

notes

MEETING OF THE BYLAWS SUBCOMMITTEE
OF THE MANAGEMENT COMMITTEE

June 11, 2001
10:00 a.m. - 4:00 p.m.
Hunton & Williams, NYC

The By-laws Subcommittee held an open meeting on June 11, 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; Doreen Saia; Jim Parmelee; Jennifer Kearney; Aaron Breidenbaugh; Michael Mager; Kathy Robb; and Steven Schell.

Agenda Item 1: Review of the May 21 Meeting Notes

The Subcommittee approved the notes of the May 21, 2001 meeting with several clarifications to the discussion of “Quorum Issue” on page three of the notes. That paragraph will be changed to indicate the Subcommittee’s earlier determinations 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. Reference was also made to Jonathan Mayo’s comment regarding “voting by organization” and there was confusion and disagreement about the meaning of his comment. The notes should further indicate the Subcommittee’s determination at the May 21 meeting to report on the quorum issue to the Management Committee.

In reviewing the notes of the May 21, 2001 meeting it was further determined that the issues related to quorum requirements should be addressed in the By-Laws. The Subcommittee will work to that end.

Agenda Item 2: Secret Ballot Issues

As requested by the Subcommittee at the May 21 meeting, Jesse Samberg provided a written proposal to amend Section 10.01 of the By-Laws to establish a process for determining when a vote will be taken by secret ballot. Under the proposal, open voting would be used unless any member requests a secret ballot. If requested, a secret ballot would be used unless challenged by any member and not supported by at least 50% of the members pursuant to an initial vote. The Subcommittee discussed several changes to this proposal. First, it was determined that subsection (a) of the

proposal should be stricken and the term roll call changed to “open vote” in the first sentence. The Subcommittee further discussed adding the term “simple” majority to the last sentence of the proposal and indicating that a simple majority is “greater than 50%” of the weighted sector voting shares. Members disagreed over whether the initial vote taken to challenge the request for a secret ballot should be by open vote or secret ballot.

Several Subcommittee members noted that the use of secret ballots can be crucial to eliminate the real or perceived influence of the PSC on a members vote and to allow members the flexibility to take a different position in New York than it did in another jurisdiction. Other members offered two administrative reasons for using open ballots: (1) the efficiency of using open ballots (as opposed to the lengthy process of secret ballot voting) and (2) the ability of parties to confirm that their votes were recorded correctly.

The Subcommittee agreed that it will ask the ISO staff to create a more efficient secret ballot voting process. Several suggestions to improve efficiency include: requiring notice, as soon as practicable, that a party will request a secret ballot or challenge such request; and requiring parties to provide a default preference for voting method to which they can refer when the issue arises, or which they may change at any time.

The Subcommittee agreed that new language establishing a manner to determine voting method is important to reduce the absolute discretion of the Chair on this issue. Neil Butterklee agreed to modify Jesse Samberg’s proposal in accordance with the Subcommittee’s discussions and to add a statement on the need to improve efficiency of secret ballot voting. The Subcommittee intends to resolve this issue at the next meeting.

Clean-Up Item 2: The Two Nominee Requirement

The Subcommittee decided to move Item 2 on the “Clean Up” portion of the agenda to immediate discussion.

The Subcommittee reviewed and approved the draft language prepared by Hunton & Williams in Section 14.03 of the By-Laws with one modification: the word “qualified” will be added to the new language such that it reads, in relevant part, “. . . if after a reasonable time following the notice there remains only one qualified candidate . . .” The Subcommittee’s work on this issue is completed.

Clean-Up Item 4: Eligibility Requirements for Chairs and Vice-Chairs

Paul Gioia raised the question of whether the Management Committee should be permitted to waive the sector and company diversity requirements for Chairs and Vice-Chairs set forth in Sections 3.06 and 3.07 of the MC By-Laws. The Subcommittee decided that it would re-visit that issue at a later time, if the restriction becomes a problem in the nominating or election process.

Agenda Item 3: Tariff Review Committee

As requested by the Subcommittee, Garry Brown presented a proposal for creation of a Tariff Review Committee (“TRC”). Garry proposed a TRC with six representatives; one representative from each of the five sectors, and one Chairperson appointed by the MC. The TRC would be a discretionary tool for use by the MC to complete straightforward tariff language changes. (In most cases a separate motion would be made referring the substantive action to the TRC.) The role of the

TRC would be limited to determining whether the draft tariff language is consistent with the decision made by the MC. Unanimous consent of the TRC would be required for the draft tariff language to go directly to the FERC. If any member of the TRC objected to the tariff language, the language would be sent back to the MC for review.

Several members noted that they do not want the TRC to discourage working groups or other committee's from preparing detailed proposals to the MC. Some members also expressed their belief that the TRC should have a total of 11 members; two from each sector plus one Chair appointed by the MC.

Garry Brown, Neil Butterklee and Paul Gioia will prepare a revised proposal for consideration by the Subcommittee at the next meeting. The Subcommittee intends to resolve this issue at the next meeting.

Agenda Item 4: End-Use Consumer Issues

As requested by the Subcommittee, Chuck Kowalski presented two proposals (identified as Strawman Proposals "A" and "B") for a revised definition of the Small Consumer subsector. The Subcommittee favored Strawman Proposal "B" with several modifications. First, the Subcommittee suggested that the prohibitions contained in paragraph 3 of Proposal A should be incorporated into the first paragraph of Proposal B. In addition, the Subcommittee determined that the "floor" for usage in paragraph 1 of Proposal B should be 100 kW. Paragraph 2 of Proposal B should be changed to apply to not-for-profit "organizations" (rather than "corporations") that represent the interests of at least 10 small consumers. In addition, Public Power Parties, State Public Power Authorities, LIPA and NYPA should be added to the litany of prohibited affiliates in paragraph 2. The Subcommittee also suggested that Proposal B should delineate the participation rights of non-voting members as set forth on page 1 of the Strawman Proposal, but including the right to make motions. The Subcommittee also agreed that any usage requirements should be stated in kW, because it is easier for consumers to determine their usage in kW rather than MW.

The Subcommittee wants to ensure that the changes do not adversely affect those whose interests are truly those of a small consumer. Aaron Breidenbaugh stated that he had no objection to the changes under consideration, as long as the changes do not affect his right to participate in ISO governance on a non-voting basis. Chuck Kowalski and Jennifer Kearney agreed to reach out to consumer groups, including the Consumer Protection Board, before the next Subcommittee meeting to ensure that those groups have no objections to the issues under consideration.

In conjunction with the discussion on the Small Consumer proposal, Garry Brown noted that Section 6.01.2 of the By-Laws provides that a vote to exclude non-voting members from executive session must be taken by secret ballot. He indicated that a clause should be added to that Section, stating that such votes are not appealable. No action was taken on this comment.

Chuck Kowalski will revise the proposal in accordance with the Subcommittee's discussions and provide the revised proposal for consideration at the next Subcommittee meeting.

Agenda Item 5: Conforming Changes to MC By-Laws

Mike Mager reported that he has reviewed the draft changes to By-Laws Section 11.02.1 and Article XII, which are intended to conform the By-Laws to the current ISO Agreement, and he has no

objections or concerns with the draft changes. The Subcommittee then approved the conforming changes with no objections.

Agenda Item 6: Relationship of MC to Standing Lower Committees

The Subcommittee postponed discussion of this topic to its next meeting.

Agenda Item 7: The 30-Day Effective Date for MC Action

Section 7.11(g) of the ISO Agreement and Section 4.12 of the MC By-Laws provide that actions by the MC do not become effective for 30 days. Doreen Saia and Garry Brown stated that they will prepare proposed language changing the effective date to 10 business days for review at the next Subcommittee meeting.

Clean-Up Item 3: Appeals to the MC

A proposed appeals process has been drafted in Article XV of the draft By-Laws distributed to the Subcommittee for the May 21 and the June 11 meetings. The Subcommittee members agreed to review this language and provide any comments to Hunton & Williams or Peter Brown no later than June 20. The Subcommittee intends to resolve this issue at the next meeting.

Clean-Up Item 5: Proxy Rules

Proposed language concerning proxy has been drafted in Section 2.05 of the By-Laws. The Subcommittee agreed to review this language and provide any comments to Hunton & Williams no later than June 20. The Subcommittee intends to resolve this issue at the next meeting.

Clean-Up Item 6: Role of the Subcommittee

No action was taken with respect to the draft changes to Section 14.01 of the By-Laws which were previously proposed in an effort to liberalize the formation of subcommittees within the NYISO governance structure.

Next Meeting

The next meeting of the By-Laws Subcommittee was scheduled for June 26, 2001 at 10 a.m. at the offices of Hunton & Williams. The meeting was subsequently rescheduled for **June 27, 2001 at 10 a.m.** at the offices of Hunton & Williams.

The Subcommittee agreed that materials for the next meeting, including proposals to be prepared by members of the Subcommittee and comments on current draft language as noted above, should be provided to the Subcommittee **no later than June 20, 2001.**