

Report of the Bylaws Work Group

RRG Meeting
October 26, 2004

Trustee Runoff Elections by the MRC

Previous recommendation: two rounds each requiring at least 20 votes for election, one more round requiring at least 16 votes for election. Thereafter, ties are resolved by drawing lots. If vacancies remain, top vote-getters are elected.

Concern expressed: no provision for adding new candidates who may garner 20 votes prior to proceeding to 16-vote round.

Recommendation: add second run-off (third vote) requiring 20 votes for election. Prior to second run-off, the MRC must request search firm(s) to provide at least two additional candidates which the MRC may either substitute for two existing candidates or proceed with the existing candidates. In addition, the MRC may request search firm(s) to provide additional candidates at any time during this election process. (Sec. 7.2.4)

Revolving Door Limitations

Previous recommendation: retain 180-day prohibition on acquisition of financial interest in a Market Participant or Member; adopt one-year prohibition on becoming owner, director, officer, employee, etc. of a Market Participant or Member.

Concern expressed: need to distinguish “owner” from “financial interest;” need to allow Board to impose more restrictive limitations

Recommendation: (Sec. 7.11.1/ 7.12.7)

- “owner” means owning or controlling at least five percent of outstanding shares of a Member or Market Participant.
- participation in mutual funds during 180-day period must be on terms and conditions available to the general public.
- Board may impose more restrictions for current and future Trustees

Trustees' Terms of Office

Concern expressed: bylaws allow for possible gap between terms of retiring Trustees and new Trustees.

Recommendation: language added that Trustees (other than Trustees who resign or are removed) shall serve until the expiration of their term and until their successors are elected.

(Sec. 7.1.2) Also added language which specifies that the Board may specify an earlier date for the effectiveness of Trustee's resignation. (Sec. 7.3).

Board Deliberations – Sunshine Act

Recommendation: (Sec. 7.4.1)

- Defined a Board “meeting” to be a gathering of at least a quorum of Trustees at which deliberation occurs or action is taken on Grid West business.
- Clarified that a quorum of the Board may not meet to deliberate or take action concerning Grid West’s business without providing notice and conducting an open meeting (except for confidential matters that may be addressed in executive session).
- A quorum may gather if not for the purpose of deliberating or taking action regarding the Corporation’s business, e.g., training, conferences, etc.

Budget Committee

Previous recommendation: 5-member committee comprised of two Trustees and three Member representatives. Each Member representative must represent a different Member class and should be current or former executives responsible for an organization's overall budget preparation or implementation.

Concerns expressed: all Member classes should be represented, larger committee needed to spread workload, Members shouldn't be limited to executives, Board shouldn't have sole authority to appoint committee members; budget should include a narrative describing financial future.

Recommendations: (Sec. 8.4)

- Budget Committee shall have 5-8 members, at least two of whom shall be Trustees and a majority of whom shall be Member representatives.

Budget Committee (cont'd)

- At first bi-annual meeting of the Members each year, Members shall forward names of candidates for Member positions on Budget Committee to Board. Board shall appoint committee members after considering recommendations from Members.
- Each Member representative shall represent a different Member class.
- Board required to “endeavor” to appoint current or former executives or senior managers.
- Committee required to prepare, in addition to budget for next fiscal year and estimated budgets for following two fiscal years, a narrative of expected capital commitments and financing for additional two years (fourth and fifth years out).

Governance Committee

Previous recommendation: Governance Committee not required, but Board has authority to establish one.

Concern expressed: absence of Governance Committee requirement sends message that governance not important; Board may feel too busy to address governance concerns; and best practices support the inclusion of a Governance Committee.

Recommendation: establish bylaws requirement for “Board Performance Committee” consisting of three or more Trustees. The committee shall (i) monitor developments in sound corporate governance practice; (ii) assist the Board in annually assessing the Board’s performance; (iii) make recommendations for improvements to the Board’s performance; and (iv) provide annual reports to the Board concerning the performance of the Corporation’s officers; and (v) perform such other duties as requested by the Board. (Sec. 8.87)

Member Standing Committees

Previous recommendation: incorporate a Tariff Advisory Committee, Operations Advisory Committee and an Planning Advisory Committee into Operational Bylaws. These would be Member committees. Board can continue or disband these and other advisory committees.

Concerns expressed: Board appointment of committee members may be a problem, board shouldn't have authority to disband these committees, members should have a broader knowledge base than just "executive or managers;" Developmental Bylaws should have a Tariff Committee.

(over)

Member Standing Committees (cont'd)

Recommendations: (Sec. 8.2.1)

- Require Board to maintain these three committees for at least four years;
- Committee members should possess “an appropriate spectrum of expertise” with respect to the subject area of a committee; “executives or managers” language eliminated;
- Members forward recommended candidates for committee positions to Board for consideration;
- Don't recommend incorporating a Tariff Committee into Developmental Bylaws. Tariff will be developed in consultation with RRG. (Sec. 3.1 and 4.1, Developmental Bylaws)

Subcommittees

Previous recommendation: eliminate authority of Board Advisory Committee (BAC) to establish subcommittees.

Concerns expressed: BAC must be able to establish, or allow members to establish, various groups to work on position papers, develop recommendations, etc.

Recommendations: allow BAC to establish work groups to assist it in carrying out its functions. These BAC-established work groups would be open to all Members. Members with common views may establish their own work groups to develop position papers. These work groups would not be open to all Members. (Sec. 8.5.8)

Wording also added to Section 6.13 which limits MRC subcommittees to activities to carry out the MRC's functions.

Advisory Vote

Concern expressed: advisory votes are limited to those requested by Board; Members should be able to initiate own recommendations.

Recommendation: clarified that Members may advise Board on matters of concern through Member-initiated resolutions or other means. (Sec. 5.1.3 and 5.15)

Vote on Budget

Concern expressed: Members don't vote on budget;
Member vote on budget impinges on Board independence.

Recommendation: binding not recommended because impractical and impinges on Board independence. If board-initiated advisory vote, Members have other means of advising board.

Clarification of Protection from FERC Orders

Concern expressed: FERC issuing an order not fashioned as a governance order but which has the effect of violating a Grid West governance provision (e.g., Special Issues).

Recommendation: clarified existing protection to cover instance in which FERC attempts to preempt or otherwise render inoperable the articles or bylaws rather than issue an order to change them. Thus, if FERC orders a modification to the articles or bylaws or issues an order that preempts or otherwise renders inoperable a provision of the articles or bylaws, the Board must either (i) obtain Member approval of the FERC-ordered change or (ii) propose dissolution to the Members. (Sec. 12.4.3)