

MEMORANDUM

TO: RTO West Regional Representatives Group

FROM: Governance Subgroup

DATE: August 2, 2000

SUBJECT: Status Report on RTO Governance Issues

This is a brief status report on the principal issues that have been addressed by the Governance Subgroup, and as to which the subgroup has either reached consensus or been unable to reach consensus to date. The subgroup intends to submit to the RRG at its meetings next week a more detailed report regarding the issues on which we have been unable to reach consensus, in order to obtain guidance from the RRG on the resolution of those issues.

Background on Proposed Governance of IndeGO

The starting point for our discussions on the proposed governance of RTO West has been the governance structure that was proposed for IndeGO.

IndeGO was proposed to have a non-stakeholder Board of Trustees which was to be elected by the voting members of IndeGO. IndeGO was initially to have three classes of voting members: (1) a Major Transmitting Utilities Class (comprised of transmission owners that had signed Transmission Control Agreements and that received, individually, in excess of two percent of the total IndeGO transmission system revenue requirement); (2) a Transmission-Dependent Utilities Class (comprised of any transmission or distribution utilities in the IndeGO control area that did not fall into the Major Transmitting Utilities Class); and (3) a Nonutility Entities Class (comprised of any entity, other than a Major Transmitting Utility or a Transmission-Dependent Utility, that was operating in the IndeGO control area and that was either subject to or entitled to apply for an order under Section 210 or 211 of the Federal Power Act). A fourth voting class, a Retail Customers Class, was to be added shortly after IndeGO became operational; that class was proposed to be comprised of retail customers that were able, as a result of direct access, to purchase services directly from IndeGO.

In addition to the four voting classes of members, IndeGO was proposed to have a separate nonvoting membership class, a Utilities Commissions Class, which was to be comprised of two utilities commissions (meaning any utilities regulatory commission or other state or provincial agency having ratemaking, siting, resource planning or other authority with regard to electrical energy) from each state and province in which any IndeGO-controlled transmission facilities were located, and the Northwest Power Planning Council. The members of the Utilities Commissions Class were entitled to elect two non-voting members to the IndeGO Board of Trustees. Although the Utilities Commissions Class members were not eligible to participate in the election of voting members of the Board of Trustees, in the event that they objected to the

election of any nominee to the Board, they could submit to dispute resolution under the IndeGO Bylaws the issue of the appropriateness of the nominee.

In order to be elected as a voting trustee of IndeGO, a nominee was required to receive a majority of the vote in each voting member class. In the event that fewer than the requisite number of nominees received a majority vote in each voting class, a runoff election would be held. If the runoff election did not result in all vacant positions being filled, then the unfilled vacancy or vacancies would be filled from the unelected nominees in accordance with the dispute resolution provisions of the IndeGO Bylaws.

In addition to the non-stakeholder Board of Trustees, IndeGO was proposed to have a stakeholder advisory committee which would advise the Board on a broad range of technical and other issues. Each IndeGO member class, including the otherwise non-voting Utilities Commissions Class, was entitled to elect three representatives to the stakeholder advisory committee.

RTO West Member Classes

- Member Classes

- We have reached consensus on the appropriateness of a Major Transmitting Utilities Class, Transmission-Dependent Utilities Class and Non-Utility Entities Class that would be generally equivalent to the analogous classes that were proposed for IndeGO. Draft proposed definitions for these classes are set forth in Attachment A to this memorandum.
- We have reached consensus on the appropriateness of a Retail Customers Class that would be comprised of retail customers eligible to purchase services directly from the RTO.
- Some members of the subgroup favor expanding the Retail Customers Class to include retail consumers that are not eligible to purchase services directly from the RTO, or providing for membership in the RTO by such non-direct access consumers in a separate class. There is not consensus within the subgroup on the appropriateness of permitting membership by such consumers, either in the Retail Customers Class or otherwise.
- There is not consensus within the subgroup on the appropriateness of a Utilities Commissions Class.
- A proposal has been made to expand the Utilities Commissions Class to include tribal governmental entities that have regulatory authority over electric utilities. There is not consensus within the subgroup as to the appropriateness of including such tribal entities within the Utilities Commissions Class.

- Some members of the subgroup favor a new voting member class, provisionally termed the Unaligned Entities Class. This class is proposed to consist of “good government” and public interest groups, including environmental groups, demand-side management entities, energy efficiency and renewable energy organizations, tribes (to the extent not in another class) and non-direct access retail consumers (to the extent not in the Retail Customers Class). There is no consensus within the subgroup as to the appropriateness of this class.
- There is broad consensus that any single legal entity, and affiliated entities under common control, should be entitled to only one membership in the RTO, and to membership in only one class.
- Voting Rights
 - The state utilities commissions representatives have proposed that the members of the Utilities Commissions Class should have full voting rights as members of RTO West, including rights to elect voting members of the Board of Trustees. There is not consensus within the subgroup as to the appropriateness of such rights.
 - There is not consensus within the subgroup as to whether the members of the Unaligned Entities Class should have voting rights.
 - Some members of the subgroup have proposed that all voting classes should have a right to vote on all matters put to a vote of the members, but that some voting classes should have greater voting power than other classes. There is not consensus within the subgroup as to the appropriateness of such differential voting power.

RTO West Board of Trustees

- Board Size and Composition
 - Thus far there is a general consensus that the RTO West Board of Trustees should be a non-stakeholder board, as was proposed for IndeGO.
 - However, the subgroup has been notified that ITC representatives may wish the subgroup to consider one or more proposals regarding the composition of the RTO’s board, including a potential proposal that a person would not be disqualified from serving as a trustee merely by virtue of having an affiliation with the ITC.
 - There is broad consensus that the board should consist of between seven and 11 members.

- Election of Trustees

- There is not consensus within the subgroup as to whether the members of the Board of Trustees should be elected by the RTO voting members directly, or instead elected by a committee of representatives elected by the RTO voting classes.
- There is not consensus as to the vote that should be required for the election of trustees. Some members of the subgroup favor carrying forward the IndeGO model, in which each nominee was required to obtain a majority of the votes within each voting class. Other members of the subgroup favor non-class voting combined with a requirement that a nominee receive a supermajority vote (such as 85 percent) for election to the board. This lack of consensus on the required vote is linked to the lack of consensus on whether each voting member class should have equivalent voting power, and to the lack of consensus whether the required percentage vote, in tandem with the allocation of voting power among the different membership classes, should be such as to permit any given class, by itself, to prevent the Board of Trustees from taking specific action.

- Board Member Qualifications

- There is broad consensus within the subgroup that board members should be required in the aggregate to possess a broad range of relevant experience, such as in commodities markets, economics, public policy and electric bulk power transmission in the Western Interconnection, but that there should not be any seats reserved on the board for individuals possessing experience in a specific area (i.e., there should not be a specific seat on the board for an accountant, a lawyer, a person with utilities experience, etc.).
- There is also broad consensus that the RTO Bylaws should not express any preference that board members come from within the RTO region, or that the Chairman of the Board of Trustees have electric utilities experience.

RTO West Stakeholder Advisory Committee

The Governance Subgroup has reached broad consensus regarding many elements of the RTO stakeholder advisory committee, although certain details of the committee's operations remain to be worked out. Attached to this memorandum as Attachment B is a memorandum summarizing the key elements of the advisory committee as to which consensus has been reached. Some of these elements are:

- Committee Size and Composition

- There is general consensus that the RTO stakeholder advisory committee should be comprised of members elected by RTO member classes, as in the case of IndeGO; but

as noted above, there is not consensus as to whether each member class would be entitled to elect an equal number of representatives to the advisory committee.

- There is general consensus that the advisory committee should be limited to not more than 25 members.
- Authority and Procedures
 - There is general consensus within the subgroup that the advisory committee should have very broad authority to consider issues raised from effectively any source.
 - There is general consensus that the advisory committee should have standing and ad hoc subcommittees that would be open to membership and participation by any interested party.
 - There is general consensus that the advisory committee's operating procedures should ensure public notice of all matters coming before the committee or any subcommittee, and an opportunity for any interested party to be heard on any issue.
 - There is general consensus that the advisory committee and its subcommittees should have broad authority to refer matters to the RTO staff for study and investigation.

RTO West Code of Conduct

- There is broad consensus within the subgroup that the RTO Code of Conduct should continue to apply to former trustees of the RTO for a period of one year after they leave office, but that former employees of the RTO should not continue to be bound by the Code of Conduct after they leave employment with the RTO.

ATTACHMENT A

DRAFT DEFINITIONS OF PROPOSED RTO WEST MEMBER CLASSES SUPPORTED BY CONSENSUS WITHIN THE GOVERNANCE SUBGROUP

Major Transmitting Utilities Class. A “Major Transmitting Utility” is a Transmission Owner¹ that, individually or together with one or more of its affiliates, receives from the RTO revenues in excess of _____ percent of the RTO’s total transmission system revenue requirement.²

Transmission-Dependent Utilities Class. A “Transmission-Dependent Utility” means any investor-owned utility, independent transmission company, municipality, municipal utility, public utility district, people’s utility district, cooperative corporation, joint powers agency, federal power marketing agency, irrigation district, joint powers authority that includes one or more of such agencies, or other entity that (i) furnishes electric services over its own or its members’ electric transmission or distribution system, (ii) is located, conducting business or operating within the control area operated by the RTO and (iii) is not a Major Transmitting Utility.

Nonutility Entities Class. “Nonutility Entity” means any entity, other than a Major Transmitting Utility, Transmission-Dependent Utility, Retail Customer, or Utilities Commission, that is located, conducting business or operating within the control area operated by the RTO and (i) that owns or has contractual rights to use transmission facilities and is subject to FERC authority pursuant to Sections 210 or 211 of the FPA, or that would be subject to such authority were it located within the United States, or that owns or has contractual rights to use transmission facilities in Canada, or is authorized to provide transmission services or interconnection over such Canadian facilities, or (ii) that is entitled to apply to the FERC for an order requiring transmission services or interconnection pursuant to Sections 210 or 211 of the FPA, or that would be entitled to apply for such an order were it located within the United States, or that is a marketing affiliate of any such non-U.S. entity seeking transmission services, or that receives interconnection or transmission services from a Canadian Transmission Provider.

Retail Customers Class. “Retail Customers” are end-user consumers of electric power, such as industrial, commercial, residential and agricultural consumers, that are not Major Transmitting

¹ “Transmission Owner” means any investor-owned utility, independent transmission company, municipality, municipal utility, public utility district, people’s utility district, cooperative corporation, joint powers agency, federal power marketing agency, irrigation district, joint powers authority that includes one or more of such agencies, or other entity that furnishes electric services over its own or its members’ electric transmission system, and *that has transferred operational control of its transmission facilities to the RTO pursuant to a Transmission Control Agreement.*

² Depending upon the outcome of discussions within the Adjunct Committee which is addressing Canadian issues, the definition of the Major Transmitting Utilities Class may need to be revised to accommodate participation of Canadian transmission owners, since such participation may take the form of indirect participation through an intermediary Independent Grid Operator, rather than direct participation through Transmission Control Agreements between the individual transmission owners and the RTO.

Utilities, Transmission-Dependent Utilities, Nonutility Entities and that are (i) [not in any manner engaged in sales of electric power] [not “market participants” within the definition of such term in Order 2000/2000-A], (ii) located in the control area operated by the RTO and (iii) eligible to purchase direct access transmission service from the RTO.

ATTACHMENT B

PROPOSED STAKEHOLDER ADVISORY COMMITTEE TO THE RTO BOARD OF TRUSTEES

Introduction

At the start of the RTO process, the filing utilities and other participants agreed to the following:

“The RTO shall be governed by an independent board of directors or board of trustees. A stakeholder advisory board shall be created to provide recommendations to the RTO governing board.”

Consistent with this agreement, it is currently contemplated that the RTO Board of Trustees (“Board”) will be composed of individuals who do not have a financial connection with the electric industry, and will not include representatives of transmission owners or transmission users. Under this approach, the Board will be the decision-making body and the advisory board will provide recommendations to it.

The following proposal is intended to implement the second part of the above agreement. It does so by establishing an Advisory Committee (“Committee”), composed of representatives of RTO member classes (regional transmission owners, transmission users and other parties with a stake in the operation of the transmission system), which will provide the Board with timely recommendations on matters upon which the Board may act.

Advisory Committee

1. Purpose

The purpose of the Advisory Committee (“Committee”) is to support the decision making of the Board by considering matters that will be taken up by the Board, and by providing in a timely manner written recommendations on what action the Board should take on such matters. The recommendations of the Committee shall be established by the vote thereof, and shall include both a majority and minority recommendation to the extent that any vote of the Committee on a matter is not unanimous.

2. Areas of Responsibility

The Committee may take up any matter that the Committee deems appropriate. In addition, the Committee will consider matters raised by members of the Committee, matters raised by any RTO member or transmission user, and matters raised or referred to the Committee by the RTO Board, the RTO staff or any Subcommittee. In addition, certain enumerated matters must go the Committee before they may be taken up by the Board, including changes to any RTO tariff, revisions or amendments of general application to any RTO contracts (such as Transmission Control Agreement, Load/Integration Agreement, Paying Agent Agreement), and

any revision to operating practices of general application (such as scheduling, transmission planning). The Board would be obliged to give due consideration to the recommendations of the Committee in determining how to dispose of the matter to which the recommendation refers.

3. Committee Structure

The Committee would be composed of mutually exclusive classes, with objective criteria and clear distinctions between categories. No entity could participate in more than one class, and each class would determine who would represent it. The size of the Committee should not exceed 25 members. Over time, the classes may need to change in order to ensure adequate representation of all stakeholder interests. Any such change would be subject to Board approval.

4. Committee Consideration Process

The Committee would maintain Sub-committees that would be responsible for specific topic areas. At a minimum, it is suggested that the Committee establish Sub-committees for Planning Coordination, Operations and Market Interface. Additional Sub-committees may be established as determined by the Committee. Upon the receipt of a matter for its consideration whatever the source of the matter, the Committee would either refer the matter to the appropriate Sub-committee, with directions on what work product it needs from the Sub-committee and a deadline for the Sub-committee to complete its work, or act on the matter if the Committee determines that no additional work product is needed. Such work product can include recommendations from the Sub-committee. (The composition and manner in which the Sub-committees would operate is described in paragraph 5 below).

Either upon receipt of the work product from the Sub-committee, or upon receipt of the matter if no additional work product is needed, the Committee would deliberate on the matter and attempt to reach consensus. In any event, after a reasonable period of time for deliberation, the Committee would vote to determine what recommendation will be made to the Board. Each committee member will be entitled to one vote, and a simple majority of the Committee members present and voting will be sufficient to approve a recommendation unless the Board has imposed a higher threshold of approval for a particular topic area. All votes will be recorded and reported to the Board. Members voting against a recommendation that is approved may submit to the Board a minority recommendation. In no event would the Committee be permitted to block consideration of a matter brought to it, and all matters brought to the Committee, and the actions by the Committee thereon, shall be reported to the Board.

5. Sub-committee Consideration Process

As outlined above, the Committee would establish Sub-committees by topic area. Sub-committees would not have standing members nor class representation. Rather, Sub-committees would be open to all, and would be composed of anyone who cares to attend. It is expected that those who are interested in the topic of the Sub-committee would attend. Sub-committees would strive to operate by consensus, but all decisions of the Sub-committees will be made by vote of all those attending, and a simple majority of those present and voting will be sufficient for approval of any matter. Each attendee will be entitled to one vote. All votes of the Sub-committees will be recorded and reported to the Committee. Any party voting against a matter that is approved may submit to the Committee a minority report of such matter.

6. RTO Staff Support

Either the Committee or any Sub-committee may request assistance from the RTO staff with regard to a matter that is either under consideration by the Committee or which has been assigned to a Sub-committee. In requesting such assistance from the RTO staff, members of the Committee and any Sub-committee shall designate an individual to act as liaison with the RTO staff for purposes of coordinating requests for such assistance, in order to minimize duplicative requests. Members of the Committee and any Sub-committee shall exercise restraint on the volume of such requests, in order to avoid unnecessarily burdening the RTO staff.

7. Availability of Information

The key to the successful operation of this approach is participation by interested individuals and parties, and this depends on the free and timely flow of information. The posting of information on the RTO website will be the primary method of disseminating such information. Before any matter can be acted upon by the Committee, the matter in question, the time, location and date of the meeting at which it will be considered, and any pertinent material then available will be posted on the website for at least five calendar days before such meeting. Further, a summary of any action taken by the Committee on a matter presented to it, such as assignment to a Sub-committee, will be posted promptly after each Committee meeting. Any materials submitted to the Committee on any such matter shall be attached to such summaries.

The time, date and location of all meetings of all Sub-committees, and the agenda for all such meetings, shall be posted at least five days prior to any such meeting. A summary of all actions taken at any Sub-committee meeting will be posted promptly after each Sub-committee meeting. Any materials submitted to the Sub-committee on any action taken shall be attached to such summaries.

Generally, any materials produced by or available to the RTO staff and relating to any matter under consideration by the Committee or any Sub-committee should (with limited exceptions for material that is entitled to confidential treatment because, for example, it contains proprietary information or relates to litigation or individual personnel matters) be available to the Committee or such Sub-committee on the same basis as to the RTO staff.