

Comments from Lon Peters – 6-15-04

Questions and Recommendations regarding the Grid West
Developmental Bylaws (Redline Draft of June 8, 2004)¹

Major Concerns

1. Several substantive issues are still outstanding regarding the Developmental Bylaws, the answers or resolutions to which are necessary for a complete understanding of the implications of adopting these Bylaws, compared with other solutions to the region's transmission problems.
2. There is no Funding Agreement yet, so Members of the Corporation have no idea what they are committing to pay for (indirectly).
3. The potential for Grid West to operate a consolidated control area on a voluntary basis would appear to have no relationship to the Developmental Bylaws, and should be eliminated.
4. The sole right to propose amendments to the Bylaws should not be reserved to the Board. Similarly, the Board should not have any right to vote on proposed amendments. The Members should have the right to propose amendments, and the sole right to approve or reject amendments.
5. Committees should not be self-perpetuating. If replacements are needed, they should be appointed or elected by the Members or the MRC.
6. It should be made clear who actually "adopts" the Developmental Bylaws. At the moment, it appears that the Interim Board has this responsibility, but it is not explicit.
7. Subclasses are necessary within the TDU Class. If agreement cannot be reached within the TDU Class, a separate proposal may be made to the RRG.
8. The proposed limitations on the activities of former Trustees are insufficient.
9. The Members should have the right to a binding vote on the adoption of the Operational Bylaws.

Detailed Questions and Comments

- §1.1.1(i) A definition of "divestiture" is needed.
- §1.1.1(iii) Greater clarity is required on the voting rights of JOEs.
- §1.1.12 The Funding Agreement must be distributed. As a general point, it will not be possible to agree or disagree on the Developmental Bylaws until the Funding Agreement is published, and the budget constraint on the Developmental Board is understood.
- §1.1.13 There appears to be a conflict between the definitions of Generator and Power Marketer (§1.1.35). The last proviso in §1.1.13 refers to Power Marketers that might be considered Generators because they "exercise operational control" over general. §1.1.35 defines Power Marketers as entities that do not own, control, or operate generation. To what Class does an entity belong that claims to be a Power Marketer but exercises operational control over generation?
- §1.1.15 A provision is necessary if the control areas in California change in a way that affects Grid West. Will the Bylaws be amended?

¹ These questions and suggestions do not address misspellings, incorrect punctuation, or other similar errors.

- §1.1.21 Some (perhaps many) Large Unbundled End-Users purchase power from more than one distribution utility in multiple states, some of which have retail access programs and some of which do not. What happens if a company has plants in multiple states with retail access programs and some plants choose “unbundled” status but others choose “bundled” status?
- §1.1.41 Which IOUs are likely to be eligible for the TDU class?
- §1.1.41 Which federal power marketing agencies are likely to be eligible for the TDU class?
- §1.1.42 If Grid West only operates a merged control area (see reference to §12.2.1), do the Operational Bylaws go into effect? If so, does Grid West have all the authorities of the Operational Bylaws?
- §4.1.2 What is the purpose of the “six month block” schedule for RRG meetings?
- §5.1.1 The relationship of the Members to the Funding Agreement needs to be stated in the Bylaws. Are the Members made aware of the Funding Agreement? Do they have any rights with respect to the Funding Agreement? If not, how do Members effectively control the activities of the Developmental Board?
- §5.1.1 The sole right to propose amendments to the Developmental Bylaws should not be reserved to the Board. The Members should also have the right to propose amendments without obtaining approval from the Board.
- §5.3.9 References to “Class” should include “or Subclass”, because material changes in circumstances could alter eligibility for a Subclass as well as a Class.
- §5.4.1 The Members should elect, by a simple majority, the initial members of the Membership Admissions Committee. The Members should also elect replacements to fill vacancies. In general, no Board or committee should be self-perpetuating, because it will lose legitimacy over time.
- §5.4.2 Ditto.
- §5.4.3(i) There is no obvious provision for “adopting” the Developmental Bylaws. It appears that the Interim Board is responsible for such action, but this is not explicit in §7.1.1. If this is not one of the authorities of the Interim Board, then who takes this action and where in the Bylaws is such action described?
- §5.9.1 Redrafting is needed: two meetings each year are required in the first sentence, but the second sentence refers to only one meeting.
- §5.14.1(ii) The differences among “designated representative”, “proxy”, and “alternate” are not obvious and should be clearly defined. In any event, if a Member designates a representative, alternate, or proxy, it should be done in writing and entered into the record of the Corporation.
- §5.14.5 The separate redline of June 10 eliminates the right of the Members to vote on the offer of the TA by the Developmental Board. If §12.2 is not adopted as a binding requirement (see further below on §12.2.), then the right of the Members to vote on the offer of the TA should be restored to §5.14.5, and the voting rule in subsection (i) should be changed so that a simple majority in three classes can reject the proposal to make the offer

- of the TA. (See also §5.14.8, which provides for a different voting mechanism; there appears to be a conflict between §5.14.5 and §5.14.8.)
- §7.1.1 If the Interim Board adopts the Developmental Bylaws, this authority should be explicitly listed. If reorganization pursuant to (iii) takes place, what happens to the Funding Agreement?
- §7.1.7(ii) There is no apparent purpose for limiting the size of the slate to twice the number of vacancies. Why should the MRC have its choices limited in this manner?
- §7.1.7(ii) What does “(including commodities trading risk management)” mean?
- §7.2.6 The right of the Board to amend the Bylaws should be eliminated. Only the Membership should have the right to amend the Bylaws. The reference to §5.14.3 in the third line to be changed to refer to the entirety of subsection §5.14. Which voting rule in §5.14 applies to the possible amendment of the Bylaws to change qualifications and voting rights (see the *proviso*)?
- §7.3 The right of the MRC to remove Trustees for cause should explicitly include reference to violations of the Conduct Rules.
- §7.5.2 Notice of meetings of the Board should be automatically sent to all Members and the MRC, not just to those who ask to be notified. Members could waive the right to be notified.
- §7.11 The limitation of six months on activities of former Trustees is insufficient, and should be extended to (at least) one year, especially given the discretion granted to the Board in §7.11.1(iii).
- §10.2(vi) Financial statements should include all forms of payments made to Trustees and officers, not just indemnifications and advances.
- §12.2 The vote of the membership should be binding, not advisory. The condition in §12.2.2(i) should be expanded to include a provision that such “risk-and-rewards analysis shows net benefits to consumers in the Northwest of commencing commercial operations of Grid West”.
- §13.3 References to §5.14.2 should be revised; the entirety of §5.14 appears to be relevant here.