

Comments from Lon Peters – 6-15-04

Questions and Recommendations regarding the Grid West
Operational Bylaws (Redline Draft of June 9, 2004)¹

Major Concerns

1. Several substantive issues are still outstanding regarding the Operational 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 provision for cost control or approval of the annual budget of the Corporation. The Members of the Corporation should have the explicit right to approve or reject the annual budget of the Corporation as proposed by the Board.
3. 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.
4. The general "standard of care" of the Board should include a cost-effectiveness requirement. This would also apply to the Special Issues List.
5. The Special Issues List needs considerably more detail.
6. The dissolution language in response by an attempt by FERC to change the Bylaws or articles of incorporation is too weak: it is limited in time and requires a vote of the membership. It should be automatic and perpetual.
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 two voting alternatives for remand of a proposal on the Special Issues List appear to have asymmetric implications in the event that members of the MRC do not vote (see below under §7.16.2(v)(b) for more detail).
9. Grid West should not be allowed to own generation under any circumstances (see §3.2 for more detail).
10. Vacancies on committees should be filled by the Members or the MRC, not by the remaining members of the committee.
11. The quorum rule for the Board is too low, and should be raised to eight.
12. The time limit on future activities of former Trustees is too short, and should be increased to (at least) one year.

Detailed Questions and Comments

- §3.1 "Mitigation of markets" is not clear. "Mitigation of market power or market manipulation" would be a better description of this responsibility.
- §3.2 Grid West should not be authorized to own generation under any circumstances. If Grid West has responsibilities for congestion management and as a default provider of ancillary services, it should meet those responsibilities via contracts that are put out for competitive bid. If

¹ These questions and suggestions do not address misspellings, incorrect punctuation, or other similar errors. Also, please refer to the questions and comments on the Developmental Bylaws, the answers to which will have implications for the parallel provisions in the Operational Bylaws. Not all of the comments on the Developmental Bylaws are reproduced here.

- insufficient competitive bids are received, then Grid West should enter into RMR-type contracts for these services. Such contracts should have time limitations (e.g., not to exceed two years).
- §3.2 How will Grid West’s “mandatory participation rules” for “voluntary operation of control areas” be reconciled with BPA’s organic statutes?
- §5.1.1 Members should also have the sole right to propose amendments to the Bylaws and the right to approve the annual budget of the Corporation, as proposed by the Board.
- §5.4.3 Vacancies on the Membership Dispute Resolution Committee should be filled by the Members, not the remaining committee members.
- §5.14.5 This section should be expanded to refer to the sole right of Members to propose Amendments to the Bylaws under §5.1.1.
- §5.15 The reference to §5.14.4 should be changed to refer to §5.14, because §5.14.4 only applies in limited circumstances.
- §6.1.3 The MRC should also appoint members to the Membership Dispute Resolution Committee. (See also §6.14.)
- §6.1.4 The word “a” should be replaced by the word “any” before “proposal under the Special Issues List”.
- §7.1.1(iii) This section should be deleted. The sole authority to amend the Bylaws should be reserved to the Members.
- §7.1.1(v) What does the word “contingencies” mean in subsection (a)?
- §7.2.2 There appears to be no reason to limit the number of potential candidates to twice the number of vacancies (see also comments on the Developmental Bylaws).
- §7.2.3 This section requires several revisions. First, the MRC “may” elect “up to two” Trustees from the Developmental Board to be on the Operational Board. Second, (ii) should be revised so that it is clear that the “greatest number of votes” refers only to the votes for the Developmental Trustees who wish to be considered for the Operational Board. Third, the reference in (iii) to §6.3 appears to be incorrect; §7.2.5 would appear to contain the description of election of the Board by the MRC. Fourth, a new (iv) is needed for the circumstance in which no Developmental Trustees wish to serve on the Operational Board, in which case subsections (i) and (ii) would not apply, and the procedures of §7.2.5 would be followed for the election of all nine members of the Operational Board.
- §7.2.4 The sole right to amend the Bylaws should be reserved to the Members. The Board should play only an advisory role, if any, in such process. This section should be deleted.
- §7.2.5(ii) Once elected under §7.2.3, such Trustees are no longer “nominees designated by the MRS to run unopposed”, but are already elected. Some redrafting would appear to be necessary, either in §7.2.3 or §7.2.5.
- §7.8 The quorum rule for Trustees is too low, and should be raised to eight.
- §7.11 The time restriction on future activities of former trustees is too short, and should be raised to (at least) one year.
- §7.12.2(iii) The “benefit/burden” test is simply wrong. Any and all changes should be evaluated based on their incremental benefits and costs, excluding prior

- changes and including only those other changes that proposed to be implemented at the same time. Prior changes (not “changed”) are already in place, and are presumably part of the analysis because they are already functioning, but cannot be used to justify future changes. Proposals for future changes should stand on their own.
- §7.12.7 Policies on independence, and affidavits filed by Trustees in conformance with this subsection, should be subject to independent audit.
- §7.15.1 A limit on the CEO’s compensation should be established in the Bylaws. If that limit is insufficient to attract appropriate candidates, the Members can amend the Bylaws.
- §7.16.1 More clarity regarding the Special Issues List is required. Terms need to be defined, at the very least.
- §7.16.2(i) “May” should be changed to “will”. Preliminary input should be a requirement, not an option, for the Special Issues List.
- §7.16.2(ii) The reference to “then-effective policies” should include a pointer to §7.5.
- §7.16.3 The criteria for proposing a change on the Special Issues List should include a cost-effectiveness demonstration.
- §7.16.2(v)(b) The two ways for the MRC to vote to remand a proposal on the Special Issues List appear to be asymmetrical. First, if fewer than all 30 MRC members vote, the threshold for remand is still 20 votes. This effectively lowers the bar for remand if members don’t vote. Second, the “unanimous Member Class remand” requires that all MRC members in office cast a negative vote. This effectively raises the bar for remand if members don’t vote.
- §7.16.3 First, subsections (a) and (b) of (i) refer to items other than §7.16.1(ii), and should be elevated to separate “romanettes” (i.e, (ii) and (iii)) and (ii) changed to (iv). Second, the Board should not be permitted to invoke §7.16.1(iii) until all appeals of the inventory of pre-existing claims have been adjudicated.
- §8.5.6 The right of attendance of members of the Board Advisory Committee, when the Chair of such Committee is meeting with the Board of Trustees, should include the right to be heard.
- §12.4 There should be no time limit on the dissolution required if FERC attempts to change the Bylaws or the Articles of Incorporation. In addition, the dissolution should be automatic, and not require a vote of the membership.
- §13.1 There is no §7.1.1(vi). Which part of §7.1.1 is intended to be excluded from Article XIII?
- §13.9 The initial reference to “baseball style arbitration” does not appear to have any follow-up, so it is not clear what the exception is intended to achieve.