

Amended As Accepted by the By-Laws Subcommittee on June 11, 2001

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MEETING OF THE BY-LAWS SUBCOMMITTEE
OF THE MANAGEMENT COMMITTEE

May 21, 2001
10:30 am - 4:00 pm
Hunton & Williams, NYC

The By-Laws Subcommittee held an open meeting on May 21, 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; Jay Kooper; Jesse Samberg; Chuck Kowalski; Neil Butterklee; Kim Byham; Aaron Breidenbaugh; Michael Mager; John Dowling; Dan Duthie; Jonathan Mayo; Kathy Robb; Steve Schell; and Gina Fedele.

The group approved the notes of the May 2nd meeting with the following change: the first word in the sixth sentence of the third paragraph from the end was changed from "All" to "Some."

Peter Brown asked the subcommittee members to consider how the number of agenda items can be managed in light of the fact that any MC member can add issues to the agenda of the subcommittee. The subcommittee agreed to use the following guidelines for its discussion that day: finish things that are ministerial in nature; address issues that might be needed this summer and address issues that other committees or subcommittees need resolved in order to proceed with their work.

The subcommittee noted that language had been drafted to cover agenda items 3 and 7. Paul Gioia suggested that the subcommittee discuss agenda item 8 (secret ballots) early in the meeting, and try to conclude recommendations on agenda item 5, as the subcommittee had some well developed approaches to this item at the previous meeting. With regard to agenda item 10, Peter Brown suggested that the By-laws Subcommittee is the group that should advise the MC on governance issues.

Peter Brown then asked the subcommittee members if there was any other business to address. Garry Brown raised the issue of the Transmission Planning Committee, as defined in the NYISO's RTO filing. Although FERC has not acted on the RTO filing, many market participants are interested in getting the Transmission Planning Committee established in order to rationalize the committee process for dealing with transmission issues. Peter Brown suggests that the NYISO cannot move forward the Transmission Planning Committee before FERC approval. The subcommittee agreed that Hunton should prepare a draft of the by-laws, as a strawman proposal, that will include transmission planning process based on the RTO filing. The strawman may provide the BIC and OC with suggestions about how to proceed with permissible organizational changes that may allow transmission planning to proceed in the spirit

of the RTO agreement. A suggestion was also made that the next draft of the ISO Agreement prepared by Hunton should indicate if there are any changed items that rely on the NYISO's RTO filing.

Agenda item 8: secret ballots. Paul Gioia suggested that the subcommittee consider this issue in the context of improving the functioning of the NYISO governance. Various subcommittee members offered the following observations in response to that suggestion. Some parties view the presence of the NY PSC to be so influential that a market participant's vote may be affected. Other parties believe that secret balloting will increase flexibility in decision-making in New York in that a company that has taken a position on an issue in other jurisdictions may be willing to take a different position in NY, as long as those different positions would not be publicized. Although there is disagreement about the actual influence of the NY PSC, the observation was made that in this case perception may be as significant as reality; this may be enough reason to lean towards secret ballots.

Other parties expressed the view that open ballots may improve the governance of the NYISO because it can be easier to reach compromises. Open ballots enhance trust among parties because negotiated agreements can be confirmed; in the case of close votes parties will know who to approach to reach a compromise. Two administrative reasons were offered for using open ballots: the speed of conducting votes and the ability of parties to confirm that their votes were recorded correctly.

If MPs are given the option of secret ballots, how should this option be implemented? The suggestion was made that an initial vote to go into executive session should be held as a secret ballot, otherwise the executive session vote may reveal the preferences of MPs.

The discussion turned to the absolute discretion that the chairperson currently has regarding the form of the balloting. A suggestion was made to instead allow a quorum of three sectors -- or, in the alternative, three individual members from different sectors -- to determine whether a secret ballot may be used. In the scenario where only three members may make a legitimate request for secret balloting, these individuals must be willing to openly declare their preference. The rationale for this requirement is that it may signal to the other committee members that parties are trying to reach a compromise. Additional details suggested for this scenario included a presumption that, upon the public request of three individual members, the voting presumption would change to secret ballots. In order to revert to open ballots, 58% of committee members would be required to vote for that change.

Another suggestion was made to provide notice prior to the meeting (via the agenda, or by other communication after the agenda is published) as to whether a vote will be open or closed. In this case, any one member (including the chairperson) may make the request for a secret ballot. In this scenario, committee members will indicate whether they support the noticed form of voting upon registering for the meeting.

Another scenario was proposed: one person makes a motion from the floor for a secret ballot. The motion must receive a second and a third, both from members of sectors that are different from the sector affiliation of the person who made the initial motion. At that point a vote of

50.1% should be required to support secret ballots, and this vote should be conducted as a secret ballot.

Garry Brown suggested that the by-laws subcommittee consider a process that eliminated a vote on whether the vote is open or closed. Garry suggested that the process should (a) establish a presumption of open ballots, thus eliminating the chairperson's discretion; (b) establish a hurdle for moving to secret ballots (for instance, one of the previously proposed hurdles); and (c) specify that if the hurdle is reached, the vote will be taken by secret ballot.

Peter Brown asked two subcommittee members to write up two different proposals based on this discussion and circulate them to the group for consideration at the next meeting.

Quorum issue. The subcommittee addressed agenda item 4: the quorum requirements for meetings. The group acknowledged that the intent of the requirement is for a quorum to be present when a vote is taken. However, the present practice is to assume that quorum is present throughout the day if the quorum requirement is met at the start of the meeting. The subcommittee's determined that: (1) quorum requirements are as specified in the ISO Agreement; (2) a quorum is determined at the beginning of a meeting; (3) if found present at the beginning of a meeting, the existence of a quorum is presumed to continue until a quorum call is requested at which time the Chair must determine if a quorum exists as required in the ISO Agreement; (4) if, following such a quorum call, it is determined that a quorum is no longer present, then formal voting business of the committee is concluded, except for a vote to adjourn, provided, however, that discussion of issues may continue; and (5) if a quorum is found to exist then the voting metrics established at the beginning of the meeting will continue to be used. Jonathan Mayo also clarified that if a quorum call is taken later in the meeting, the voting metric that was established at the start of the meeting prevails, even if the number of members has changed. That is, the NYISO does not establish a new registration for the meeting based on subsequent quorum calls. Jonathan suggested that if a meeting goes beyond the noticed time and a quorum call is requested, the committee could legitimately default to voting by organization at that point. Peter Brown acknowledged that the voting metrics could be addressed at some point; however, the subcommittee agreed that the present practice has not been a problem and therefore it should be continued. The subcommittee decided to report on this issue to the MC.

Proxy rules. A clarification was requested as to the practice for making a proxy change during a meeting. Currently, the by-laws require the NYISO to receive a written notice on company stationery for a proxy to be changed. This presents a logistical burden to those who are participating electronically or by telephone. Jonathan suggested that the NYISO could issue challenge phrases to voting members which may allow members to give proxies more liberally. This recommendation was accepted by the group.

Conforming changes to by-laws. Mike Mager agreed to review the language in draft by-laws to insure that conforming changes (for the ISO Agreement) are correct.

Two nominee requirement. Kathy Robb read proposed language that reflects the recommendation that in the future, under specific circumstances, a nominating subcommittee

may forward only one candidate for election to the full committee. The subcommittee asked Hunton & Williams to prepare that language for review by the subcommittee.

Committee to advise MC on governance issues. The recommendation was made and accepted by the subcommittee that this charge should be given to the by-laws subcommittee; the name of the subcommittee should be changed to “Subcommittee on by-laws and governance.” The subcommittee agreed to review the requirements in section 14.01 and recommend changes that will liberalize the formation of subcommittees. For example, references to “standing” subcommittees and requirements for by-laws for subcommittees could be eliminated.

“Tariff (or Technical) Review Committee” This proposed committee was discussed as a discretionary tool for the MC. It may be used when the MC agrees that tariff language should be changed on a straightforward issue that does not require any policy or market innovations. In those circumstances, the MC would be allowed to delegate authority to the TRC to sign-off on the tariff without going back to MC. Peter Brown asked Garry Brown, Paul Gioia and Neil Butterklee to flesh out a proposal for the function of the TRC. One of issues to be considered is whether a threshold should be established that automatically send proposed tariff language back to MC for approval.

Emergency meeting. Paul Gioia raised a question as to whether the creation of emergency meeting may compromise the ability of the NYISO to make exigent circumstances filings. If it might, he suggests that the creation of the emergency meeting is not important enough to compromise this ability of the NYISO. The subcommittee agreed to table this issue until the next meeting to allow time to more fully consider the issue.

Qualifications for chairs and vice-chairs. Paul Gioia offered to discuss the diversity issue with Jerry Ancona and, if appropriate, to bring a specific proposal back to the subcommittee.

Proposed appeals process. A proposed appeals process has been drafted as section XV of the by-laws. Peter Brown asked the subcommittee members to review this language and provide comments before the next meeting of the subcommittee.

Participation by small consumers. The group considered whether there should be additional criteria for participation, such as a floor on electrical usage. John Dowling and Chuck Kowalski agreed to consider this issue and to present recommendations to the subcommittee at its next meeting.

Next meeting. The next meeting of the by-laws subcommittee was scheduled for June 11th, 10 a.m. at the offices of Hunton & Williams.