

**PRELIMINARY DRAFT**  
**DESCRIPTION OF POSSIBLE GOVERNANCE APPROACH**

A. Background Information

This paper describes in general terms a possible approach to governance issues for a regional transmission entity (the “regional entity”) for the Northwest (meaning the term very broadly to include British Columbia, Washington, Oregon, Idaho, and parts of Montana, Nevada, Utah, and Wyoming). This approach was introduced to the governance work group (the “work group”) of the RTO West Regional Representatives Group (the “RRG”) late in the day during the work group’s meeting on October 21, 2003. The work group did not have time to discuss the approach in any detail. There are some significant questions (raised by work group members based on very preliminary discussions) that may influence whether parties will ultimately be willing to support the approach, but at the same time many of the work group’s participants felt the approach merited further exploration.

The approach described below builds on earlier discussions within the work group concerning what procedural and other protections are available to stakeholders under the RTO West Bylaws (the “Bylaws”) as proposed in the Stage 2 FERC filing (submitted to FERC on March 29, 2002). The work group also considered, and there was general consensus in the work group supporting, some potential enhancements to the provisions of the Bylaws to give greater opportunity for regional stakeholders to influence and respond to decisions of the RTO West independent Board of Trustees (the “Board”). The work group did not reach consensus on whether those enhancements provided acceptable protections either alone or as part of a package.

1. Examples of Bylaws Provisions To Give Stakeholders Means To Hold the Board Accountable

Much of the work group discussion on October 21, 2003 (which helped lead to the approach outlined in part B of this paper below) focused on regional stakeholders’ ability to hold the Board accountable through their power to remove Board members.<sup>1</sup> Under the Bylaws as currently written, members of the RTO West Trustee Selection Committee (who are the elected representatives of five classes of regional stakeholders) not only have the exclusive power to

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<sup>1</sup> To simplify the discussion in this paper, we use the terms “stakeholders” or “regional stakeholders” to refer to the parties that are affected by the governance, business practices, and transmission operations of the regional entity. In a governance structure based on the Bylaws of RTO West as proposed in the Stage 2 FERC filing, parties that wish to participate in the governance of the regional entity must become members of the entity (and designate themselves into one of the five voting member classes). Under the Bylaws as currently written, members do not have direct power to elect and remove members of RTO West’s Board of Trustees. Rather, each of the five member classes is entitled to elect six of the 30 members of the RTO West Trustee Selection Committee. The Trustee Selection Committee has the exclusive power to elect and remove Board members.

elect Board members, but the power to remove Board members, with or without cause.<sup>2</sup> (The Bylaws provide that 20 out of the 30 Trustee Selection Committee members must vote in favor of removing a Board member for cause; to remove a Board member without cause requires the approval of 24 out of the 30 Trustee Selection Committee members.) See § 6.6 of the Bylaws.

Another set of protections are tied to the Board Advisory Committee. Any member of the corporation can have a representative on the Board Advisory Committee. Board Advisory Committee members have the right to attend meetings with the Board at least four times a year. See § 7.5.6 of the Bylaws. This is in addition to the right of all of the corporation's members to receive notice of, attend, and be heard at Board meetings. See § 6.9 of the Bylaws. The Board is obligated to consult with the Stakeholder Advisory Committee before taking certain kinds of actions (such as amending the RTO West tariff) and the Board is obligated to consider the advice of the Stakeholder Advisory Committee. See §§ 7.5.2 and 7.5.3 of the Bylaws.

A summary of provisions in the Bylaws that support stakeholders' involvement in and influence over Board decisions is included with this paper as Attachment A.

## 2. Some Potential Enhancements of Stakeholder Protections the Work Group Discussed

In general, the enhancements to the current Bylaws the work group discussed at its October 21 meeting focused on procedural mechanisms to assure that stakeholders can make effective use of the Board removal remedy (if all other efforts to elicit responsive Board action have failed). Other procedural mechanisms were proposed but not discussed because of time constraints.

One possibility is that the Bylaws could be modified to provide that, in addition to the mandatory pre-decision consultation provisions already included (*see* § 7.5.3), there would be short list of designated issues (dealing with some fundamental changes to the nature of the organization's activities or programs) for which there were heightened procedural protections. There was no consensus evident during the work group's discussions as to what items should be included on the short list.

For example, if the Board were considering taking action with respect to one of the designated issues, it could be required to provide notice and an opportunity for consultation for a period of at least 60 days before taking the action (together with an obligation to consider, before reaching a decision, the input received during the consultation period). The Board would not be able to proceed with the action before the 60-day consultation period had elapsed. ("Proceeding with the action" could be defined to include both (a) direct implementation of the action and (b) the submission of a regulatory filing necessary to implement the action.)

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<sup>2</sup> The Board of Trustees also has the power to remove Trustees but only for cause (which includes, without limitation, willful misconduct, violation of the conflict-of-interest or disqualification provisions of the Bylaws, failure to attend more than one-half of the Board meetings during a fiscal year, or failure to attend at least one meeting during the fiscal year between the Board and the Board Advisory Committee). (*See* § 6.6 of the Bylaws.)

If, during the 60-day consultation period, stakeholders responded by initiating certain specified actions (for example, if a member class or the entire membership were to call a meeting or if the Trustee Selection Committee were to call a meeting), the Board's ability to proceed with the action would be stayed for some additional time period sufficient to enable the stakeholders to fully carry out their responsive actions. The stay could continue long enough to enable the Trustee Selection Committee to call a vote on removing one or more Board members, if necessary.

If stakeholders took no action before the prescribed waiting period (such as 60 days) had elapsed, the Board would be free to proceed with implementation (or appropriate regulatory filings).

B. The Approach

Building on the discussions described in part A.2 above, the end-of-day approach presented to the work group consisted of these elements:

- There would be a short list of designated issues (again, relating to fundamental changes to the nature of the organization's activities or programs).
- Board decisions concerning designated issues would be subject not only to the consultation and stay provisions described in part A.2 above, but to veto by the vote of a representative stakeholder committee (generally expected to be the Trustee Selection Committee or something very much like it).
- Assuming the representative stakeholder committee had 30 members (which is how the Trustee Selection Committee is structured), it would take a vote of at least 16 of the 30 stakeholder committee members to overturn a Board decision with respect to a designated issue.
- The final element of this proposal is that there would be no "pre-determined" end state to which the Board would be required to move the regional entity. Many members of the work group were unclear as to what was intended by this element and would like to discuss it further. Some felt that a mission statement of ends or objectives the regional entity was intended to promote (*e.g.*, seeking "efficient use of the transmission system" or the intended goals of locational marginal pricing) without predetermining the means to obtaining those ends (*e.g.*, locational marginal pricing itself) would at least be necessary. Others suggested a nonbinding business plan that might include, for example, development of locational marginal pricing but that the Board would be free to change.<sup>3</sup>

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<sup>3</sup> PacifiCorp expressed significant concern about the potential for consensus around a proposal that did not identify a clear path to a presumptive end state, although PacifiCorp indicated that it is open to reviews along the way to determine whether the regional entity has met appropriate objective tests relating to readiness before moving forward.

Some of the work group participants raised general questions concerning the implications of the approach. These questions related to a range of topics, including how the proposal would affect the overall independence of the regional entity's Board, how it would affect the current form of Transmission Operating Agreement proposed for RTO West, how it might affect the process for seeking necessary regulatory approvals, possible corporate law considerations, and how expected future benefits might be affected by uncertainty about the regional entity's long-term direction. Other topics that many work group participants indicated were critical to them included what the initially authorized scope of the regional entity would be and what items would be on the designated list of issues that could be subject to stakeholder veto. Given the time of day when these matters came up, however, the work group did not have an opportunity to discuss them.

## **ATTACHMENT A**

### **SUMMARY OF SELECTED RTO WEST BYLAWS PROVISIONS**

1. Members of all classes must either be located in, or be buying or selling energy into, through, or out of, the RTO West Geographic Area. (1.1.23/1.1.54, 1.1.29, 1.1.40, 1.1.50/1.1.32, 1.1.52, 1.1.58)
  - a. California is specifically excluded from being a “Participating Jurisdiction.” (1.1.32)
2. Certain rights of Members:
  - a. Elect members of Trustees Selection Committee (4.1.1) – each Member class, or sub-class, elects Committee members.
  - b. Each Member class, or sub-class, may remove by majority vote, with or without cause, the members of Trustees Selection Committee which the class, or sub-class, previously elected. (4.1.1)
  - c. Amend Articles of Incorporation and certain bylaws provisions. (4.1.1)
  - d. Approve dissolution of Corporation. (4.1.1)
  - e. Right to appear before, and be heard on any matter before, the Board. (6.9, 7.5.9)
  - f. Right to receive at annual meeting responses from Board members and corporate officers to Members' questions about annual report and other significant issues. (4.4.1)
  - g. Schedule special meetings of Members if called by at least one-third of Members entitled to vote at the meeting. (4.4.2)
  - h. Schedule special meetings of Member class or sub-class if called by at least one-third of Members entitled to vote at such meeting. (4.4.2)
  - i. Right to be informed of agenda, attend meetings and review meeting minutes of Board of Trustees (6.8.2, 6.9, 9.1) and Trustees Selection Committee. (5.7.5, 5.8.2, 5.9)
  - j. Right to participate in Board Advisory Committee. (7.5.1)
  - k. Right to present to Board all Member viewpoints expressed in Board Advisory Committee. (7.5.5)
  - l. Right to attend the required meetings (four per year) between the Board and the Chairperson of the Board Advisory Committee. (7.5.6)
  - m. Right to review Corporate records, including records of accounts and finances. (9.1.1)
  - b. Right to take disagreements under the bylaws to alternative dispute resolution. (11.5)
3. Certain rights of public:
  - a. Right to be notified of scheduled Board (6.8.2), Trustees Selection Committee (5.8.2), Board Advisory Committee (7.6) and Member-wide meetings. (4.5.2)
  - b. Right to be notified of any matter on which the Board Advisory Committee must advise and which is referred to the Board Advisory Committee by the Board for advice. (7.5.3)
  - c. Right to attend Board (6.9), Trustees Selection Committee (5.9), Board Advisory Committee (7.6) and Member-wide meetings. (4.6)

- d. Right to review minutes of Board (6.7.5), Trustees Selection Committee (5.7.5), and Board Advisory Committee. (7.6)

4. Rights of Trustees Selection Committee:

- a. Elect members of Board of Trustees (5.1.1) – election requires 24 votes.
- b. Exclusive right to remove any Trustee without cause upon affirmative vote of at least 24 Committee members. (6.6)
- c. Right to remove any Trustee for cause upon affirmative vote of at least 20 Committee members. (6.6)
- d. Exclusive right to elect members of RTO West Arbitration Committee. (5.1.3)
- e. Right to remove Trustees Selection Committee members, for cause, with at least 20 affirmative votes. (5.6)

5. Obligations of Trustees:

- a. Meet at least six times each fiscal year. (6.7.1)
- b. Meet within RTO West Geographic Area. (6.7.1)
- c. Comply with Standards of Conduct (6.13) and be subject to compliance determinations by independent compliance auditor. (6.15.4)
- d. Act only in best interests of Corporation. (6.15)
- e. Consider any timely advice of the Board Advisory Committee on any matter of concern related to the Corporation. (7.5.2)
- f. Refer to Board Advisory Committee, prior to final Board action, (i) any proposed amendment or modification to the RTO West Tariff; (ii) any proposed amendment or modification to the forms of the Transmission Operating Agreement, Generation Integration Agreement, Load Integration Agreement or Scheduling Coordinator Agreement; (iii) RTO Transmission System planning matters; (iv) the annual budget of the Corporation (including potential budget reductions and financial controls when a proposed budget materially exceeds the expenses for the prior audited fiscal year); and (v) any proposed measures to implement market power or price mitigation. (7.5.3)
- g. Obligation to condition substantial portion of compensation for officers, managers and other corporate employees as the Board deems appropriate upon successful implementation of cost management and other performance goals. (8.11.1)
- h. Obligation to ensure that officers, employees, substantially full-time consultants and contractors, and other individuals performing discretionary functions for on behalf of the Corporation comply with the Employees Code of Conduct. (8.14)