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# Grid West Developmental Bylaws Update

*Regional Representatives Group*

*Meeting*

*Portland, Oregon*

*May 5-6, 2004*



## Where are we?

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### ➤ **Components of Decision Point #1**

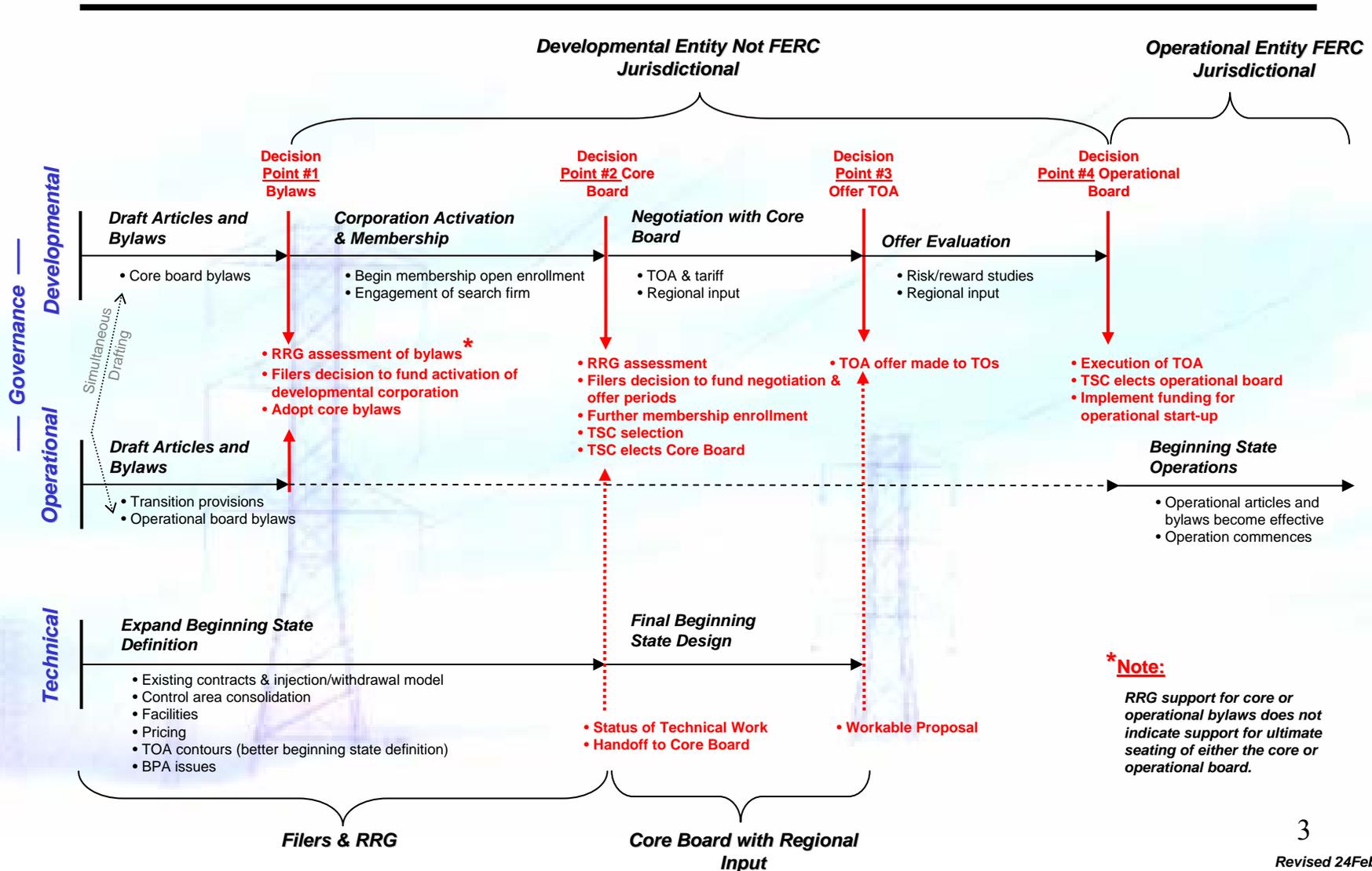
- RRG assessment of bylaws
- RRG consensus on whether to adopt Developmental Bylaws
- Filers decision to fund activation of developmental corporation
- Adoption of Developmental Bylaws

### ➤ **Approaching Decision Point #1**

- Proposed Developmental Articles and Bylaws posted on April 28<sup>th</sup> on the RRG Main Page
- Proposed Operational Bylaws to be completed and posted ASAP
- Transmission Services Liaison Group (TSLG) report defining Grid West beginning state to be posted May 14<sup>th</sup>



# Process Diagram





## Articles & Bylaws: The Governing Documents of Grid West

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### Implementing the Regional Proposal – a balancing act



#### **Governance structure through bylaws – two goals**

- Retain regional control over Grid West development process
- Seat an independent board to provide a negotiating counter-party to transmission owners & operators in Transmission Agreement (TA) and tariff provisions

Here's what we propose for the RRG's consideration...<sup>4</sup>



## Retaining Regional Control over Grid West Development

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- Developmental Board will be seated by regional stakeholders (Decision Point #2)
  - Members of the Corporation must have a stake in regional transmission system [*Art. V and member class definitions*]
  - Members elect Members Representative Committee (MRC) [*Art. VI*]
  - MRC in turn elects Developmental Board [*§7.1.7 and §7.2.7*]
  - Board candidates will possess knowledge of regional power and transmission operations [*§7.1.7*]
- Developmental Board will foster regional input
  - Fostering regional stakeholder input is an express purpose of the Developmental Stage [*§3.1*]
  - Transmission agreements and tariff provisions proposed by the Developmental Board must be consistent with the Regional Proposal [*§3.1*]



## Retaining Regional Control over Grid West Development (continued)

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- Process requirements provide adequate opportunities for regional input
  - Regional Representatives Group (RRG) retained [[§4.1](#)]
  - Open meetings promote transparency [[§7.6](#), [§5.11](#) and [§8.3](#)]
  - Members and RRG may bring matters directly to the Board [[§7.6](#)]
  - Regional consultation required [[Art. IV](#)]
    - *Regular consultation with regional governments and RRG* [[§4.2](#), [§4.1.3](#)]
    - *Periodic meetings throughout geographic area* [[§4.3](#)]
    - *At least semi-annual meetings with membership* [[§5.9.1](#)]
  - Open sessions for Transmission Agreement negotiations [[§12.1](#)]
- Process provides for regional accountability
  - Members may override the Developmental Board's proposal to offer Transmission Agreements [[§12.2](#)]
  - Transmission Owners must decide whether to execute Transmission Agreements
  - BPA will conduct ROD process before reaching decision
  - State regulatory commissions will review Transmission Agreements before investor-owned utilities execute agreements



## Seating an Independent Developmental Board

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- Process for selection of Board ensures independent search for candidates
  - Candidates for Trustee position will be identified by an experienced search firm [[§7.1.7\(i\)](#)]
  - Slate of candidates should be diverse and include individuals possessing, collectively, [[§7.1.7 \(ii\)](#)]
    - *Knowledge of operational characteristics of the Pacific Northwest power system and Western Interconnection transmission system*
    - *Executive management or board experience with electric utilities*
    - *Personal abilities and qualities: integrity, leadership, problem-solving, facilitation and consensus-building*
    - *Experience in engineering, law, finance, economics, accounting, information technology, commodities*
    - *Experience in regulation and public policy*
  - MRC nominates and elects Board from identified candidates



## Seating an Independent Developmental Board

(continued)

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- Criteria for Board members require independence from market participants and Members
  - Candidates will be disqualified if they have a conflict of interest in the duties of a Trustee [[§7.1.7\(ii\)](#)]
    - *Financial interest in a market participant, Member or a major contractor of the corporation [[§7.10](#)], however*
      - Investments through diversified mutual funds are allowed [[§7.10.2](#)]
      - Retirees with retirement benefits that don't vary as a result of performance of their former employer are not disqualified [[§7.10.2](#)]
    - *Employment by the candidate or family member with a market participant or Member [[§7.10.1](#)]*
    - *Participation by the candidate or a family member as an owner, director, officer, employee, or similar role, of a market participant or Member within the past year [[§7.10.1](#)]*



# Seating an Independent Developmental Board

(continued)

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- Board retains independence in decision-making
  - Although beginning state design must be consistent with the Regional Proposal, Developmental Board decides whether design is workable before offering Transmission Agreements
  - Developmental Board determines independently what terms to be included in offer of Transmission Agreements
  - If Members override decision to offer Transmission Agreements, the Developmental Board decides independently whether and how to modify Transmission Agreements to be offered
    - *Developmental Board may always determine further effort is futile and opt to dissolve the corporation*
- Services and related protocols for the Operational Stage, consistent with the Regional Proposal, will be subject to tariff provisions
- In summary:

*The Developmental Board retains the independence to develop a proposal it determines is workable, sustainable and beneficial, but that independence does not replace the region's ability to decide whether to implement the proposal.*



## Other Issues Related to Developmental Bylaws

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- Purposes of the Corporation and limitations of the Developmental Board [*Art. III*]
- Deadlines to complete the Developmental Stage [*Art. XIII*]
- Voting structure [*§5.2 and definitions §1.1*]
- Transition from current (Interim) Board to Developmental Board to Operational Board [*§7.2.5*]
- Non-jurisdictional status of Developmental Stage [*passim*]



## Purposes of the Corporation

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- The purposes of the Corporation are to:
  - Develop, negotiate, and offer Transmission Agreements with transmission owners and operators, consistent with the Regional Proposal [[§3.1](#)]
  - Develop tariff provisions describing services and related protocols for the Operational Stage, consistent with the Regional Proposal [[§3.1](#)]
  - Promote and foster regional stakeholder input [[§3.1](#)]
  - Consider such matters as economic efficiency and fairness, cost-effectiveness, risks and rewards, fuel diversity and sustainability, and environmental effects [[§3.1](#)]
  - Secure broad regional support for execution of Transmission Agreements by transmission owners and operators in order to transition to the Operational Stage [[§3.1](#)]
- These actions are subject to limitations [[§3.2](#)]



## Limitations of the Developmental Board

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- The Developmental Board does not have the authority to:
  - Own, control, or operate any jurisdictional facilities [[§3.2.1](#)]
  - Purchase, sell, transmit, deliver, or participate in any energy market or transactions [[§3.2.2](#)]
  - Provide any utility service or control activities affecting utility service [[§3.2.3](#)]
  - Make any filing with any state, provincial, or federal utility regulatory commission [[§3.2.4](#)]
  - Spend or borrow beyond the approved limits in the funding agreement [[§3.2.5](#)]
  - Adopt the Operational Bylaws, except as provided in §7.2.5 [[§3.2.1](#)]
  - Amend the Operational Bylaws [[§3.2.7](#)]



## Deadlines to complete the Developmental Stage

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- If the Board does not offer Transmission Agreements within one year, it must initiate dissolution of the corporation, subject to the Members' vote
  - Caveat: if a Board "offer" is overridden by the Members, the time within which to make an offer is extended by 90 days [*§12.2 and §13.1*]
  - If BPA and two contiguous IOUs do not execute Transmission Agreements within one year of the Board's offer, the Board must initiate dissolution of the corporation subject to the Members' vote [*§13.2*]
- The Board may dissolve the corporation for lack for progress ("futility" determination) [*§13.3*]
- If the Board recommends dissolving the corporation because of failure to meet timelines or "futility", members get an opportunity to override [*§13.1, §13.2, §13.3 and voting provisions §5.14.2*]
- If state or FERC exercise electric utility regulatory authority, the Board must dissolve the corporation (not subject to a Member vote) [*§13.4*]



## Voting structure - Background: Membership Rights

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- Elect and remove members of the Members Representative Committee
- Approve amendments of the bylaws,
- Override a proposal by the Developmental Board of Trustees to dissolve the Corporation
- Override a decision by the Developmental Board of Trustees to make an initial Transmission Agreements offer to transmission owners and operators,
- Participate in advisory votes submitted to the Members by the Interim or Developmental Board of Trustees,
- Amend the articles of incorporation; and
- Receive notices and attend and be heard at meetings of the Members and the Interim and Development Boards of Trustees



## Voting structure - Background (continued)

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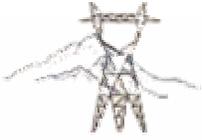
- The Membership Representatives Committee (MRC) is composed of 30 representatives elected by 5 membership classes with 6 votes in each class
- MRC replaces old Trustee Selection Committee (TSC)
  - Some RRG members questioned whether the voting structure was appropriate given the TSC's expanded duties
  - Voting structure in Stages 1 & 2 was a compromise based on the TSC's limited role
  - Bylaws Work Group proposes some changes in voting structure
- The MRC has expanded duties, but not in the Developmental Stage



## Voting structure - Membership classes

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- **Classes in order of priority of class assignments** [[§5.2.3](#)]
  - Major transmitting utilities (MTU) [[§5.2.1](#), [§1.1.19](#)]
  - Transmission dependent utilities (TDU) [[§5.2.1](#), [§1.1.39](#)]
  - Non-utility entities (generators, marketers, and others) [[§5.2.3](#), [§1.1.26](#)]
  - End-use consumers (large consumers and consumer advocates) [[§5.2.1](#), [§1.1.8](#)]
  - States and provincial energy authorities, tribes, and unaligned entities [[§5.2.1](#), [§1.1.38](#)]
- Members may only vote within their own sub-class (or class, if no sub-classes)



# Voting structure - Membership classes

<i>Class</i>	<i>Sub-Class</i>	<i>MRC Votes</i>	<i>Voting Power</i>	
			<i>Number</i>	<i>Percent</i>
MTU	Voting members	6	6	20.00%
TDU	N/A	6	6	20.00%
Nonutility Entity	Generators & marketers	5	5	16.66%
	Other	1	1	3.33%
End Use Consumer	Large Unbundled End-Use Consumer	2	2	6.66%
	Large Bundled End-Use Consumer	1	1	3.33%
	Consumer Advocate	3	3	10.00%
State and Provincial Energy Authority/ Tribes/ Unaligned Entity	State and Provincial Energy Authority	4	4	13.30%
	Tribes	1	1	3.33%
	Unaligned Entity	1	1	3.33%
	<b>Totals</b>	30	30	99.98%



## Voting structure - Membership classes (continued)

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### ➤ Major transmitting utilities

*(Note- voting structure may be different in Operational Bylaws) [§5.2 and definition §1.1.19]*

- Who can be class members?
  - Utilities with more than \$160 million of transmission investment
  - Utilities with more than \$50 million (but less than \$160 million) of transmission investment, if they agree to fund the development effort
  - With some exceptions, if an applicant qualifies for this class, it must join this class
  - This class has no sub-classes (*at least during the development stage*)



## Voting structure - Membership classes (continued)

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### ➤ **Transmission-dependent utilities**

*(Revised voting structure) [§5.2 and definition §1.1.39]*

- These are not major transmission owners, but may have some transmission
- Weighted voting mechanism in Stages 1 and 2 was the subject of protest and controversy and has been removed
- Who can be class members?
  - Utilities who are dependent on transmission systems of others for serving load
  - If an applicant qualifies for this class and another (the generators class, for example), it must join this class
  - This class has no sub-classes



## Voting structure - Membership classes (continued)

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### ➤ **Non-utility entities (generators, power marketers, and others)**

*(Voting structure stayed the same; one MW floor added to definition) [[§5.2](#) and definition [§1.1.26](#)]*

- Who can be class members?
  - Generators, power marketers (sub-class)
    - Exception for certain generators [[§5.2.3\(iv\)](#)]
  - Others, including non-regional utilities selling into the region or buying from the region (sub-class)



## Voting structure - Membership classes (continued)

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### ➤ **End-use consumers**

*(Revised voting structure) [§5.2 and definition §1.1.8]*

- Who can be class members?
  - Large Bundled End-Use Consumers (sub-class)
  - Large Unbundled End-Use Consumers (sub-class)
  - Consumer Advocates (sub-class)
  - There are exceptions for large retail customers with generation [§5.2.3(iv)]



## Voting structure - Membership classes (continued)

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- **States and provincial energy authorities, tribes, and unaligned entities**  
(*Voting structure stayed the same*) [[§5.2](#) and [definition §1.1.38](#)]
  - Who can be class members?
    - States and provincial energy authorities (sub-class)
    - Tribes (sub-class)
      - \* *Any tribe may join sub-class, but each tribe may only have one member*
    - Unaligned entities, e.g., environmental, renewables, demand side and public interest group representatives (sub-class)



# Voting structure - Membership votes

<u>Issue</u>	Class without Sub-classes	Class with Sub-classes
1. Election of MRC representatives	<ul style="list-style-type: none"><li>➤ Each member present has one vote for each vacancy</li><li>➤ Candidates with highest number of votes wins</li></ul>	<ul style="list-style-type: none"><li>➤ Within a sub-class, each sub-class member has one vote for each vacancy for a sub-class representative</li><li>➤ Candidates with highest number of votes wins</li><li>➤ Other class members (outside the sub-class) have no vote in electing the sub-class representative to the MRC</li></ul>
2. Removal of MRC representative by member class  <i>(MRC also has removal rights)</i>	<ul style="list-style-type: none"><li>➤ Each member present has one vote</li><li>➤ A majority of the class members present must vote to remove the MRC representative</li></ul>	<ul style="list-style-type: none"><li>➤ Within the sub-class, each sub-class member has one vote</li><li>➤ A majority of the sub-class members present must vote to remove a MRC representative</li><li>➤ Other class members (outside the sub-class) have no vote in the decision</li></ul>



## Voting structure - Membership votes (continued)

<u>Issue</u>	Class without sub-classes	Class with sub-classes
3. Amendment to Articles of Incorporation	<ul style="list-style-type: none"><li>➤ Unanimous vote of Developmental Board of Trustees</li><li>➤ At least 80% of Members must attend and vote “yes” (not 80% of those present)</li></ul>	<ul style="list-style-type: none"><li>➤ Unanimous vote of Developmental Board of Trustees</li><li>➤ Sub-classes ignored and all members of class vote as one class</li><li>➤ At least 80% of Members must attend and vote yes (not 80% of those present)</li></ul>
4. Amendment to Bylaws	<ul style="list-style-type: none"><li>➤ Each class member present has one vote</li><li>➤ If 2/3 of class votes <u>in favor</u> of amendment, the entire class vote will count toward passage of bylaw change</li><li>➤ 4 out of 5 classes must vote as a class <u>in favor</u> of amendment (each by a 2/3 majority)</li></ul>	<ul style="list-style-type: none"><li>➤ Within a sub-class, each sub-class member present has one vote</li><li>➤ The affirmative vote of the sub-class is determined by the number of affirmative votes divided by the total votes cast in the sub-class, which amount is multiplied by the voting power of the sub-class</li><li>➤ An affirmative class vote is obtained if the total of the affirmative fractional votes within each sub-class equals 2/3s or more of the total class votes</li><li>➤ 4 out of 5 classes must vote in favor of the amendment (each by 2/3 majority)</li></ul>



## Voting structure – Membership votes (continued)

<u>Issue</u>	Class without sub-classes	Class with sub-classes
<p>5. Override Votes (Override a proposal to dissolve the corporation)  (Override a proposal to make an initial transmission agreement offer to transmission owners and operators)</p>	<p>➤ 4 out of 5 member classes must vote to <u>override</u>, each by a 2/3 majority</p>	<p>➤ 4 out of 5 member classes must vote to override, each by a 2/3 majority. Initial vote is by sub-class with sub-class votes accumulated to determine if entire class has voted to <u>override</u> by a 2/3 majority.</p>
<p>6. Advisory Votes</p>	<p>➤ Voting rules will be set by the Board</p>	<p>➤ Voting rules will be set by the Board</p>



## Transition from Developmental Board to Operational Board – what's required?

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- Adopt Operational Bylaws
  - When BPA and at least two other contiguous IOUs execute a Transmission Agreement within a specified time period, the Board must adopt the Operational Bylaws and move to the Operational Stage  
*[§7.2.5]*
- Provide bridge funding until Grid West can offer transmission services



## Non-jurisdictional status of Developmental Stage

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- Membership in Grid West does not cause a non-jurisdictional entity to become subject to FERC jurisdiction over interstate transmission services and wholesale power sales
  - Membership does not result in any proprietary or operational interest in FERC-jurisdictional facilities [*§5.17*]
  - FERC's extensive jurisdiction over IOUs is based on jurisdiction over their facilities [*Federal Power Act §201(b)*]
  
- Provisions related to non-jurisdictional status are incorporated throughout the Developmental Bylaws
  - Purposes are limited and bylaws prohibit ownership, control or operation of any electric utility facilities subject to jurisdiction of any state, provincial, or federal utilities regulatory commission, which might give rise to regulatory jurisdiction. The limitations also prohibit offering services, making regulatory filings and other “jurisdictional” activities [*§3.1 and §3.2*]



## Non-jurisdictional status of Developmental Stage

(continued)

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- Developmental Stage is clearly different from Operational Stage - each stage has separate bylaws and a distinct board
- Bylaws nullify any action taken by the corporation during the Developmental Stage if that action prompts a regulator, such as FERC, to exercise jurisdiction over the corporation [[§13.4](#)]
- Bylaws provide for dissolution of the corporation if a regulatory entity, such as FERC, exercises jurisdiction over the corporation [[§13.4](#)]



## Sources for Further Information

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- Attendance at RRG meetings – Meeting schedules, summaries and progress reports are posted at [www.rtwest.com](http://www.rtwest.com) and click on “RRG Main Page”
- Final Narrative Description of RRG Regional Transmission Proposal  
*Posted December 24, 2003*
- “Message” Document About the Regional Proposal  
*Posted February 3, 2004*
- Briefing Paper About the Regional Proposal  
*Posted February 3, 2004*
- Proposed Developmental Bylaws for Grid West  
*Posted April 28, 2004*
- Grid West Developmental Bylaws Summary  
*Posted April 28, 2004*
- Proposed Articles of Incorporation for Grid West  
*Posted April 28, 2004*