

MEETING OF THE BYLAWS SUBCOMMITTEE
OF THE MANAGEMENT COMMITTEE

March 28, 20001
Hunton & Williams, NYC

The By-laws Subcommittee of the MC held an open meeting on March 28, 2001. An agenda had been prepared and distributed in advance of the meeting.

In attendance in person or by teleconference were: Garry Brown; George Diamantopoulos; Walter McCarroll; Peter Brown; Paul Gioia; Jim Parmelee; Aaron Breidenbaugh; Jay Kooper; Len Singer; Chuck Kowalski; Mollie Lampi; Ira Freilicher; Steve Schell; Gina Fedele.

The group began by discussing the “seven business day rule” for agenda distribution and agreed unanimously to recommend an adjustment to the rule to require advance distribution of agendas seven calendar days in advance of a meeting. The group also agreed to recommend to committee chairs and the NYISO that materials be distributed as far in advance of the meeting as possible. If materials cannot be distributed a few days in advance, the importance of getting materials distributed at least 24 hours before a meeting was stressed. The group considered, and rejected, a mandate for advance distribution in order for an agenda item to be eligible for action.

The group also discussed the time required for agenda distribution in advance of a special meeting, particularly given the potential need over the summer for a meeting on short notice. The group suggested that a provision be added to the bylaws for “emergency meetings” at the request of the NYISO Board Chair with the concurrence of the MC Chair, upon “as much notice as possible.”

The group agreed to a suggestion that the nomination process be adjusted to drop the requirement that a minimum of two names be presented to the Committee for a vote and instead indicate that there is a preference that two names be submitted for any position. The group agreed that if there is only one nominee, the committee would review the single candidate’s credentials and then announce his/her name, if appropriate, as the candidate.

The group also discussed the meaning of the word “consensus” in terms of the work of the Task Forces and Working Groups, and determined to leave the issue to the chairs of the such groups.

In clarifying the appeals process, NYISO indicated it had draft amendments for the bylaws which would deal with filing dates, required presentation of the action being appealed and relief requested. This draft will be circulated before the next meeting.

ISO counsel will also draft procedures for the Stay Review Committee.

The committee discussed several issues surrounding the end-use customer sector, including a suggestion that some mechanism be established to avoid non-bona fide residential customers from participating in the governance process by joining as a “small consumer.” To protect against potential abuse, some suggested that the definition of “small consumer” be changed to allow only representational organizations to join; others suggested imposing a quorum on the “small consumer sub-sector” without requiring bona fides be established. The group also discussed the need to create an opportunity for participants who do not fit into existing sectors to participate in governance meetings, on a non-voting basis, to avoid forcing them into the small consumer sector.

The group made several recommendations without reaching consensus:

- ?? that a quorum of three be utilized for the small consumer sub-sector. The existing liberal proxy rules were cited as ameliorating any potential hardship this requirement might impose. In the absence of reaching a sub-sector quorum, the voting shares of those members that do vote would be pro rata (dividing the vote allocated to that sub sector among all members of the sub-sector) with the vote of non-present members being passed to the balance of the sector.
- ?? that participation in the small consumer sector be limited to representational organizations, provided the definition of organizations representing small consumers is not too narrow . (For example, does the organization have to be non-profit?)
- ?? that a separate class of non voting participants be created to allow participation by parties who do not “fit” anywhere but in the small consumer sub-sector. Individual residential consumers could also join this class of non voting participants. This class of participants will be eligible to do everything a member could do, including being elected to office, but will not be eligible to vote. The annual membership fee for this class of participant was not resolved.

A question remains as to status of industrial or commercial consumers in the small consumer sub-sector (with loads of 2 MW or less) and the opportunity for a non bona fide person to join the sub-sector under that definition. There was disagreement on imposing a minimum usage requirement.

An alternative was presented to devise a “wolf in sheep’s clothing strategy” that would monitor the bona fides of small consumers. Part of this strategy would allow market participants to raise objection if they did not agree that any particular “small consumer” met the test. The subcommittee members reiterated a strongly held view that there is a loop hole in the existing agreement that invites gamesmanship by non-bona fide members participating as small consumers.

The ISO offered to draft “wolf in sheep’s clothing” language (for the NYISO Agreement) to guard against gamesmanship (but to ensure that subsequent ineligibility not invalidate votes taken). In the alternative, the Agreement could require a small consumer “certify” that he or she carries an interest of a residential customer

The group could not agree that individual residential customers should not participate as full members and agreed to continue to discuss this issue.

The subcommittee then took up the relationship between MC and lower committees. Specifically, the group discussed whether all issues that are voted on at a lower committee (BIC or OC) should require a subsequent vote at the MC (as is currently the case with issues requiring a tariff amendment).

Paul Gioia indicated that the lower committees were given the authority to adopt procedures, and this authority resides with the lower committees alone, since procedures don’t need to be filed at FERC. The lower committees may also use their technical expertise to develop broad or detailed recommendations on rules and policy matters that require tariff filings, but the lower committees do not have exclusive jurisdiction over these issues.

Garry Brown suggested that the system should work in the following manner. Once a lower committee adopts a concept which requires a tariff change, tariff language should be drafted. The MC must approve the actual tariff filing but the MC should NOT overturn the lower committee’s action on the concept.

The group discussed whether the lower committees had exclusive jurisdiction over issues listed in the ISO Agreement or whether they act as arms of the MC. This would suggest that the lower committees bring required expertise to certain issues but, if the issue requires a tariff filing, the lower committee may only provide a recommendation that the MC endorse the issue and make a tariff filing in support of it.

Peter Brown stated that lower committees have plenary jurisdiction over the issues as identified. Given the appeals process and the ability of MC to change their responsibilities, he believed that it was necessary for an issue to be heard first at the lower committee.

It was decided that further discussion on this issue was necessary.

A short discussion ensued on how and when to determine that a secret ballot is to be used. The current method, wherein Chairs have the discretion to decide, is not satisfactory to some. One suggested alternative was to impose a presumption for a secret ballot unless the Chair directs otherwise, with 58% to overturn. Reference to the NEPOOL model, where the chair can hold a secret ballot, was made.

TOs and NYC are in favor of open ballots. Len Singer thinks there should be a presumption of an open ballot and that members should be free to change to a secret ballot on 58% vote. NYPA, LIPA, NYSERDA and CPB favor open balloting. The group agreed to take this issue up at the next meeting.

The next meeting was scheduled for May 2, 2001, 10 am - 4 pm, at the offices of Hunton & Williams in NYC.