

MEETING OF THE BYLAWS SUBCOMMITTEE  
OF THE MANAGEMENT COMMITTEE

May 2, 2001  
10 am - 4pm  
Hunton & Williams, NYC

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The By-laws Subcommittee held an open meeting on May 2, 2001. An agenda had been prepared and distributed in advance of the meeting.

In attendance in person or by teleconference were: Peter Brown; Paul Gioia; Garry Brown; Jim Parmelee; Jay Kooper; Jesse Samberg; Chuck Kowalski; Neil Butterklee; Kim Byham; Joe Holtman; Aaron Breidenbaugh; Bob Loughney; Ira Freilicher; Kathy Robb; Steve Schell; and Gina Fedele.

The group approved the minutes of the March 28<sup>th</sup> meeting after a brief discussion.

The subcommittee then considered two changes to be presented to the Management Committee at its May meeting. These are the creation of an “emergency special meeting” and a change in the notice requirement for committee meetings, reducing the notice time from 7 business days to 5 business days. The subcommittee agreed that these two provisions would sufficiently benefit the NYISO’s conduct of business during the upcoming summer season to warrant requesting the Management Committee to approve these relatively minor revisions to the by-laws in May, with any other changes in the by-laws being presented as a complete package at the June or July meeting.

With regard to “emergency special meetings,” Paul Gioia suggested that the Chair of the NYISO Board should have the right to request a meeting of this type, with the MC chair complying with all such requests. The subcommittee agreed with this approach, and also agreed that notice time for emergency special meetings should be “as soon as practicable.” Further, the NYISO Board Chair must define the emergency that warrants the emergency special meeting and the agenda will be limited to the issue that gave rise to the meeting. After additional discussion, the group agreed that in the absence of the Board Chair, the Acting Chair of the Board or the NYISO President would have these rights and obligations.

Chuck Kowalski pointed out that the 30 day restriction on the effectiveness of committee actions should be addressed in the context of emergency special meetings. Ira Freilicher expanded on this issue, suggesting that in the case of tariff changes that have been approved by both the MC and the Board, the 30 day restriction should be eliminated. The subcommittee agreed that this issue should be addressed, but there was consensus that proposed changes to the ISO Agreement and by-laws presented at the May MC meeting would focus on the two areas identified earlier. Ira suggested that actions taken at an emergency meeting could be defined to address exigent circumstances, thus avoiding a 30 day delay before implementation.

Peter Brown then raised two items that he had added to the meeting agenda at request of individual members. Proxy rules (by Aaron Breidenbaugh) and qualifications for standing committee chairs (by Jerry Ancona; i.e. sector diversity issues). Peter asked the subcommittee if they felt it was appropriate to bring individual member items to the subcommittee. The subcommittee members agreed that it was appropriate, but that the subcommittee should consider what priority to assigned to the resolution of such items. In this context, the subcommittee addressed a timing issue with regard to any proposed changes in the qualifications for standing committee chairs. Since committee chairs are elected in November, the subcommittee agreed to target the July MC meeting for the next round of proposed changes to the by-laws and ISO Agreement, with an understanding that it is preferable for the subcommittee to complete its work with the submission of the second round of proposed changes.

The subcommittee spent a considerable amount of time discussing the circumstances and process for moving issues from the lower committees to the Management Committee. Garry Brown expressed the view that if the MC can take a fresh look at any issue that falls within the jurisdiction of the BIC or OC, then actions of the BIC or OC are meaningless. Garry concludes that when a non-tariff issue does not achieve a 58% vote at a lower committee, an appeal of the vote should be the only way that the issue be considered by the MC. Since the appeals process imposes an additional effort on parties it should discourage the frivolous use of the MC to review the action -- or inaction -- of the lower committees.

The subcommittee also discussed which subject matters may come legitimately before the MC on appeal or as a new item. Divergent opinions were expressed, ranging from an approach that would only allow the exact motion that was voted on at the lower committee to come before the MC on appeal, to one that says the MC should be given an opportunity to develop new solutions to an issue that has been addressed at the lower committees. The subcommittee also agreed that the committee process for reviewing tariff-related policy matters should be better specified. For instance, how many levels of approval of the policy concept should be allowed? Which group should be charged with drafting the tariff language?

The following committee process was proposed for non-tariff items. The issue would be addressed by the BIC or OC as appropriate. Once the lower committee votes yes or no on the matter, the item may come before the MC on appeal. The subcommittee agreed that in this circumstance, an appeal should be the exclusive avenue for MC consideration. However, the group notes that the MC can direct the BIC or OC to take action on any particular issue. In connection with appeals, the MC may either remand the issue to the lower committee or make a final decision on the item. There was consensus among the subcommittee that on appeal, the MC may modify the action taken at the lower committee, as long as the change is “reasonably related” to the original action and subject matter.

The subcommittee discussed the implications of section 7.02(d) of the ISO Agreement. Specifically, does that section provide the MC with the broad authority to take action on any issue it wants to consider (even those within the jurisdiction of the lower committees), or would the MC be required to specifically take control of the matter?

The group agreed that the following procedures could be used by the MC to address non-tariff issues. The MC may: (1) direct lower committee to take up the issue; (2) make an affirmative action to take jurisdiction of issue from lower committee; (3) make a recommendation on the matter to the lower committee.

With regard to the MC's jurisdiction on tariff matters, the subcommittee confirmed that the ISO Agreement is clear that any business or operational issue requiring a tariff filing can go directly to the MC for action, however, the MC can refer the matter to a lower committee for a recommendation.

The subcommittee then considered the question of whether the MC may overturn the policy decision of a lower committee on a tariff related matter and concluded that the MC does have this authority. The group then discussed whether the standard for the MC to overturn such a decision should be higher than 58%, but ultimately rejected the idea for a different voting standard.

With regard to specifying a process for taking tariff changes through different committees, the subcommittee identified the following stages as common to all tariff-related matters:

1. Concept development
2. Detail development
3. Tariff development
4. Tariff approval
5. Detail approval

The subcommittee discussed the merits of specifying the role of lower committees, working groups, the MC, etc. in these five stages for each tariff-related issue, as the need arises. The subcommittee agreed that the process would benefit from this up-front specification, and agreed to develop a recommendation to that effect.

The subcommittee also discussed the possible creation of a "Tariff Review Subcommittee" as a standing subcommittee of the MC. This new subcommittee was envisioned as having 5 sector representatives, with a 6<sup>th</sup> individual added by the MC Chair based on the issue / concept. The 6<sup>th</sup> individual should be a subject matter expert who can ensure that the tariff development process remains consistent with the original decision. The subcommittee believes that the membership of the proposed Tariff Review Subcommittee may change, at the discretion of each sector, based on the issue / concept under consideration.

The group moved on to a discussion of the voting rules for the End Use Consumer sector. Jay Kooper and Chuck Kowalski reported that Catherine Luthin is willing to accept a 3 person quorum rule as long as there is no dilution of existing proxy rules. Peter Brown then asked Aaron Breidenbaugh what he intended when he asked the subcommittee to consider a "review of proxy rules." Aaron explained that the granting (or transferring) of a proxy during a meeting must happen via a fax (written statement). Aaron suggested that this is sometimes inefficient and asked the group to consider rules that will make it easier to give a proxy during a meeting. The subcommittee agreed to consider that issue.

The subcommittee went on to discuss the participation of trade associations and individuals in the NYISO and, in that context, considered whether a new non-voting group should be created. In general, the subcommittee agreed that these trade associations or individuals must have a legitimate interest in ISO operations or markets; that they must be certified; and that they must not be qualified to participate in any other sector. The subcommittee also agreed that, if this non-voting group is created, its members will be allowed to make motions; will not be permitted to serve as chair or vice-chair of committee (because they could not participate in executive session); and should pay a fee.

The following changes in the definition of end-use consumer were considered next. The definition currently states that the individual's "primary" interest in the NYISO should be as a residential consumer, and that "primary" should be changed to "exclusive." The group also considered if it should recommend a lower bound on energy usage (at least 50 kW).

The subcommittee went on to discuss the issues related to secret and open ballots. Garry Brown made the suggestion to leave the current arrangements in place -- that is, it will be the chairperson's discretion to specify the manner of voting. Paul Gioia pointed out that this issues will continue to be controversial. The City of New York and the MTA raised the public interest argument in explaining their preference for open ballots. Con Edison stated that it is not opposed to secret ballots but prefers open ballots. Some subcommittee members acknowledged the unfortunate fact that market participants can legitimately fear retribution when open ballots are taken. Some subcommittee members spoke about compromises being easier to achieve when secret ballots are used. Some organizations may want to, or be required to, make their views public even if there is a secret ballot. The group was divided about whether this should be the practice of the NYISO committees.

Jim Parmelee suggested that the next time the By-laws Subcommittee meets it should bring draft proposals together and try to craft two proposals to bring to the MC. (1) The status quo and (2) presumption of open ballots.

The group agreed with that approach, and agreed to consider all open issues at its next meeting, scheduled for May 21; 10:30 a.m.