stakeholder sectors.

The non-voting advisory members of the nominating committee would include the following:

- One member of the EIM Transitional Committee (for the initial establishment of the EIM governing body, but not afterwards);
- One member of the EIM governing body (after it has been established);
- One member of the ISO Board; and
- One representative of public interest and consumer advocate groups.<sup>2</sup>

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<sup>2</sup> The representative of this sector would be selected through a sector-based selection process similar to that used for the four direct participant sectors. This sector would open to all formally organized groups with an interest and active involvement in energy issues within the footprint of the ISO and EIM balancing authority areas. This sector includes, among others, consumer and environmental groups that focus on such issues.

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Although these advisory 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.

The nominating committee would 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. Candidates with background in public interest organizations would qualify, assuming they otherwise have the requisite knowledge and skills. All candidates should have senior executive-level experience in an appropriate field, and a proven reputation for excellence.

The candidates must be independent of entities that participate in the ISO market, including EIM, or that advocate positions in ISO stakeholder processes. This means that, among other things, candidates could not hold financial interests in, or receive compensation from, market participants, with the exception of retirees who receive a defined-benefit pension from a market participant.

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). The nominating committee would then carefully review and interview candidates to develop a consensus slate of the most qualified candidate(s) for the available slot(s).

The nominating committee should select the best candidates available in the United States. Optimally, the committee's choices would ensure that the overall composition of the EIM governing body reflects diversity of expertise, so that it is not dominated by members who specialize in one subject area, such as operations or utility regulation, as well as geographic diversity. No one state or sub-region in the West should have excessive representation – meaning members whose place of residence or work history tends to associate them with a particular Western state. (As members, of course, these individuals must be independent of both market participants and state or sub-regional interests.) Nominations should attempt to ensure that expertise in western electric systems and markets is present on the governing body. And, if the nominating committee can identify a qualified candidate with a Western background who has as high a level of overall experience and knowledge as the other candidates, all other factors being equal, the Committee should prefer the candidate with a Western background.

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 Board will not be allowed to confirm only some of the nominees from the slate developed by consensus of the nominating committee, as the slate is likely to be the product of collaboration and compromise.

The requirement that the initial slate must be approved by the 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

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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 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.

Following approval of an initial slate, the five new members would be assigned by chance to terms of differing lengths so that terms are staggered going forward. One member would serve a term of one year, two would serve terms of two years, and two would serve terms of three years. After the EIM governing body is initially filled, all future terms for renewed or new members would be three years.

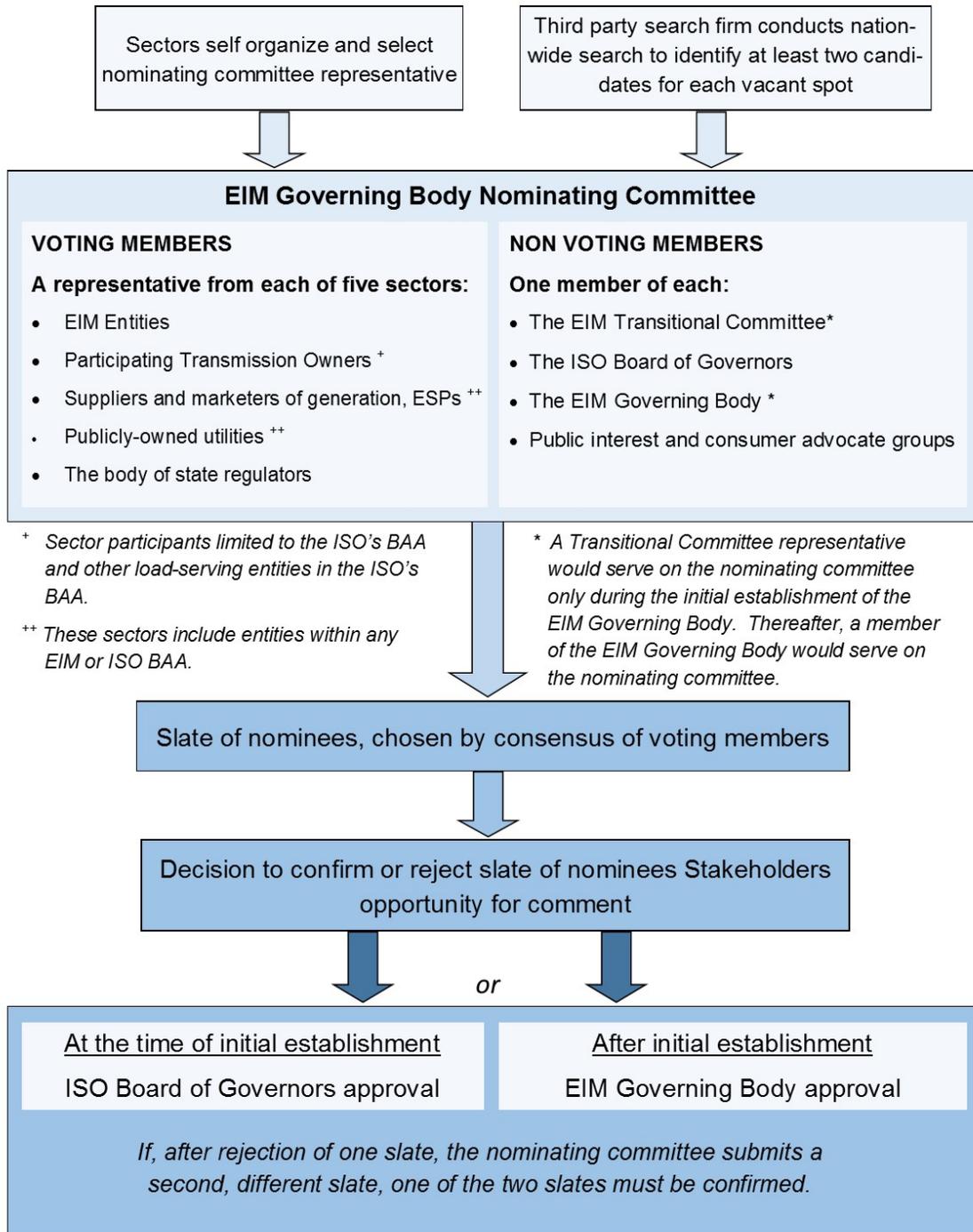
For filling later vacancies, the consensus candidate(s) would be submitted to the EIM governing body, rather than the ISO Board, for a similar "up or down" vote on approval. At both the initial and vacancy stages, the approving body would not have the authority to appoint anyone other than the slate 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. If it occurred, however, and the nominating committee submits a second, different, slate of candidates to the ISO Board or, later, to the EIM governing body, the approving body would be required to confirm one of the two slates submitted. This mechanism is intended to avoid a prolonged deadlock.

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 ISO bylaws would include more specific provisions governing such removal.

The overall process for selecting members is depicted below.

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## EIM Governing Body Nominating and Selection Process



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### D. Scope of Authority

The EIM governing body would have a role in any changes to rules that affect the EIM – 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 EIM balancing authority areas, or differently to EIM balancing authority areas than to other areas within the ISO’s real-time market, and
- (2) tariff rules that apply to participation in the ISO’s entire 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 initiative falls in. For initiatives in the first category, the EIM governing body would serve as the primary decision-maker. For initiatives in the second category, it would play a key advisory role. For initiatives that include elements of both, the role of the EIM governing body would depend on the primary reason for the initiative – was it driven primarily by EIM or by other factors? All of these proposed rules are explained in more detail below.

The ISO will need to develop a guidance document explaining how it will apply these categories to a set of new initiatives and assign them to the governing bodies, as explained below at page 24. This document should help clarify the principles involved and prevent future disagreement over which initiatives should be delegated, as some stakeholders have requested. For present purposes, some examples from currently pending initiatives may help illustrate how it would work after the EIM governing body is established.

Market rules that likely<sup>3</sup> would fall within the first category, because they apply uniquely or differently to EIM areas, include:

- Access charge and rate design for EIM transfers (reciprocity);
- 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, because they apply generally to the real-time market, include:

- Real-time market timelines and optimization, such as hour-ahead scheduling process, 15-minute market or real-time dispatch;

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<sup>3</sup> This list is illustrative, as it appears many of these initiatives will be concluded before the EIM governing body is established.

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- Settlement calculations for the entire 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 process for approving tariff amendments 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 entire 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 Board's involvement should be limited in most cases.

### ***Primary Authority***

For initiatives that propose only changes to market rules that would not exist but for the EIM, the EIM governing body would have the primary authority for considering and approving the proposed tariff amendment, to the extent it involves a change in policy such that ISO Board approval would be required. The Transitional Committee expects that, in most such cases, the EIM governing body would be the only decisional body to engage on the merits of the proposed change. 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 Board. The matter would require no further action unless a majority of the Board votes to further consider the matter (instead of simply approving the consent agenda). 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.<sup>4</sup>

If ISO staff does not receive approval for a proposed rule change from the EIM governing body, or if it does but the 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 consideration by 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 Board, presumably through its consent agenda. Approval from both bodies would be required for the proposal to go forward.

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<sup>4</sup> To be clear, there should be no room for the ISO Board to exercise a "pocket veto" over a proposal approved by the EIM governing body by removing it from the consent agenda and simply declining to vote. The EIM governing body's primary authority should be structured in a way that will require the ISO Board to either approve the matter on the consent agenda or promptly take affirmative steps to address any aspect of a policy that the EIM governing body has approved with which the Board may disagree.

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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 sole exception to this would be a narrow provision to deal with "exigent circumstances" requiring expedited action that could not be accomplished with the two-body review process. In that context, the ISO staff, in emergency circumstances, after receiving approval from the EIM governing body only, 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.

This 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, and to provide additional assurance to market participants that EIM-specific market rules will not change without both a good reason and widespread support.

### ***Formal Advisory Role***

For initiatives that propose only modifications to generally applicable rules of the ISO's real-time market or rules that govern 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 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 Board on any potential changes to the ISO's generic real-time market rules or other market rules that the EIM governing body believes will have an important impact on the EIM. As discussed below, the EIM governing body's charter would focus on promoting the success of the EIM for the benefit of all ISO market participants. 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.

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### ***Hybrid Initiatives***

Some policy initiatives propose to change both generally applicable rules of the real-time market and also a component that is unique and specific to EIM. One example is the still-pending initiative about administrative pricing rules, which has been approved by the ISO Board but has not yet been filed with FERC. In the very unusual case where prices are unavailable for both the 15- and 5- minute market, the ISO needed to determine what price would be used to settle the real-time market. As a policy resolution, it was decided that, in the ISO's balancing authority area, the day-ahead price for the relevant node would apply. However, a different rule is necessary for other areas of the real-time market (i.e., the EIM), which do not participate in the day-ahead market. Although the issue is the same from a design perspective, a separate solution is necessary for EIM.

For such “hybrid” initiatives that have both components that fall within the primary authority of the EIM governing body, and other components that fall within its advisory role, the Transitional Committee proposes to ensure that the EIM governing body will have a role in approval, thereby expanding its authority. The precise role of the EIM governing body will depend on the primary driver for the initiative.

To illustrate, some hybrid initiatives will be driven by EIM-specific factors. A hypothetical example would be a proposal enabling EIM Entities to purchase ancillary services in the real-time market to meet the needs of their balancing authority area. While such an initiative would include both changes to the general rules of the real-time market about procuring ancillary services and EIM-specific rule changes, the driving factor – if such an initiative were proposed – would be to add a service for EIM market participants in particular. In contrast, the primary driver for the administrative pricing rules initiative described above is not the EIM. Rather, it is to ensure that prices are available in the event of a systems failure.

The Transitional Committee proposes that when the primary driver of an initiative is EIM or an EIM-specific factor, the complete policy initiative would first go to the EIM governing body for approval. Then the ISO Board would consider the entirety of the proposal on its merits – meaning not through its consent agenda. In other words, both bodies would need to approve the initiative before staff could file the proposed amendment with FERC.

On the other hand, when a hybrid initiative is primarily driven by factors other than EIM, the Transitional Committee proposes that staff should first take those aspects of the initiative that are EIM-specific to the EIM governing body for approval. Then, assuming those parts are approved, staff would present the entire proposal to the ISO Board. The Board would be asked to approve the entirety of the proposal and the matter would not be on the consent agenda. However, the Board would not be able to change the EIM-specific aspect of the proposal in any way. If the Board does not approve the policy and requires staff to rework it in some manner, the initiative would need to go back to the EIM governing body for approval if any aspect of the EIM-specific portion of the proposal was changed.

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The rules governing “hybrid” tariff amendments would also have an exception for “exigent circumstances” requiring expedited action that could not be accomplished with the two-body review process. In those circumstances, ISO staff could, with approval from the ISO Board only, 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.

### *Summary of Classifications*

To recap, any given policy initiative could be classified in four possible ways:

- Category 1 (Initiative Falls Entirely within EIM Governing Body’s Primary Authority): For any policy initiatives that involve market rules changes that fall *entirely* in the EIM governing body’s primary authority, the matter would go to the EIM governing body for approval, and then to the consent agenda of the ISO Board.
- Category 2 (Initiative Falls Entirely within EIM Governing Body’s Advisory Authority): For any policy initiatives that involve market rules changes that fall *entirely* in the advisory authority of the EIM governing body, the matter goes to the ISO Board for approval and the EIM governing body has an option to provide advisory input.
- Category 3 (Hybrid Where Primary Driver For Initiative is EIM-Specific): When the primary driver for the initiative is EIM and the policy initiative is a hybrid in that it has *both* a component that would fall within the EIM governing body’s primary authority and a component that would fall within its advisory authority, the *whole policy initiative* would first go to the EIM governing body for approval, and then the ISO Board would consider the entirety of the proposal on a non-consent-agenda basis. In other words, both bodies would need to approve the initiative in its entirety before staff could proceed with a tariff amendment filing.
- Category 4 (Hybrid Where Primary Driver For Initiative is *not* EIM-Specific): When the primary driver for the initiative is *not* EIM and the policy initiative is a hybrid in that it has *both* a component that would fall within the EIM governing body’s primary authority and a component that would fall within its advisory authority, *the EIM components of the initiative* would first go to the EIM governing body for approval. Then, the ISO Board would consider the entirety of the proposal on a non-consent-agenda basis. In other words, before staff could proceed with a filing, the EIM governing body would need to have approved the EIM components and the ISO Board would need to have approved the entirety of the initiative.

### *Documenting the Delegation of Authority*

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. The revised bylaws must contain at least provisions that:

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- Establish the EIM governing body, their terms of the office and a general explanation of how members will be selected or, potentially, removed;
- Define the general scope of authority of the EIM governing body; and
- Document the basic approval structure contemplated for initiatives that are wholly or partially within the EIM governing body’s primary authority.

The Committee expects that the bylaws would define the scope of authority at a high level appropriate for a governing document, through the general principles explained in this section. The bylaws should allow the delegation of authority to be revoked only with approval from a majority of both bodies, or a supermajority of either body (two-thirds of the members then in office).

ISO staff should prepare a guidance document that explains how these scoping rules would be applied to a set of foreseeable future policy initiatives, as noted above on page 19. The document should be subject to stakeholder review and comment before the EIM governing body is seated, and approval by the ISO Board. This approach, which is consistent with how policies and procedures governing the Board are maintained and developed, ensures that there are clearly defined and well-documented rules without prescribing in the bylaws operational details that may require revision over time.

The Transitional Committee will continue to participate in the ISO’s process to ensure that the bylaw amendments and any other necessary changes are implemented consistent with the Committee’s final governance proposal. Beyond that, the Committee will leave the details of the bylaw amendments, including the mechanism for obtaining stakeholder input on proposed changes, to the ISO Board.

### **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 by itself, with the possibility that competing proposals could be submitted to FERC. The governance model envisioned by the Committee would preclude the ISO from filing permanent rule changes in an area subject to the EIM governing body’s primary authority without its approval. 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 areas within the latter body’s primary authority.

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Situations in which a change approved by the EIM governing body is not approved through the consent agenda of the Board would occur, if at all, only very rarely. Indeed, given the importance of fostering broad confidence and support for EIM, the Board would have a strong incentive to apply such deference as its normal course of business. The Transitional Committee believes the delineation of relative authorities between the Board and EIM governing body is crucial. However, the Transitional Committee firmly believes that it should provide this at a general level, with a guidance document and a process for determining how to classify initiatives. Many of the interactions between the EIM and the ISO's broader markets are highly technical, or involve complex policy questions that go beyond governance issues that are the primary charge of the Transitional Committee. Therefore, the Transitional Committee 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.

The proposed approval structure for initiatives that are within the EIM governing body's primary authority, either wholly or partially, 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 EIM market, 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, and vice-versa. Communications between these two bodies in both directions should facilitate better collaboration.

The Transitional Committee does believe, however, that it is appropriate for some process to be established upfront to resolve any disputes that may arise with respect to which entity has primary authority to examine new or changed market rules that were not part of the original delineation of authorities. To not do so would leave open the possibility of continuing uncertainty as to which body has primary authority and thus would possess the responsibility to authorize relevant Section 205 filings. The Transitional Committee outlines the following process for determining with finality how changed market rules will be categorized and any disputes resolved:

- When a market rule change is contemplated, ISO staff will inform stakeholders as early as possible, and in any event no later than the final proposal for stakeholder comment, whether it believes the change falls under the primary authority of the ISO Board or EIM governing body, or some combination thereof.<sup>5</sup> After receiving stakeholder comments,

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<sup>5</sup> While ISO staff should have additional time to identify which governing body should have primary authority over a given initiative, it should nevertheless continue to flag policy initiatives that could affect EIM as early as possible.

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staff would send public notice to the chairs of both bodies about its determination of which body will have primary authority, or how primary authority will be divided, including a summary of any stakeholder comment on the issue.

- ISO staff would proceed consistent with its notification unless the chair of either body objects or seeks additional information.
- If, after they receive any information requested, the chair of either the Board or EIM governing body objects to the proposed classification, dispute resolution will commence immediately and consist of the following steps. First, the dispute resolution will be formally noticed. Second, stakeholders will be allowed an opportunity to comment so as to fully inform the dispute resolution process. Finally, the Board and EIM governing body will meet as a “committee of the whole” to discuss and resolve the matter. This meeting could be held via telephone conference. Final resolution will be made by a vote of the combined members of both governing bodies. If there is a tie for any reason, the Chair of the Board shall break the tie.

This dispute resolution process will be triggered only when there is a division of opinion on proper classification. The Transitional Committee expects these instances to occur very rarely, if at all.

### **F. Body of State Regulators**

The Committee recommends that the ISO Board establish a body of regulators from the states in which the EIM operates that would include one representative from each state public utilities commission in which load-serving utilities participate in EIM (including the ISO real-time market).<sup>6</sup> These regulators would have a working relationship with the EIM governing body, which will help improve mutual understanding and collaboration. As the market grows, the perspective of state regulators will be especially valuable in exploring opportunities to offer new services over a more diverse footprint in ways that are in the public interest.

The federal government has jurisdiction over the wholesale electricity markets in the United States. However, state regulators have authority over a wide range of issues, including retail rates and numerous policies that are directly affected by the operation of EIM and other wholesale markets. Further, state regulators are responsible for overseeing whether an investor-owned public utility is being prudently operated and managed.

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An EIM “flag” on certain policy initiatives, which is distinct from the question of authority to approve the initiative, will be important to help new stakeholders identify the initiatives that may affect their interests.

<sup>6</sup> The Transitional Committee will leave it to each state commission to decide how it will select its own representative. Commissions that regulate new EIM participants would be eligible to designate a representative upon the execution an EIM Implementation Agreement.

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Examples of such committees in other regional organized markets are numerous.<sup>7</sup> 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 in transmission cost allocation, and meets almost weekly.

The immediate purpose of the regulators’ body 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. Instead, the primary functions of the regulators’ body would be to select a voting member of the nominating committee and to help regulators learn about the EIM, the EIM governing body and related ISO developments that may be relevant to their jurisdictional responsibilities. The regulators’ body should have periodic meetings to inform representatives about the EIM and ISO markets generally, with a focus on upcoming EIM issues in which they may have an interest.

The establishment of the regulators’ body will also enable regulators to provide advice and input on issues of interest. Absent such a body and accompanying educational support from ISO staff, the Transitional Committee is concerned that *ad hoc* efforts to involve individual states’ regulators in the ISO stakeholder process regarding EIM developments would fall short of the full range of participation that would be useful for a regional marketplace. When regulators are interested in a given issue, this body would offer a vehicle through which they could express a common position in the ISO stakeholder process on EIM issues. Or, depending on the issue, the regulators might express an opinion directly to the EIM governing body.

We referred above to the “immediate” purpose of the regulators’ body because the Committee expects that the regulators themselves also will have views on their role and relationship with the ISO. Expression of diverse views between the regulators’ body and the EIM governing body will enhance understanding of issues and improve ties across and between the regions. The purpose of the Transitional Committee’s work is to ensure that a commitment to support such a body of regulators and to convene regular meetings becomes part of the proposal that the ISO Board approves. The Committee recommends this initial structure as a cost-effective way to orient regulators to the EIM, and encourages the regulators to develop their role and their processes with assistance from ISO staff. Over time, the regulators themselves will have to decide how to charter and where to house the body. If the regulators seek enhancements from or within the ISO, they may explore those issues directly with the ISO Board.

The Transitional Committee envisions that the ISO would provide assistance and support, as appropriate and necessary, to help this body of regulators perform 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. Forums already exist in the Western Interconnection that might be willing to host meetings of the state regulators’ body in

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<sup>7</sup> 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 that was prepared for the Transitional Committee.

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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. WIEB, through the Western Interconnection Reliability Advisory Body, already has a statutory role in advising WECC, NERC, and FERC about regional reliability issues. Housing within that organization a body that advises on regional market design may be logical, although, again, the decision on the ultimate constitution of the regulators' body is one to be made by the regulators themselves. In any case, for the time being, holding meetings side-by-side with these organizations could maximize participation and allow for broader participation of regulators, while minimizing costs.

The Committee anticipates that the costs of supporting the body of regulators, which it expects would be minimal, would be allocated in the same manner as all other costs of the EIM. See the discussion in the Transitional Committee's Draft Final Proposal, top of page 6 (explaining why the costs of the EIM governing body should be allocated in the same way).

### **G. Regional Issues Forum**

The Transitional Committee recommends the creation of a Regional Issues Forum for stakeholders. The Committee does not wish to displace the ISO's existing stakeholder process, which it strongly supports, but merely augment it. The role of the liaisons will be to organize the periodic forums and facilitate input and participation from their respective sectors on the topics and content of the forums, in order to ensure a diversity of viewpoints is heard.

Liaisons of this Regional Issues Forum would be self-selected by each sector in a manner similar to how sectors have selected representatives to evaluate ISO Board candidates, and how they selected nominees to the Transitional Committee. The following sectors select two liaisons so as to not overly limit participation and to better reflect diverse interests:

- Transmission-owning utilities: These entities will be within the EIM footprint, and could be EIM Entities or Participating Transmission Owners;
- Independent generators and marketers: Independent generators must be located within the EIM footprint and marketers must be transacting within the EIM footprints;
- Publicly-owned utilities: This sector will be made up of publicly-owned utilities (including rural cooperatives), and any federal or state entities, that are within the EIM footprint. Examples of state and federal entities include power marketing administrations (BPA and WAPA) and state agencies (the California Department of Water Resources, Colorado River Commission and others);
- Public interest groups and consumer advocates: This sector will include organizations that represent end-use customers; and
- Neighboring adjacent balancing authority areas: This sector will include any balancing authority area whether public or investor owned, including any non-participating power marketing administration that interconnects with the EIM footprint. The Transitional Committee considered broadening this sector further given the regional impacts of the EIM, but could not think of a concrete and clear

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empirical test that would lead to anything less than inclusion of any balancing authority areas within the Western Interconnection, which seems overly broad.

Forums would be held three times annually to discuss broad issues related to EIM. The meetings and materials would be available to the public, so that other stakeholders would be permitted to attend and participate. Generally speaking, the Regional Issues Forum would not take up for consideration individual policy issues that are currently part of an ongoing stakeholder process, but rather would address broader issues of EIM operations. From time to time the Forum may want to share particular thoughts on timely issues regarding EIM and relevant topics, or address topics suggested by the ISO, and in doing so may produce documents or opinions for the benefit of the EIM governing body and the ISO. The ISO staff may choose to respond to these products in writing. Beyond these basic requirements, the Regional Issues Forum would be responsible for establishing its own procedures and methods of operation.

The Regional Issues Forum should not require the ISO to make significant expenditures. Any reports or other written work product would be generated by the liaisons themselves, as opposed to ISO staff. And in contrast to the proposed body of regulators, liaisons of the Regional Issues Forum would not receive travel cost reimbursement. They would rely on ISO staff support mainly for coordination and logistics, including arranging meetings, should they choose to hold them at the ISO's Iron Point facility.

After 18 months (4-5 meetings), the efficacy and role of the Regional Issues Forum will be reconsidered through a stakeholder process within the broader EIM stakeholder processes, reflecting not only its performance but any changed governance structures and regional market development as a whole.

### **H. Commitment to Re-evaluate Governance**

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; while the ISO should not wait too long to start the process after the need arises, it would be inefficient to start before then. 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 EIM governing body initiate a review of EIM governance no later than five years from approval of this proposal. Although the EIM governing body should be given discretion to decide whether such conditions have come to pass before five years have elapsed, the Transitional Committee recommends that the EIM governing body strongly consider initiating such a review if:

- 1) A relatively large number of EIM Entities have entered the market, regardless of the size of those entities (the Committee contemplated as a possibility seven entities); or

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- 2) A similar imbalance energy market elsewhere in the western interconnection has committed to join or merge into the EIM.