

## Energy Imbalance Market

### ***Transitional Committee Issue Paper: Conceptual Models for Governing the Energy Imbalance Market***

#### **Comments of Puget Sound Energy January 26, 2014**

Puget Sound Energy (Puget or PSE) appreciates the opportunity to provide this second round of comments on the Energy Imbalance Market (EIM) Transitional Committee's issue paper<sup>1</sup> discussing models for governance of the EIM, originally issued January 5, 2015. PSE has been actively evaluating the benefits and impacts of CAISO's EIM, and provides comments on the following issues relating to market governance. In general, PSE supports an EIM governance structure that is regionally equitable, maximizes EIM independence to the extent practicable, and allows for utilization of CAISO's resources and experience.

#### **1. Criteria for Evaluating EIM Governance Proposals**

In Section III.B of the issue paper, the transitional committee requested that stakeholders provide comment upon a list of criteria, to be used to evaluate the range of governance options for the EIM. PSE suggests the following revisions to the proposed criteria:

- Operations (p.5):
  - A. The issue paper proposed that the governance structure should "*Protect the integrity and reliability of ISO operations.*" PSE proposes that this criterion should be revised to the following: "*Protect the integrity and reliability of ISO operations, while prioritizing the progress and maintenance of the integrity and reliability of the EIM.*" PSE believes that it is important to evaluate governance proposals in light of *both* non-EIM ISO functions and the EIM, but that the governance of the EIM should prioritize the effective functioning of the market within its mandate. This does not imply a dichotomy between non-EIM ISO functions and the EIM, but instead seeks to frame the governance of the EIM in light of its core responsibility.
  - B. The issue paper proposed that the governance structure should also "*Provide for efficient interaction between the EIM and ISO's other market functions.*" PSE proposes that this criterion be revised to state "*Provide for efficient interaction between the EIM and ISO's other market functions, while ensuring fair and diligent protection of the EIM and its participants.*" Once again, PSE emphasizes that it does not view ISO and EIM functions as opposed, but that the EIM governance structure should be developed first and foremost around the protection of the EIM itself.

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<sup>1</sup> Available at [http://www.caiso.com/Documents/IssuePaper\\_ConceptualModels-EnergyImbalanceMarketGovernance.pdf](http://www.caiso.com/Documents/IssuePaper_ConceptualModels-EnergyImbalanceMarketGovernance.pdf).

- Confidence in Governance to Facilitate Possible Expansion (p.6):
  - A. The issue paper offers as a criterion *“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.”* PSE proposes that this be revised to read *“Ensure that the EIM governing body is equitably pursuing the best interest of all EIM Entities and the market as a whole and is not unduly influenced by a single state or a narrow set of entities or states.”* PSE believes that the EIM governing structure must be able to make decisions equitably for all market participants, and that this approach will provide confidence in the market, improve the EIM’s expandability, and avoid unreasonable distribution of costs and benefits to any particular participant category or geographic area.
  - B. The issue paper suggests as a criterion *“Allow options to expand the functionality of the market to provide additional services, as requested by EIM Entities.”* PSE proposes that this be revised to read *“Allow options to expand the functionality of the market to provide additional services, as appropriate.”* Specific market changes might not be requested by EIM Entities; for instance, an EIM Participating Resource or a Scheduling Coordinator could seek an additional market function. As discussed below, the EIM governance structure should be sufficiently independent and flexible to be able to recommend and seek market improvements based upon its own analysis and stakeholder comments, and the revised language would reflect this flexibility.
  - C. In the overall category of confidence in governance to facilitate expansion, PSE recommends the addition as a criterion *“Ensure regionally focused, unbiased, and effective oversight.”* The EIM governing body must be able to provide dependable and detailed market oversight. Confidence in the careful oversight of the market will allow for appropriate market expansion, and would provide valuable certainty to current, pending, and potential EIM entrants.
  
- Compliance with Legal Requirements and the Committee Charter (p.6):
  - A. The issue paper suggests as a criterion *“Ensure that the EIM complies with other applicable legal requirements, including but not limited to environmental regulations and states’ renewable energy goals.”* PSE suggests that this be revised to read *“Ensure that the EIM and all market participants comply with applicable legal requirements, including but not limited to federal and state environmental regulations and any federal and state renewable energy goals or requirements.”* Given the complexities of Western environmental regulations (most prominently, California’s GHG cap-and-trade program, but also including other state requirements) as well as the pending compliance plans for EPA’s regulation of existing power plants under section 111(d) of the Clean Air Act, ensuring that the EIM *itself* is in compliance with federal or state regulatory requirements is insufficient. While PSE recognizes that the EIM governing body may not be able to

directly enforce these regulations, that body will be able to promulgate market rules that allow for proper market outcomes and the dissemination of critical information, which will be crucial for the compliance of market participants.

- B. PSE proposes that the following criterion be added to this section: *“Ensure FERC approval and oversight over EIM governance.”* As discussed below, PSE believes that the EIM governing body must be able to make filings directly with FERC; accordingly, the relationship between the governing body and FERC should be enshrined in the core criteria for evaluation of the various options.

## 2. Proposed Models for Governance

In Section III.D of the issue paper, the Transitional Committee presented three potential governance models for the EIM, and discussed their potential benefits and drawbacks: 1) an advisory committee to the CAISO Board of Governors; 2) a Governing Board established under CAISO bylaws; and 3) an Autonomous Separate Entity. PSE supports option 2 – the Governing Board model - coupled with the specific suggestions addressed in these comments below.

Though Puget sees potential benefits in the third option (the Autonomous Separate Entity model) – specifically the enhanced possibilities for equitable and regionally focused governance of the EIM – Puget currently supports the Governing Board model due to the potential for high costs associated with the Autonomous Separate Entity model, and the limited number of current market participants among which to allocate these costs. Puget believes the Governing Board model would provide the necessary level of autonomy for the still-growing EIM, and would provide the most economic option to transition toward a more autonomous approach in the future.

It is important to note that, based on the information compiled by the CAISO’s legal department and linked through Appendix A of the issue paper, all six of the other RTOs/ISOs referenced allow members to directly assist in the selection process of the Board of Directors (or equivalent)<sup>2</sup>, without requiring governmental approval. Though CAISO currently has a Board Nominating Committee consisting of members from a range of stakeholder sectors, this does not ensure equitable regional representation, or require that EIM Entity interests be represented in the nominating committee. Additionally, the California Governor and legislature have the ultimate authority for appointments to the CAISO Board, and have no obligation to follow the suggestions of the Nominating Committee in appointing members. In contrast, other RTO/ISO models allow for members to make the final determination on Board nominations.<sup>3</sup> The current CAISO Board of Governors selection process provides California (over any

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<sup>2</sup> I.e. PJM’s “Board of Managers.”

<sup>3</sup> This does not mean that states are excluded from the process, simply that they do not have the *final say*. For instance, while ISO-NE’s model grants state regulators input on the initial slate of board candidates, the Joint Nominating Committee incorporates market participants, and final board approval is contingent upon a vote of the Participants’ Committee. See Issue Paper Appendix on ISO Governance Structures at pp.5-6, available at [http://www.caiso.com/Documents/ISO-RTO\\_GovernanceStructures-Oct2014.pdf](http://www.caiso.com/Documents/ISO-RTO_GovernanceStructures-Oct2014.pdf).

other state represented, or potentially represented, by the regional footprint of the EIM) with inequitable and unparalleled influence over the governance of the CAISO-administered markets, including the EIM.

For these reasons, Puget seeks to ensure that without incurring unreasonable costs, the EIM governance structure, much like other RTOs/ISOs in existence today, will be *regionally* focused, with no state, subregion, individual entity, or market segment having inequitable influence or decision making power. To further the development of this equitable governance structure, Puget proposes the below comments.

### **3. Additional Considerations in Developing EIM Governance<sup>4</sup>**

A. Is it necessary for the EIM body to have at least some degree of authority to independently change market rules?

Yes. The EIM governance body should have authority over issues that may impact the EIM, with coordination required with the ISO Board on issues that impact both the EIM and other aspects of CAISO's markets. As referenced above, the ISO Board does not currently guarantee *any* representation of EIM Entities or other participants from outside California. Until the composition of the ISO Board can guarantee an unbiased, regional perspective (i.e. by allowing for nomination of Board members outside of the state of California), the EIM governance committee will be the sole body tasked with ensuring representation and protection of EIM interests in the CAISO markets.

Assuming that the EIM governance body is made up of individuals representing each of the market participants and/or nominated by the market participants in the EIM markets, the EIM governance body will be the most informed body involved in the market, and will therefore be the entity most capable of making decisions that are workable, applicable to EIM-specific conditions, and equitable for all participants. As with any governing body, checks and balances limiting this authority should be formally adopted in writing. One issue that requires particular attention, and stakeholder feedback, is the definition of "elements of the tariff that *may* impact the EIM,"<sup>5</sup> which will circumscribe those issues under the purview of the EIM governance body. Other structural issues that PSE believes should be addressed include:

- i. Term limits for the members of the EIM governance committee;
- ii. A cap on the number of members on the EIM governance committee;
- iii. Composition of the governance committee, which should ensure representation for each EIM Entity (providing equitable regional

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<sup>4</sup> All topics discussed in this section are based upon questions raised in the Transitional Committee Meeting on January 12, 2015.

<sup>5</sup> Referenced in the first partial paragraph on page 10 of the issue paper (emphasis added).

- representation), each of the seven sectors outlined in the Transitional Committee Charter,<sup>6</sup> CAISO itself, and a set number of independent members;
- iv. Nomination of the EIM governance committee, which should be done via a committee of EIM market participants (including CAISO), EIM Entities, and the seven sectors outlined in the Transitional Committee Charter. PSE opposes self-nomination by the EIM board<sup>7</sup>; and
  - v. FERC should approve the initial governance proposal and any subsequent changes to the governance and voting structure.

B. Could the “Advisory Committee” model involve a board that consisted of stakeholder representatives?

Yes. However, Puget supports the more autonomous “Governing Board” model. Regarding the development and structure of the EIM Governing Board, Puget offers the following comments.

- i. *Board Nominee Review Committee* - Puget supports a change in the structure of the CAISO Board Nominee Review Committee to ensure that EIM Entities and regional interests are represented on the committee in equitable proportion to their participation in the ISO markets. In order to ensure checks and balances in the nomination process, the committee could also be changed to guarantee membership for representatives from state utility commissions and a set number of independent members selected by class sectors. In order to avoid delay or impasse in the voting process, the voting structure of the Board of Nominee Review Committee could be formatted similarly to the NYISO’s Shared Governance process, allowing for an allocation of votes to each sector based on the sector’s percentage of market share.<sup>8</sup>
- ii. *EIM Governing Board* - Puget supports the Governing Board model, as it is more autonomous than the Advisory Committee model, and more financially responsible at this juncture than the Autonomous Separate Entity model. Puget requests that the Transitional Committee establish a process to ensure representation for any new EIM Entities prior to engagement in the EIM, and to ensure that the EIM Governing Board includes:
  - 1. A representative of each EIM Entity;

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<sup>6</sup> Investor-owned utilities, publicly owned utilities, generators and marketers, alternative energy providers, EIM participants, government agencies, and public interest entities.

<sup>7</sup> This approach is proposed in the first paragraph of the Governing Board subsection of the issue paper on Page 9.

<sup>8</sup> See, e.g. Robert E. Fernandez, *Shared Governance at the New York Independent System Operator*, presentation to the Consumer Advisory Council at p.12 (Oct. 6, 2011), available at [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/councils/consumer\\_advisory\\_council/Shared\\_Governance\\_at\\_the\\_NYISO\\_-\\_Robert\\_Fernandez\\_-\\_10-06-2011.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/councils/consumer_advisory_council/Shared_Governance_at_the_NYISO_-_Robert_Fernandez_-_10-06-2011.pdf) (noting that the NYISO’s Management Committee’s 58% threshold for FPA 205 filings “requires consensus of a broad cross-section of stakeholders.”)

2. Stakeholders from the seven sectors outlined in Transitional Committee Charter, including state agencies;
  3. CAISO; and
  4. A set number of independent seats that are regionally representative.
- iii. *EIM Governing Board Nominating Committee* – The EIM Governing Board Nominating Committee should select EIM Governing Board members. This should not be a self-nomination process as proposed in Page 9 of the issue paper and the committee should consist of:
1. A representative of each EIM Entity
  2. Stakeholders from the seven sectors outlined in Transitional Committee Charter, including state agencies;
  3. CAISO; and
  4. A set number of independent seats that are regionally representative.

C. Would additional costs associated with the autonomous model be worth incurring?

Excess costs associated with the Autonomous Separate Entity model could be mitigated by an evolutionary process, allowing the existing ISO Board and governance structure to become more regionally focused through ensuring representation of EIM Entities and regional participants in the nomination and governance process, as discussed above.

Additionally, the CAISO should work to incorporate more of a regional focus in its internal staff. For instance, the CAISO could ensure that its policy department contains staff specifically tasked with assisting on and tracking issues in each region that the EIM incorporates (i.e., staff that covers Nevada, Oregon, Idaho, Utah, Wyoming, and Washington administrative issues, in addition to those addressed by CPUC, CEC, and CARB).

D. How would the EIM body work with the ISO under any of these models to avoid dueling filings at FERC?

PSE supports authorizing the EIM to have distinct areas of authority in which it could make filings under section 205 of the Federal Power Act. While varying in some respects (because the EIM is a new market) this would follow the precedent of ISOs/RTOs such as PJM and MISO, in which transmission owners have reserved filing rights for areas such as transmission and ancillary services rates. Additionally, transmission owners retain exclusive rights to alter certain ISO/RTO tariff sections related to rates.<sup>9</sup> The

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<sup>9</sup> See, e.g. PJM Transmission Owners Agreement at section 7.3.4, available at <https://www.pjm.com/~media/documents/agreements/toa.ashx>; MISO Transmission Owners Agreement at Appendix K, available at <https://www.misoenergy.org/Library/Repository/Tariff/Rate%20Schedules/Rate%20Schedule%2001%20-%20Transmission%20Owners%20Agreement.pdf>.

delineation of areas which are core EIM competencies and therefore suitable for separate Section 205 filing rights will doubtless be complex, but it would not be unprecedented. Allowing the EIM governing body to separately file to change market rules in appropriate areas would advance EIM independence while ensuring close and equitable involvement of market participants and the ISO Board.

By ensuring that the ISO Board, the Board of Nominee Review Committee, the EIM Governing Board Nominating Committee, and the EIM Governing Board all demonstrate equitable representation of regional and stakeholder interests, the priorities of the ISO Board and the EIM Governing Board should be in alignment. To the extent they are not, FERC can review any conflicting filings, comments, or protests, and make a determination.<sup>10</sup> Separate filing rights would provide a tool for the EIM Governing Board to protect EIM Entity interests in the face of a current ISO Board structure that is selected through a process prescribed by California's government.

- E. The tight integration of the EIM with the ISO's 5 and 15 minute markets may raise practical issues regarding EIM governance. Is there a risk that a separate body would diverge from CAISO market rules to an unworkable degree?

The charter of the EIM Governing Board should reflect that the intent of the EIM Governing Board is to facilitate an equitable, regionally focused EIM. PSE believes that the demonstrated regional benefits of broad EIM dispatch – including CAISO's BAA – would serve as a strong incentive to keep EIM and CAISO markets well aligned, as misalignment would likely result in a loss of potential energy diversity, reliability benefits, and ratepayer savings. To the extent the existing market rules might not accommodate the evolution of the market, stakeholders (through the above outlined governance structure) would need to address situation-specific issues at the relevant time. Should market rules diverge to an unworkable degree, the situation might eventually dictate the evolution (and costs) of a fully autonomous market structure for the EIM.

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<sup>10</sup> This would be consistent with aspects of other ISO/RTO market structures and reserved filing rights. For instance, the MISO Transmission Owners Agreement Section II (cited at n. 9) specifies numerous tariff sections and service provisions for which transmission owners are permitted to make Section 205 filings, which potentially conflict with concurrent filings from other transmission owners or MISO itself.