

notes

MEETING OF THE BY-LAWS & GOVERNANCE SUBCOMMITTEE
OF THE MANAGEMENT COMMITTEE

March 31, 2003
10:00 a.m. - 3:00 p.m.
Hunton & Williams LLP, NYC

The By-Laws & Governance Subcommittee held an open meeting on March 31, 2003. An agenda was prepared and distributed in advance of the meeting.

In attendance in person were: Neil Butterklee, Paul Gioia, Michael Mager, Tariq Niazi, Elaine Robinson, Tom Halleran, John Reese, Dan Duthie, Francis Pullaro, Michael Delaney, Kim Byham, Stu Caplan, John Dowling, Jesse Samberg, Jim Parmelee, Jim D'Andrea, Howard Fromer, Kathy Robb and Meredith Winn.

In attendance by teleconference were: Garry Brown, Doreen Saia, Larry DeWitt and Aaron Breidenbaugh.

Review of meeting notes

The Subcommittee reviewed and suggested changes to the notes of the February 25, 2003 meeting. Hunton & Williams was asked to revise the notes to reflect the suggested changes and to distribute the revised notes to the By-Laws Subcommittee prior to the April 29, 2003 meeting.

Discretion of the MC to hear tariff issues in the first instance

The Subcommittee discussed whether the MC should continue to have the discretion to consider tariff changes in the first instance or whether the MC By-Laws should be revised to include a requirement that the Lower Committees consider those issues first. One member of the Subcommittee argued that, pursuant to the current ISO Agreement, Parties may bring tariff issues directly to the MC, and the MC may, at its discretion, refer those issues to the BIC or the OC for initial review prior to considering them at the MC. The member argued that, although the MC should maintain its discretion to refer issues to the Lower Committees, Parties should not be discouraged from bringing tariff issues to the MC in the first instance, particularly in urgent circumstances.

Other members suggested that the MC By-Laws and the ISO Agreement should be revised to require that any tariff change that falls within the jurisdiction of the BIC or the OC must be considered in the applicable Lower Committee prior to being considered by the MC. One member proposed revising the MC By-Laws to include a provision allowing Parties to bring a tariff issue to the MC in the first instance only if the MC waives a requirement that Parties first take the issue to a Lower Committee.

Another member suggested that this discussion be held over until the Subcommittee discovered how often the Lower Committees are bypassed in order to take an issue to the MC in the first instance; it was noted that this situation had only occurred once in the past two years. The Chair of the Subcommittee commented that this discussion was related to the issue of how to put items on the MC agenda and held over the discussion until the next meeting when it will be discussed whether a policy statement encouraging the MC Chair to refer tariff issues to the Lower Committees in the first instance should be included in the MC By-Laws.

How to place items on the MC agenda

The Subcommittee discussed whether the Chair of the MC should continue to have discretion in placing items on the MC agenda. It was noted that having less items on the MC agenda would result in fewer MC meetings and, therefore, less NYISO costs. A member of the Subcommittee noted that if Parties take certain issues to the Lower Committees in the first instance then there will be less MC meetings. Several members agreed that the current process for placing items on the MC agenda works well and should not be changed.

A member of the Subcommittee repeated the suggestion made at the February 25, 2003 meeting that the Chair must place a tariff item on the MC agenda when such a motion is brought whether or not the motion is seconded. The Subcommittee asked Hunton & Williams to draft revisions to the MC By-Laws reflecting this suggestion. The Subcommittee will review the proposed draft at the next By-Laws Subcommittee meeting.

Procedures for screening, certification and acquisition of voting rights

A member of the Subcommittee proposed the following procedures and timeline (in business days) for the screening, certification and acquisition of voting rights for new Parties:

- Day 1: Party submits application, pays fee, designates representative;
- Day 2: NYISO gives notice of application to all Members;
- Day 4: NYISO makes final determination;
- Day 5: Party is eligible to vote.

The Subcommittee generally agreed that Members may challenge the application of the Party after NYISO notice and before NYISO final determination. Section 2.02 of the ISO Agreement currently allows Parties to challenge “the right of a person, entity or Party to participate in a sector or subsector” at any time. The Subcommittee generally agreed that challenges made after NYISO final determination will not be made retroactively effective.

A majority of the Subcommittee agreed with the five-day timeline, but a minority requested that the timeline for approval be six days. One member of the Subcommittee argued that a Party should be allowed to vote as soon as he submits his application and pays the required fee. The member argued that requiring a screening process and allowing challenges prior to a Party’s acquisition of voting rights is undemocratic. Hunton & Williams was asked to draft revisions to the MC By-Laws to reflect the five-day proposal. The Subcommittee agreed to consider Hunton

& Williams' proposed draft at the next By-Laws Subcommittee meeting and to determine then whether or not to submit two proposals to the MC based on the separate timelines.

The Other Suppliers sector

The Subcommittee discussed whether Generators should continue to be able to join the Other Suppliers sector. Several members of the Subcommittee agreed that a flexible, multi-sector structure has been a fundamental aspect of NYISO governance since the market's inception and that a dichotomy between load and supply within the Other Suppliers sector was contemplated when the sector structure was created. Other members noted that changing the definition of Other Suppliers would require a change to the ISO Agreement. They argued that changing the governance structure of the NYISO was not within the jurisdiction of the By-Laws Subcommittee.

One member argued that Generators should not be able to continue to join the Other Suppliers sector, because their voting interests are identical to those of Members participating in the Generators sector. The member argued that all Generators should vote in the Generator sector. Other members wanted to consider establishing criteria in the MC By-Laws for determining sector allocations. The Subcommittee did not come to a resolution on this issue, and the matter was held over until the next By-Laws Subcommittee meeting.

Procedures for special meetings

The Subcommittee discussed whether the requirements and procedures for holding special meetings of the MC should be more restrictive. It was noted that holding numerous special meetings is costly. Some members suggested that special meetings should only be allowed in urgent circumstances. Other members commented that special meetings are necessary to the market system and have not been abused.

Hunton & Williams was asked to revise Section 4.05 of the MC By-Laws to provide the Chair of the MC with a standard for determining when special meetings may be called. According to this standard, the Chair will consider the urgency of the matter to be considered at the special meeting, the amount of time before the next regular MC meeting, the adequacy and extent of prior consideration of the matter, and the burdens imposed on the MC from calling a special meeting. The Subcommittee will review the proposed draft at the next By-Laws Subcommittee Meeting.

Appeals to the Board

The Subcommittee discussed whether procedures for appeals to the Board should be revised. No member of the Subcommittee proposed revisions to the MC By-Laws relating to this issue. The Subcommittee agreed to review draft revisions provided by Hunton & Williams regarding appeals to the MC at the next By-Laws Subcommittee meeting. At that time, the Subcommittee will decide whether or not to take up the issue of revising procedures for appeals to the Board.

Cost impact analyses

Jim Parmelee, on behalf of the Budget, Standards and Performance Committee, explained to the Subcommittee that the MC had asked him to bring a proposal relating to cost and budget impacts as well as justification for MC approval of projects to the May 28, 2003 MC meeting. The Subcommittee asked Mr. Parmelee to draft revisions to the MC By-Laws to reflect proposed rights and duties of the MC required by the proposal. The Subcommittee will review the draft revisions at the next By-Laws Subcommittee meeting.

Next meeting

The next meeting of the By-Laws & Governance Subcommittee is scheduled for Tuesday, April 29, 2003 at 10:00 a.m. at the offices of Hunton & Williams LLP, 200 Park Avenue, 31st Floor, New York City.