



## The Public Advocates Office Comments on the EIM Governance Review Committee Revised Straw Proposal

Initiative: Western EIM governance review

### 1. Provide your organization's overall position on the EIM Governance Review Revised Straw Proposal:

Choose:

- Support
- Support with caveats
- Oppose
- **Oppose with caveats**
- No position

### 2. Provide a summary of your organization's comments on this proposal:

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) is California's independent consumer advocate with a mandate to obtain the lowest possible rates for utility services, consistent with safe and reliable service levels, and the state's environmental goals.<sup>1</sup> Cal Advocates submits its comments and recommendations on the *Governance Review Committee [GRC], Revised Straw Proposal* prepared by the Western [Energy Imbalance Market] EIM Governance Review (Revised Straw Proposal), which the CAISO published on December 14, 2020.<sup>2</sup> Comments on the Revised Straw Proposal are due January 29, 2021.

Cal Advocates submits the following recommendations in response to the Revised Straw Proposal:

1. The CAISO Board should limit the scope of the joint authority to market design and rules for the EIM only.
2. The EIM GRC should remove the proposed dual-filing approach to resolving deadlocks.

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<sup>1</sup> California Public Utilities (Cal. Pub. Util.) Code § 309.5.

<sup>2</sup> *Governance Review Committee Revised Straw Proposal*, Western EIM Governance Review Committee, December 14, 2020, p. 1. Hereafter: Revised Straw Proposal.

3. The EIM GRC should not fund a market expert before further exploring ways to leverage existing resources, and without first releasing more detailed cost allocation information to all stakeholders.

**3. Provide detailed comments including examples on Issue 1: The Delegation of Authority for Market Rules to the Governing Body, the Decisional Classification Process, and Durability:**

*Cal Advocates does not support the proposed joint authority setting rules for the broader real-time market (RTM) but supports the joint authority setting rules for the EIM.*

Currently, the EIM Governing Body's approval is limited to changes in the RTM that are specific to the EIM.<sup>3</sup> The EIM Governing Body also provides advisory input for all other CAISO RTM rules. The EIM Governing Body has primary authority for the EIM market, where proposed changes are first approved by the EIM Governing Body, then placed on the CAISO Board's consent agenda. The CAISO Board either approves the proposed changes or remands them to the EIM Governing Body if further consideration is needed.<sup>4</sup>

The EIM GRC proposes to alter the process so that the EIM Governing Body and the CAISO Board hold equal, "joint" authority for all proposed changes to the EIM.<sup>5</sup> This would require each body to consider the changes and share approval authority. The EIM GRC recommends that the CAISO Board and EIM Governing Body consider and approve proposed changes to the EIM in a joint session after a full discussion and a presentation from CAISO staff.<sup>6</sup> Only after approval by the CAISO Board and the EIM Governing Body would CAISO staff submit the proposal to the Federal Energy Regulatory Commission (FERC) for filing.

The EIM GRC further proposes two options to articulate the scope of the joint authority.<sup>7</sup> One option is that the joint authority would extend to all proposed changes regarding market design rules that apply to the RTM or EIM, excluding rules that apply to only the CAISO-controlled grid or the CAISO Balancing Authority Area (BAA).<sup>8</sup> The second option provides for broader joint authority, and would exclude rules that apply only to the CAISO-controlled grid or

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<sup>3</sup> Revised Straw Proposal, p. 5.

<sup>4</sup> Revised Straw Proposal, pp. 5-6.

<sup>5</sup> Revised Straw Proposal, p. 6.

<sup>6</sup> Revised Straw Proposal, p. 6.

<sup>7</sup> Revised Straw Proposal, p. 12.

<sup>8</sup> Revised Straw Proposal, p. 12.

rules in the CAISO BAA “that are related to reliable operations (e.g., rules relating to resource adequacy, reliability must run contracts, the capacity procurement mechanism, or ancillary services).”<sup>2</sup>

Cal Advocates does not support either option because each would give entities outside California authority over market rules that govern the broader CAISO RTM, which is outside the scope of the EIM. The CAISO is not a regional transmission operator (RTO), such as the Southwest Power Pool (SPP) or Independent System Operator New England (ISO-NE), with service territories that cover multiple states.<sup>10</sup> While the CAISO dispatches energy in real-time from areas outside of California through the EIM, the CAISO’s operational service territory remains largely in California (and a small portion of Nevada along the California border).<sup>11</sup> This distinction means that, as proposed, the joint authority would allow entities outside of the CAISO’s jurisdictional service territory to create rules for the broader RTM that could affect parts of the RTM that are not part of the EIM. Notably, those entities can elect to exit the market at any time, while entities in the CAISO’s BAA cannot. This could allow entities outside California to design market rules and exit if the market becomes unfavorable, while entities inside the CAISO’s BAA, who cannot exit, would be left with more unfavorable conditions. Therefore, the level of risk from market participation between entities outside California and entities within the CAISO’s BAA is not the same.

Accordingly, Cal Advocates proposes the EIM GRC consider and adopt a third option (Alternative Option 2) which appropriately would give joint authority over market rules that affect only the EIM and would not include broader RTM rules from the scope of the joint authority. Cal Advocates recommends Alternative Option 2 as follows:<sup>12</sup>

The central philosophy underlying the governance framework for joint or shared authority emphasizes that functions exclusive to the CAISO or functions integral to the CAISO’s core roles and responsibilities including maintaining reliability within its BAA, operating markets, and continuing as a viable ongoing concern remain under the exclusive authority of the CAISO Board of Governors. These exclusive and/or core functions include:

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<sup>2</sup> Revised Straw Proposal, p. 12.

<sup>10</sup> <https://www.iso-ne.com/about/what-we-do/three-roles/>; <https://spp.org/about-us/>

<sup>11</sup> <http://www.caiso.com/about/Pages/OurBusiness/Opening-access.aspx>

<sup>12</sup> This language was discussed with Southern California Edison Company.

- Credit policy, credit default and revenue insufficiency issues,
- Generator Interconnection, Transmission Planning Process, resource adequacy, cybersecurity, physical security, Transmission Ownership Rights, managing the full network model,
- Convergence Bidding, Resource Sufficiency Evaluation, congestion management and Congestion Revenue Rights,
- Residual Unit Commitment, imports to satisfy the CAISO BAA resource adequacy requirements and exports from resource adequacy resources,
- Price formation, market power mitigation inclusive of system market power mitigation, market monitoring, compliance monitoring, metering, outage management and reporting,
- GHG accounting and calculation of the GHG adder, and
- Market software, cost allocation principles and disputes applicable to all the core functions listed.

***The EIM GRC should remove the proposed dual-filing approach to resolving deadlocks.***

The EIM GRC’s July Straw Proposal<sup>13</sup> and Revised Straw Proposal recognize that there may be situations where the EIM Governing Body and the CAISO Board do not agree on whether to approve a proposal that is subject to joint authority. When these situations occur, the EIM GRC proposes an iterative process.<sup>14</sup> The CAISO’s staff would commence additional stakeholder processes designed to specifically explore ways in which to address the identified concerns and to establish a revised proposal for both bodies to consider.<sup>15</sup> This CAISO-led stakeholder process could be initiated up to two times. If the EIM Governing Body and the CAISO Board continue to disagree, the CAISO’s staff would submit two proposals to FERC — the CAISO Board’s proposal and the EIM Governing Body’s proposal.

The EIM GRC’s Revised Straw Proposal attempts to reconcile this “dual-filing approach” with the law by prohibiting a dual-filing “in the scenario where the [EIM] Governing Body has a proposal that it would support but the [CAISO] Board does not support the proposal

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<sup>13</sup> *EIM Governance Review Committee Straw Proposal*, Western EIM Governance Review Committee, July 31, 2020. Hereafter: July Straw Proposal

<sup>14</sup> Revised Straw Proposal, pp. 13-14.

<sup>15</sup> Revised Straw Proposal, pp. 13-14.

and further, has no alternative it would support.”<sup>16</sup> However, this dual-filing approach nevertheless presents a conflict with California law and could jeopardize the CAISO’s tax-exempt status.

Specifically, the California Corporations Code states “the activities and affairs of [the CAISO] shall be conducted and all corporate powers shall be exercised by or under the direction of the board.”<sup>17</sup> While the CAISO Board is permitted to delegate activities to employees and other bodies, it must retain ultimate control. The CAISO Board may only delegate its authority “provided that the activities and affairs of [the CAISO] shall be managed and all corporate powers shall be exercised under the ultimate direction of the [CAISO] board.”<sup>18</sup>

In addition, California Public Utilities Code requires that the CAISO manage the transmission grid and related energy markets in a manner that will reduce overall economic costs to the state’s consumers and protect the public’s health and the environment.<sup>19</sup> To fulfill these requirements, the CAISO must operate “in furtherance of state law regarding consumer and environmental protection.”<sup>20</sup> Allowing decision makers from other states to submit their own proposal to FERC essentially grants them an equal role in decisions regarding the operation of the CAISO markets and may result in the adoption of rules and policies that fail to protect California’s interest in protecting the environment and reducing costs to consumers.

Finally, the CAISO is a “supporting organization” as defined by federal tax law and regulations. Supporting organizations are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.<sup>21</sup> As set forth in the Public Utilities Code Section 345.5, subd. (a),<sup>22</sup> California established the CAISO as a nonprofit public benefit corporation exclusively for the charitable purpose of ensuring efficient use and reliable operation of the electric transmission

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<sup>16</sup> Revised Straw Proposal, p. 17.

<sup>17</sup> Cal. Corp. Code § 5210.

<sup>18</sup> Cal. Corp. Code § 5210.

<sup>19</sup> Pub. Util. Code § 345.5, subd. (b).

<sup>20</sup> Pub. Util. Code § 345.5, subds. (a), (c).

<sup>21</sup> Organizations that operate for the benefit and use of a state for exclusively public purposes are “supporting organizations” See 26 U.S.C.A. §§ 170 (b)(1)(A)(v), 509(a)(1); 26 C.F.R. § 1.509, subd. (a).

<sup>22</sup> See Pub. Util. Code § 345.5, subd. (a).

grid in the state.<sup>23</sup> However, to qualify as a supporting organization, the State of California must supervise or control the CAISO.<sup>24</sup>

The dual-filing proposal conflicts with the CAISO Board's ultimate authority under the Corporations Code, the CAISO's mandate to act in accordance with California law under the Public Utilities Code and jeopardizes the CAISO's tax status as a "supporting organization" under the supervision and control of California. Pursuant to its proposed joint authority, the EIM Governing Body would be able to direct the CAISO's staff to address its concerns and potentially submit a proposal to FERC on its behalf. The EIM Governing Body's proposal could conflict with California laws and/or policies and compete with a proposal filed by the CAISO. FERC may approve the EIM GB's competing proposal and, thereby, challenge the CAISO's statutory mandate.

For example, the CAISO Board could propose new market prices and accounting mechanisms that further California's environmental goals or reduce costs for California's ratepayers. At a minimum, allowing the submission of two proposals to FERC presents a risk that FERC would adopt a proposal that was not approved by the CAISO Board, the entity charged with operating the grid consistent with the interests of California's consumers, including public health and the environment.

Moreover, as Appendix A in both the GRC's July 2020 Straw Proposal and Revised Straw Proposal recognizes, the CAISO's outstanding tax-exempt bonds restrict the use of the CAISO's main offices for any reasons other than those required by the State of California.<sup>25</sup> However, the proposed dual-filing approach would allow the EIM Governing Body to direct the CAISO's staff to address the concerns of the EIM Governing Body's and potentially submit the EIM Governing Body's proposal to FERC. Allowing the EIM Governing Body to use the time and resources of the CAISO's staff for the submission of a proposal that may not support California's environmental goals and interest in reducing cost to the state's consumers would be an improper use of the CAISO's resources.

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<sup>23</sup> See Articles of Incorporation of California Independent System Operator Corporation, Sec. IV (A) (May 5, 1997) *available at* [caiso.com/Documents/ISOArticles\\_Incorporation.pdf](https://www.caiso.com/Documents/ISOArticles_Incorporation.pdf).

<sup>24</sup> 26 C.F.R. § 1.509, subd. (a).

<sup>25</sup> July Straw Proposal p. 47, fn.71 p. 47, fn. 71.

The EIM GRC supports its proposed dual-filing approach by pointing to the ISO-New England's practice of submitting dual-filings to FERC. These dual filings describe both the proposal approved by the ISO-New England's Board and an alternative approved by its Participants Committee under the Participants Agreement.<sup>26</sup> However, ISO-New England's dual-filing process does not present the same conflicts as the EIM GRC's because there are significant differences between the underlying structure of the CAISO and ISO-New England. First, the Participants Committee is the principal governing body through which the members of the New England Power Pool (NEPOOL) act as a stakeholder organization.<sup>27</sup> NEPOOL is ISO-New England's predecessor organization; it established the ISO-New England in 1997.<sup>28</sup> The relationship between ISO-New England and NEPOOL is similar to the relationship between the CAISO and the State of California. If the CAISO presented FERC with two proposals provided by its CAISO Board and the State of California, it would not necessarily raise the same legal conflicts as presenting FERC with two proposals provided by the CAISO Board and the EIM Governing Body.

Second, ISO-New England is not a "supporting organization" under the Internal Revenue Code.<sup>29</sup> Because ISO-New England is not a supporting organization, it is not subject to the same restrictions regarding the use of its offices and resources that binds the CAISO. This also means that other entities to the Participants Agreement can direct ISO-New England staff to address their concerns and submit proposals to FERC on their behalf while the EIM Governing Board cannot provide the same direction to the CAISO.

For these reasons, Cal Advocates recommends that the EIM GRC modify its proposal to eliminate the dual-filing approach in the case of deadlocks and that the CAISO Board retain ultimate authority to approve a single CAISO filing to FERC.

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<sup>26</sup> Revised Straw Proposal, p. 16.

<sup>27</sup> See ISO New England, Industry Standards, Structure, and Relationships *available at* [iso-ne.com/about/what-we-do/in-depth/industry-standards-structure-and-relationships](https://iso-ne.com/about/what-we-do/in-depth/industry-standards-structure-and-relationships) [last accessed Dec. 22, 2020].

<sup>28</sup> See *New England Power Pool* 79 FERC ¶ 61,374, 1997 WL 34663 [granting NEPOOL's restructuring proposal to transfer control to an ISO].

<sup>29</sup> See 2016 Return of Organization Exempt from Income Tax (Form 990), Schedule A *available at* [projects.propublica.org/nonprofits/organizations/43372500/20174240934300119/full](https://projects.propublica.org/nonprofits/organizations/43372500/20174240934300119/full) [last accessed Dec. 22, 2020].

**4. Provide detailed comments including examples on Issue 2: Selection of Governing Body Members:**

Cal Advocates does not have a response to this question at this time.

**5. Provide detailed comments including examples on Issue 3: Governing Body Meetings and Engagement with Stakeholders:**

Cal Advocates does not have a response to this question at this time.

**6. Provide detailed comments on the proposal for Modifying the Regional Issues Forum to Enhance Opportunities for Stakeholder Engagement:**

Cal Advocates does not have a response to this question at this time.

**7. Provide detailed comments on the proposal for Representation for Federal Power Marketing Agencies and Consumer-Owned Utilities:**

Cal Advocates does not have a response to this question at this time.

**8. Provide detailed comments including examples on Issue 4: Other Potential Areas for Governing Body Involvement:**

Cal Advocates does not have a response to this question at this time.

**9. Provide detailed comments including examples on Issue 4.1: Annual Policy Initiatives Roadmap:**

Cal Advocates does not have a response to this question at this time.

**10. Provide detailed comments including examples on Issue 4.2: Governing Body Role with Department of Market Monitoring, Market Surveillance Committee and Governing Body Market Expert:**

*The GRC should not fund a market expert before further exploring ways to leverage existing resources and without providing more detailed cost allocation information.*

Cal Advocates continues to have concerns about the proposal for the GRC to retain a market expert to be funded by all market participants.<sup>30</sup> This role is duplicative in that the EIM GRC, already has access to similar resources, such as the Department of Market Monitoring, the

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<sup>30</sup> Revised Straw Proposal, p. 38.



Market Surveillance Committee, and CAISO staff. Cal Advocates recommends eliminating this aspect of the Revised Straw Proposal and that the EIM GRC further evaluate how to leverage the expertise that is available from these existing resources to provide the EIM GRC and stakeholders with the information needed to evaluate market-related issues.

Cal Advocates' concern with the EIM GRC's proposal is that all market participants should pay equally for the costs of the market expert, even though CAISO market participants will not derive equal benefits from the market expert compared to potential extended day ahead market (EDAM) participants. For example, the Revised Straw Proposal identifies a primary purpose of the market expert would be to "... increase confidence among potential extended day-ahead market (EDAM)<sup>31</sup> participants that the full impact of market issues is being assessed."<sup>32</sup> Because participants in CAISO's BAA would have no choice but to participate if an EDAM is created, they are not "potential" EDAM participants in the same manner as the EIM entities, and thus the CAISO market participants would not derive as much benefit from the market expert's efforts on behalf of the "potential" EDAM participants as would the "potential" EDAM participants.

In addition, the proposed cost allocation of the market expert from EIM market participants via a pro-rata share of overhead costs associated with market operations and from CAISO participants via the CAISO's Grid Management Charge<sup>33</sup> may not align cost allocation with the benefits received. Cal Advocates requests that the CAISO provide information about the historical allocation of EIM costs to each EIM entity and of RTM costs to CAISO participants in the CAISO BAA, so that these costs can be compared to total EIM benefits and to the projected benefits of the market expert. Appendix B of the Revised Straw Proposal<sup>34</sup> does not provide sufficient information to identify the costs to administer and operate the RTM and EIM, costs that have been allocated between EIM participants and CAISO participants.

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<sup>31</sup> The EDAM initiative released its first straw proposal on July 20, 2020, a week before the first straw proposal for this EIM GRC initiative was released. See: <https://stakeholdercenter.caiso.com/StakeholderInitiatives/Extended-day-ahead-market>

<sup>32</sup> Revised Straw Proposal, p. 36.

<sup>33</sup> Revised Straw Proposal, pp. 38-39.

<sup>34</sup> Appendix B: Summary of Multi-State RTO State Committees (table), Revised Straw Proposal, pp. 48-49.

Cal Advocates understands that these costs are allocated to EIM participants via Charge Code 4564 (EIM Administrative Charge) and to CAISO participants via Charge Code 4560 (Market Service Charge) and Charge Code 4561 (Systems Operations Charge),<sup>35</sup> but the CAISO has not provided stakeholders with the results of applying those charges to EIM participant and CAISO participant transactions. The CAISO should provide a table that shows, the aggregate charges for the administration and operation of the RTM that are captured in each of Charge Codes 4564, 4560, and 4561, for each EIM Entity and for the CAISO, for each year (or quarter).

Additionally, the CAISO should identify and include all other grid management charges associated with the administration or operation of the real-time markets and include those charges in the table. Also, the CAISO should host a stakeholder call at least one week after it publishes the results of its analysis, and at least a month prior to publishing its next revised straw proposal, to describe CAISO's methodology for collecting and summarizing the data, to provide CAISO's observations about the results and how they pertain to potential allocation of the costs of the market expert, and to provide an opportunity for stakeholders to ask questions about CAISO's analysis and observations.

**11. Provide detailed comments including examples on Issue 4.3: Possible Funding for the Body of State Regulators:**

Cal Advocates does not have comments on this issue at this time.

**12. Provide detailed comments including examples on Issue 5: Governing Body Mission Statement:**

Cal Advocates does not have a response to this question at this time.

**13. Provide detailed comments including examples on Issue 6: Other Potential Topics for Consideration:**

Cal Advocates does not have a response to this question at this time.

**14. Additional comments on the Revised Straw Proposal or EIM Governance Review initiative:**

Cal Advocates does not have a response to this question at this time.

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<sup>35</sup> 2020 Budget and Grid Management Charge Rates, CAISO, December 19, 2019, pp. 52-53.  
<http://www.caiso.com/Documents/2020Budget-GMCRatesBook-Final.pdf>

If you have any questions or comments, please contact Danielle Dooley at [Danielle.Dooley@cpuc.ca.gov](mailto:Danielle.Dooley@cpuc.ca.gov) or 415-703-3666.