

# Memorandum

**To:** ISO Board of Governors

**From:** Energy Imbalance Market Transitional Committee

**Date:** September 11, 2015

**Re:** Decision on proposal for long-term governance structure of EIM

---

***This memorandum requires Board action.***

## EXECUTIVE SUMMARY

As part of its proposal to offer energy imbalance market services to other balancing authority areas in the West, the ISO committed to establish an energy imbalance market (EIM) governance structure to enhance the ability of regional stakeholders to have input into EIM market rules. To that end, in May 2014, the ISO Board of Governors appointed the EIM Transitional Committee, a 13-member advisory committee that includes representatives of market participants, state regulators and public interest groups.<sup>1</sup> The Board chartered the committee to develop, through a public stakeholder process, a proposed long-term structure for EIM governance. Over the past year, the Transitional Committee has been working toward this goal. Its EIM governance proposal is set forth in Attachment A to this memorandum.

The Committee's decisional process has been grounded within certain fundamental considerations. On the one hand, extending governance beyond California political appointees is necessary to give EIM stakeholders assurances as to the ISO's responsiveness to all interests. On the other hand, the imbalance market is an inextricable part of the ISO's pre-existing real-time market. Its existence within the ISO's other market systems is the key to EIM's value proposition – a low cost to participate and no exit fee. This arrangement necessitates that the EIM governance framework must fit within the existing ISO governance structure.

The Committee developed a proposal that is consistent with its charter, and that strikes an appropriate balance between these fundamental considerations. It proposes a governing body

---

<sup>1</sup> Initially, the Transitional Committee was seated with 11 members, and expanded as new entities signed implementation agreements. Current members of the Transitional Committee are: the Chair, Rebecca Wagner (Public Utilities Commission of Nevada), Brad Albert (Arizona Public Service Corp.), 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), David Mills (Puget Sound Energy), Mark Smith (Calpine Corporation), Walter Spansel (NV Energy), Robert Weisenmiller (California Energy Commission), and Carl Zichella (Natural Resources Defense Council).

that will work closely with the ISO Board of Governors and share authority over EIM market rules. The five members of this new body, who will be financially independent from market participants, will be selected by representatives of all EIM stakeholders. The Committee's proposal also recommends the establishment of a body for state regulators in states that participate in the real-time market (including EIM), and a periodic forum for discussion of regional issues.

These changes would be implemented through amendments to the ISO corporate bylaws and adoption of a charter for the EIM governing body. Both of these documents will come to the Board for decision at a future meeting.

The Committee's final proposal benefitted in its development from a great deal of stakeholder input and, as a result, has widespread support from stakeholders within the balancing authority areas of the ISO and entities that have committed to join EIM.

Accordingly, the EIM Transitional Committee proposes the following motion:

***Moved, that the ISO Board of Governors approves the plan for a long-term EIM governance structure, as recommended by the EIM Transitional Committee, to establish a new five-member body that will exercise defined delegated authority over certain market rule changes, as well as a body of state utility regulators and forum for regional stakeholders to meet periodically to discuss issues relevant to EIM as detailed in Attachment A to the memorandum dated September 11, 2015.***

***Moved, that the ISO Board of Governors directs Management to implement the EIM Transitional Committee's proposed EIM governance structure.***

## **BACKGROUND ABOUT DEVELOPMENT OF THE PROPOSAL**

The Transitional Committee's charter grants the Committee wide discretion to explore potential governance arrangements, while establishing several broad guidelines and parameters to be factored into the design. The charter specifies that the proposed governance structure should:

- Consist of members that are independent from EIM market participants to enable the EIM body to best exercise authority over EIM rules;
- Provide a meaningful and clear role for the EIM governing body;
- Remain nimble, to allow for efficient decision-making;
- Avoid the potential for dueling filings at FERC, and include a mechanism to resolve any disagreements between the EIM governance body and the ISO Board; and
- Allow for efficient and meaningful market oversight.

The Transitional Committee has met 14 times beginning in July 2014. It received briefings from ISO staff about legal and regulatory background, as well as the governance arrangements of other system operators with regional markets. In addition, the Committee

divided itself at different times into various working groups, which enabled smaller groups of Committee members to work on discrete topics related to the governance proposal and the stakeholder process.

In January 2015, the Committee posted an issue paper that described three models representing potential relationships between the EIM governing body and the ISO's existing governance structure. Following stakeholder comment, the Committee proceeded to develop its proposal through three iterations, including a straw proposal posted March 19, and a draft final proposal posted June 22. The Committee received at least 23 sets of written comments on each of these three papers. A chart detailing all stakeholder activities and input is included as Attachment B.

## **SUMMARY OF PROPOSAL**

The Transitional Committee adopted its final proposal on August 25 (Attachment A). It proposes that the ISO establish a new body with five independent members who are selected by stakeholders in the ISO's entire real-time market, including the balancing authority areas of EIM Entities. The EIM governing body will exercise certain delegated authority over market rules, as explained below, following the same procedures as the ISO Board of Governors, including open meetings. Members will be compensated by the ISO and supported by ISO staff, with one full-time staff member dedicated to ensuring the needs of the EIM governing body are met.

### ***Selection process***

Candidates for the EIM governing body will be selected by a nominating committee. Nominees must be approved in public session by the ISO Board of Governors (for the initial slate of nominees) or the EIM governing body itself (for subsequent slates).

The nominating committee will consist of five voting members – one representative each from the following sectors:

- EIM Entities;
- Participating Transmission Owners;
- Suppliers and marketers of generation, including load-serving entities that do not own transmission assets;
- Publicly-owned utilities; and
- State regulators.

The representatives of these sectors will be chosen through a process controlled by the members of each sector, similar to the processes used to recommend candidates for the Transitional Committee and to select representatives to the Nominee Review Committee for the Board of Governors. The nominating committee will also include three non-voting advisory members, who will otherwise participate fully in the vetting process and be expected to share their views with the voting members. These advisory members include one representative each of:

- The EIM Transitional Committee (for the initial establishment of the EIM governing body, but not afterwards);
- The EIM governing body (after it has been established);
- The ISO Board of Governors; and
- Public interest and consumer advocate groups.

The nominating committee will work with an executive search firm under contract with the ISO to identify and interview at least two candidates for every open position, and will act by consensus of the five voting members. This process is intended to yield only nominees who are acceptable to and endorsed by representatives of all five stakeholder sectors, and thus inspire confidence in the selection process. A representative of the EIM Transitional Committee will participate as an advisory member during selection of the initial slate to serve as a guide for the nominating committee, to share the Transitional Committee's vision for how the process will work and other background.

Each slate of nominees selected through this process will be subject to approval by the ISO Board of Governors, initially, and the EIM governing body, for subsequent slates. With an eye toward this confirmation process, a member of the ISO Board of Governors and, once it is established, the EIM governing body, will participate as advisory members, functioning as liaisons. Their participation will also enable candidates to learn more about their potential colleagues and responsibilities.

The entire slate must be approved or rejected as a whole. Members will serve three-year terms, except for the initial slate, which will have staggered terms. Members will be limited to three full terms.

### ***Delegated authority***

The EIM governing body will have a decisional role in any changes to tariff rules that affect EIM, including both:

- Rules that are EIM-specific, insofar as they apply uniquely to the EIM balancing authority areas or otherwise will not exist "but for" the EIM, and
- Tariff rules that apply to participating in the ISO's real-time market generally.

The precise role of the EIM governing body in approving a particular initiative will depend on the type of rules the ISO proposes to change. The EIM governing body will have primary authority over proposed changes to rules in the first category, meaning that the EIM governing body's approval will be required before ISO staff could proceed with a filing at FERC. After receiving this approval, ISO staff will include the proposal on the consent agenda for the next meeting of the ISO Board of Governors. The matter will require no further action unless a majority of the ISO Board voted to remove the item from its consent agenda and consider the issue on its merits.

For initiatives in the second category – *i.e.*, that propose modifications only to generally applicable rules of the real-time market – the EIM governing body will have an advisory and consultative role, including the right to submit an advisory opinion to the ISO Board of Governors. It 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.

Recognizing that many policy initiatives involve changing rules in both categories, the Transitional Committee also proposed rules for approval of such “hybrid” initiatives. In all cases, the EIM governing body will approve at least the rule changes that are EIM-specific, and the ISO Board of Governors will consider the full proposal on its merits, rather than through its consent agenda.

ISO staff will place policy initiatives within the various classification according to the principles described in the proposal, which includes a dispute resolution mechanism for any instances when members of either governing body is uncomfortable with a proposed classification. The process will conclude with a joint meeting or teleconference of the two bodies, in which they will vote on the appropriate classification, with the chair of the Board of Governors to cast any tie-breaking vote.

### ***Documentation***

The delegation of authority to the EIM governing body will be formally documented through an amendment to the ISO’s corporate bylaws. The amendment will contain, at least, provisions that:

- Establish the EIM governing body, the process for selecting members and the terms of office,
- Define the general scope of authority of the EIM governing body, and
- Document the basic approval structure for initiatives to change market rules that are wholly or partially within the primary authority of the EIM governing body.

In addition, it is proposed that the ISO Board of Governors issue a charter to the EIM governing body to detail its responsibilities and goals, and to establish the Regional Issues Forum described below.

### ***Body of state regulators***

Under the proposal, the ISO will establish a body of state regulators from the states in which the real-time market operates, including all EIM balancing authority areas. Each state utilities commission will be entitled to select one representative to participate. The primary function of the regulators’ body in the near term will be to educate its members about the EIM, the EIM governing body and related developments at the ISO that affect the regulators’ jurisdictional responsibilities. In addition, the regulators could express views on EIM issues in the stakeholder process or to the EIM governing body itself. The ISO will provide assistance and support for periodic meetings, including reimbursement of travel expenses to the extent permitted by state ethics rules. The Committee notes that there are already forums for western electric utility regulators, and holding

meetings of the new body in conjunction with an existing forum may help to maximize participation and minimize costs.

The Transitional Committee expects that, over time, the regulators themselves will develop their own view about how to charter and house their body.

### ***Regional Issues Forum***

The ISO should establish a forum to encourage stakeholder dialog on regional issues. To further the dialog, public meetings will be held three times annually, to be organized by liaisons selected by sectors in a fashion similar to representatives on the nominating committee with one significant difference: In addition to the four sectors of market participants, liaisons will also be selected by a fifth sector of neighboring balancing authority areas that do not participate in the EIM. Members of the EIM governing body will be encouraged to attend the meetings. These meetings will be open to the public, and any reports, issue papers or opinions considered will be publicly available.

The Regional Issues Forum should not require significant expenditures from the ISO, as the liaisons will not be entitled to travel cost reimbursement. They will rely on ISO staff support mainly for coordination and logistics, including arranging meetings, should they choose to meet at the ISO's facilities.

After 18 months, the efficacy and role of the Regional Issues Forum will be reconsidered through a stakeholder process.

### ***Re-evaluation Period***

The Transitional Committee believes that this entire EIM governance structure should be re-evaluated after a period of time in light of accumulated experience and changing conditions. The committee recommends that the EIM governing body initiate a review no later than five years from approval of this plan, and that it should have discretion to do so sooner if, in its judgement, conditions merit a re-evaluation.

### ***Implementation***

This proposal includes amendments to the ISO's bylaws and development of a charter for the EIM governing body, both of which will come to the Board for decision at a future meeting. The Transitional Committee will defer the details of stakeholder feedback on these documents to the Board of Governors. At the request of commenting stakeholders, the Transitional Committee plans to participate in public comment on these documents with a focus on their consistency with the final proposal.

## **STAKEHOLDER POSITIONS**

Attachment B to this memorandum includes a matrix of the Committee's responses to stakeholder comments on the draft final proposal. As reflected in the matrix, the Committee's proposal is widely supported by stakeholders within the balancing authority areas of the ISO and EIM Entities, with limited disagreement over certain details. A number of entities from the Northwest urged the Committee to take a fundamentally different path, by recommending the creation of a separate corporation to govern the EIM. The Committee explained in detail in its straw proposal that governance through a separate entity would undermine the benefits of EIM and was not a feasible option at this point.

## **CONCLUSION**

The Transitional Committee recommends that the Board approve the Transitional Committee's proposal for a long-term EIM governance structure. The Committee appreciates the opportunity to engage on this important issue and thanks the ISO staff that have provided their time and skills to assisting the Committee.