

**List of Issues Related to Bylaws Provisions for “Core” Board
With Ideas and Recommendations from the Bylaws Work Group**

Below is a list of issues that the RRG Process Group believes will need to be addressed during development of Bylaws to allow the region to elect an early “core” Board of Trustees. As used below, the terms “core Board,” “core corporation,” and “core Bylaws” are intended to refer to the Independent Entity’s developmental period (when it will not be subject to FERC jurisdiction and will not yet offer any commercial services). The terms “operational Board,” “operational corporation,” and “operational Bylaws” are intended to refer to the period during and after the Independent Entity’s transition to commercial operations.

The Process Group envisions that both the core and operational Bylaws would build from the foundation provided by the RTO West Stage 2 Bylaws. The core Bylaws would be tailored to reflect the specific developmental mission of the organization during its pre-operational phase. The operational Bylaws would in most respects track with the RTO West Stage 2 Bylaws, with appropriate modifications to conform to the Regional Proposal (including its governance provisions).

The redlining underneath each listed issue summarizes initial ideas and recommendations from the Bylaws Work Group concerning that issue.

1. Purposes of the corporation and limitations on the core Board

1.1 Overall purposes:

1.1.1 Negotiate (with the bounds of the RRG Regional Proposal) the terms of Transmission Operating Agreement and initial tariff.

1.1.2 Address remaining technical issues as needed to complete work on Transmission Operating Agreement and tariff.

1.2 Limitations:

1.2.1 Financing/budget/purchasing.

1.2.2 Cannot offer services.

1.2.3 Restrictions on authority to submit filings to regulators (federal, state, provincial).

1.2.4 Cannot control facilities; cannot order anyone but its own staff or contractors to do anything.

1.2.5 Limited ability to hire staff or contractors to complete necessary work efforts (e.g., maximum number or maximum total dollars or both).

1.2.6 Cannot change Articles of Incorporation or Bylaws (or adopt new ones) solely on Board initiative.

2. Process for regional input

2.1 The RRG should continue to be a main source of broad regional input, but should not be viewed as the exclusive channel for seeking regional input.

2.2 Once the core Board is in place, the core corporation should assume responsibility for administering the RRG process (arranging meeting space, sending announcements, etc.).

2.3 Existing provisions in the Stage 2 RTO West Bylaws providing for public involvement should be carried into the core Bylaws, although not necessarily the concept of the Board Advisory Committee (which doesn't appear to add anything the RRG wouldn't already provide).

2.4 May want to consider additional provisions for fostering public participation and consultation with regional regulators and others.

3. Internal voting structure of membership classes related to selecting TSC members

3.1 Clarify whether this issue really comes into play with respect to the core corporation (developmental entity). If concerns relate mainly to the operational corporation (when the role of the TSC becomes broader and more significant), work informally with interested parties to bring a proposal for the operational Bylaws back to the Bylaws Work Group.

4. Number, qualifications, and compensation of core Board members

4.1 Recommendation to the RRG: defer discussion on this set of issues until the Bylaws Work Group is able to come back to the RRG with an integrated proposal to address the whole set.

5. Deadlines and remedies related to accomplishing core Board mission (e.g., term, "sunset," incentives)

5.1 Specify maximum time periods within which the Board, working diligently, could reasonably be expected to:

5.1.1 Make a TOA offer to eligible transmission owners.

5.1.2 Receive an answer back from the transmission owners concerning acceptance of the TOA offer.

5.2 Include provisions that will cause the core corporation to "sunset" if:

5.2.1 The Board determines (before expiration of the maximum time periods) that further efforts toward a TOA offer would be futile.

5.2.2 The Board does not complete the necessary tasks (either TOA offer or acceptance) within the maximum time periods permitted.

6. Ensure pre-TOA non-jurisdictional status of the core corporation and Board

6.1 See limitations outlined under issue #1.

6.2 Consider building protective mechanisms into the core Bylaws (such as automatic dissolution or other “firewalls”) that would take effect if FERC tried to assert jurisdiction over the core corporation (directly or indirectly through orders directed at participating jurisdictional utilities).

6.3 Develop a short briefing paper to explain reasons FERC lacks jurisdiction over the core corporation.

7. Form of core and operational Bylaws

7.1 Recommendation to the RRG: there should be separate sets of Articles of Incorporation and Bylaws for the core corporation (developmental phase) and the operational corporation, as well as clear transition provisions (so that it takes a separate, affirmation action to adopt the operational corporation’s Articles of Incorporation and Bylaws).

8. Role of the existing RTO West Board of Directors in administering the process to get to the core Board (including resolving disputes over membership)

8.1 There is currently an existing non-profit, non-membership corporation (formed under Washington law) named “RTO West,” which has been the vehicle through which funding for previous RTO-related work (and the RRG Regional Proposal) has been channeled.

8.2 The conditions on which the RTO West filing utilities have provided funding to RTO West include an obligation for RTO West to repay the advanced funds if and when it transitions to its operational state (when it will have its own tariff to fund its operations).

8.3 One of the main tools for the filing utilities to recover the funds they have advanced to RTO West is continuity of corporate existence from the current RTO West corporation to the ultimate operational entity (even if the Articles of Incorporation and Bylaws are amended at appropriate intervals as the organization transitions through its different phases). The intent is that the operational organization will retain the obligations incurred by the initial RTO West corporation.

8.4 For these reasons, the filing utilities envision that the core corporation would be created by adopting amended Articles of Incorporation and Bylaws for the existing RTO West corporation. The transition to the core corporation, governed by its core Board of Trustees, will require a transitional period during which the corporation has become a membership organization, has enrolled initial members, but has not yet held elections to seat the core Board

(because the core Board election cannot take place until after members have enrolled and had the opportunity to elect their chosen members of the Trustee Selection Committee).

8.5 There has to be an “interim board” (or a group or institution authorized by the Bylaws or Board) to administer the process of enrolling initial members of the corporation, resolving any disputes that might arise in connection with membership enrollment, supporting the process of preparing for and holding elections of Trustee Selection Committee members, and expending whatever limited funds might be needed for membership enrollment, Trustee Selection Committee member elections, and election of the core Board.

8.6 The RTO West Stage 2 Bylaws’ approach would have the current Board of RTO West (consisting of representatives of each of the filing utilities) administer the initial membership enrollment process and other steps necessary to seat a core Board, after which the core Board would take over the responsibility of governing the core corporation (subject to all the limitations and other provisions in the core Bylaws). The filing utilities do not envision that there would be any changes in the authorities of the current RTO West corporation (or its Board) between now and when the Articles and Bylaws for the core corporation are adopted (although additional utilities could join as filers and consequently have representatives on the current Board of RTO West).

8.7 Recommendation to the RRG: for the reasons outlined above, proceed with the approach contemplated in the RTO West Stage 2 Bylaws for administering the membership enrollment process and other steps necessary to seat a core Board (subject to potential appropriate restrictions needed to limit the Board’s activities to these tasks) unless there are strong concerns in the region about proceeding on this basis. If there are, explore with the concerned parties options they would consider preferable.

9. Transition from core Board to operational Board

9.1 The transition from the core Board to the operational Board would be triggered by meeting the “critical mass” test for transmission owner participation specified in the RRG Regional Proposal (the Bonneville Power Administration plus at least two investor-owned utilities with transmission systems that are contiguous with Bonneville’s). Meeting this test would be measured by whether the minimum number of transmission owners has executed a Transmission Operating Agreement (and the Transmission Operating Agreement has become effective).

9.2 Recommendation to the RRG: to avoid unnecessary lag between meeting the “critical mass” test and seating the operational Board, the search for any additional Board candidates needed to transition to an operational Board should be initiated as the core Board approaches the point of offering a Transmission Operating Agreement to eligible transmission owners (provided there are reasonable grounds to expect the offer is likely to be accepted by the requisite minimum of transmission owners).

10. Fee structure for initial membership in core corporation

10.1 Under the RTO West Stage 2 Bylaws, membership in the corporation requires payment of a flat annual membership fee of \$1,000. The membership fee is waived for state, provincial, and tribal regulatory authorities. The Board of Trustees also has the discretion to waive or reduce the annual membership fee upon written request from legitimate public interest participants.

10.2 The reasons for and amount of annual membership dues (some of which are outlined below) were thoroughly discussed and carefully considered in developing the RTO West Stage 2 Bylaws, and they remain valid.

10.3 Recommendation to the RRG: The provisions concerning payment of a \$1,000 annual membership fee (together with the specific provisions for waiving or reducing the fee) should be retained in the core corporation's Bylaws for the following reasons:

10.3.1 Members should be required to help defray the costs of administering their membership.

10.3.2 The requirement to pay a reasonable membership fee is a way to screen for genuine interest in and commitment to participating in the organization.

10.3.3 If the ability to pay a flat annual fee of \$1,000 acts as a barrier to participation, how would a party with this problem have the means to participate meaningfully in the organization in any case?