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MEMORANDUM

TO: Power Committee

FROM: Wally Gibson

SUBJECT: Update on Grid West Issues

INTRODUCTION

The Grid West Regional Representatives Group (RRG) is currently trying to resolve a major governance issue about the balance between the independence of the Grid West Board of Trustees and the amount of control the members of the organization have over the actions of the Board and the evolution of the organization. One group of participants believes that the Board should ultimately be independent, subject to the review inherent in the need of Board members to be elected or reelected by the members every three years. This group tends to believe the balance in the current bylaws is appropriate. The other group believes that the members, either acting directly or through their representatives, should participate in a number of the key decisions of the Board, in some cases overruling or precluding Board action. This group believes there ought to be additional member controls incorporated into the bylaws. The shorthand for this disagreement is often "independence" vs. "accountability."

The RRG is scheduled to reexamine these issues at a meeting on November 18-19 and have a final discussion, at which consensus will be sought, on December 9. If consensus is found, the Filing Utilities are scheduled to meet shortly after and adopt the developmental bylaws, starting (but by no means ensuring the outcome of) the process to create Grid West. As part of this attempt to find a point of consensus on these issues, a small group from the RRG, the Mediation / Facilitation Group, is currently working to see if they can develop a proposal to present to the RRG that might provide that point of consensus.

The states, which have all been directly represented on the RRG through their Commission staffs, have fairly diverse opinions on these issues, ranging from serious concern about Grid West getting away from regional control and only responding FERC to, on the other side, being generally supportive of an independent Grid West Board and feeling that there are sufficient constraints on the Board already and that more would just impede its ability to act effectively to address the problems facing the regional transmission grid.

DISCUSSION

A Brief History

In the summer of 2003, the RRG reassembled to reexamine the failure of RTO West to get sufficient regional support to move forward. An effort was undertaken to focus directly on the problems facing the regional transmission system (a number of which are recounted in the Council's Draft Power Plan) instead of having the discussion be directed by the requirements of FERC's RTO orders. FERC, by that time, had publicly backed away from its aggressive stance with regard to implementation of the Standard Market Design (SMD) proposal and was suggesting that it would defer substantially to state and regional action. This discussion was successful in developing a list of regional transmission problems that most agreed were important difficulties for significant parts of the industry, even if they did not all directly affect every individual party.

This set of discussions was followed by several focused work groups that developed different means of addressing the common set of problems, over the course of about six weeks. As the RRG discussed these various approaches to the problem list, ranging from bilateral and multilateral contractual approaches to an independent organization that was a somewhat modified version of RTO West, it became apparent that there needed to be a different approach to the RRG's process for dealing with the issues. A small group, subsequently dubbed the Platform Group, was delegated to go off for a week and come back with a proposal that aimed for the center of gravity of the RRG's discussions, taking account of the work of the previous groups that had addressed various solutions.

That group came back with a proposal, originally called the platform proposal, now called the regional proposal, that had several key elements aimed at addressing regional problems and issues. The proposal was staged, focusing on a limited beginning state and only allowing Grid West to evolve further in certain areas if several specific hurdles were passed. These areas were called the "special issues" and were required to pass a formal vote of the members' representative committee, or if they failed to pass, to be adopted by a super-majority of seven out of nine members of the Board, rather than the Board's adopting with a simple majority, as with most issues. There were also timing requirements that delayed the special issues until a certain amount of time had passed after initial operation, or in some cases, delayed and then required consideration of the special issues. Some special issues required additional specific questions to be addressed by the board in any proposal to adopt them. This proposal was formally presented to the RRG in December of last year.

The special issues list was put in the proposal to address certain key concerns of significant portions of the RRG, and to add checks on the ability of the Board to act independently of the wishes of the membership of Grid West. The special issues list was part of a compromise that tried to address the concerns of those RRG members who felt that the RTO West proposal had been too much, too fast. The special issues list addressed the following:

- Authorization for the Corporation to exercise backstop measures (causing construction or implementation of non-wires alternatives) with respect to chronic, significant commercial congestion;
- The Corporation's departure from using the company rate approach to recover fixed costs of transmission service (e.g., to go to an average rate across the region);
- Authorization for the Corporation to convert the transmission rights of the transmission owners to financial rights and to issue new financial rights;
- Authorization for the Corporation's market monitor to impose penalties or actively intervene in markets (as opposed to, e.g., simply reporting to the appropriate enforcement authorities); and
- Authorization for the Corporation to adopt and enforce a loss methodology that overrides individual company loss methodologies.

Following that, the RRG created a Process Group who put together a proposed process to get the organization to an operational state when the specifics of the regional proposal's beginning state could be implemented. The proposed process was presented to the RRG in late January, 2004. This involved four decision points with greater levels of commitment to moving forward at each point. Only the fourth decision point, however, actually created an operating organization that was FERC-jurisdictional. Before that decision point, money would have been spent by the filing utilities, but no operating organization would exist. There were to be two sets of bylaws, developmental bylaws adopted at decision point one that defined the process for going forward, and operational bylaws, adopted at decision point four, that created the operating organization. The platform and process proposals were endorsed by many members of the RRG and accepted at least as a basis for further discussion by a number of others.

While both sets of bylaws were being written by a bylaws work group over the months since about last February, a contractor was hired, and put under the direction of a third group from the RRG, the Transmission Services Liaison Group (TSLG), to flesh out the substance of the way in which Grid West would provide services in the beginning state, following the guidelines of the regional proposal. The first round of that work was completed and presented to the RRG in middle and late October.

In late July, Bonneville engaged the National Academy of Public Administration (NAPA) to review the bylaws in light of governance issues and problems at various other non-profit corporations. At the same time Bonneville began a public review of Grid West to help inform its actions about decision point one, the adoption by the Filing Utilities of the Grid West developmental bylaws. That comment period closed in late September and the NAPA report was delivered about the same time, and formally presented to the RRG in early October.

The process proposal never intended that decision point one was to be such a significant event, since it merely intended to demonstrate that the Filing Utilities were willing to make the ongoing financial commitment to engage a search firm to look for Board candidates, to begin enrolling members of the Developmental Board (which had clearly different tasks defined for it than the Operational Board) and to continue support for the contract work of fleshing out the technical details. However, a number of the RRG members are viewing decision point one as the beginning of the proverbial slippery slope, from which it may be too difficult to recover.

The Current Issues

Currently in the developmental and operational bylaws there are a number of provisions for involvement of the members with the Board, to bring issues before them, to review proposed actions, to participate in and review development of the annual budget and so forth. In addition, there are a number of mechanisms aimed at ensuring control over costs of Grid West. Ultimately, however, the Board has the decision-making ability, within the constraints of the purposes of the corporation and its fiduciary duty to act in the interests of the members. This is the case even with regard to the five issues on the special issues list, although the bylaws require a supermajority of seven out of nine to adopt one of the special issues in the face of disagreement by a significant minority of the members acting through their members' representative committee.

There is no place currently in the bylaws for binding membership votes on initiation of Grid West or on actions of the Board, outside of the Board election and recall processes.

However, each of the Filing Utilities would have to go through some formal approval process, either, as in the case of Bonneville, self-imposed and self-defined or in the case of the IOUs, whatever is required by their state regulators, in order to sign a Transmission Agreement with Grid West and turn over their systems to Grid West to operate.

A sizeable number of members of the RRG, primarily representing the public power customers of Bonneville, believe that there should be more member input than this. The range of opinion among them on additional bylaw provisions is from stronger checks at key points, such as a binding member vote before Grid West becomes operational, to significant binding member input at almost any major decision, such as approval of the annual budget. Generally the public utility customers of Bonneville would characterize their experience of Bonneville decision making as one in which Bonneville listens to them extensively, then does what it wants to do, absent significant pressure being put on them by the delegation, and this appears to have influenced their approach to Grid West.

On the other side of the argument, a number of RRG members believe that the current balance is appropriate, that the Board does need to be ultimately independent of the commercial interests represented by the members and that the additional proposed member involvement in decision making will simply drive Grid West into gridlock, with no ability to act to address the important problems facing the regional transmission system.

This overarching disagreement about governance has also been focused on one specific area of potential Board action. This is the issue of financial rights. The authority for the Board to issue financial rights and convert the transmission owners' rights (but not the rights of third party contract holders, such as Bonneville's transmission customers) to financial rights is one of the five special issues highlighted in the bylaws as requiring a higher degree of member assent and Board support than normal actions taken by the Board.

A number of the proposed additional member controls over the actions of the Board have to do with making financial rights more difficult, if not impossible, to implement without a high degree of member agreement. Again the issue appears to be focused on Bonneville's interactions with its customers, since the Grid West proposal has as one of its foundation elements that existing contracts not be impaired or converted. Bonneville's customers appear to be more concerned with what Bonneville might do after the Board acts, than with the Board acting directly on them, especially since much of the current interaction between Bonneville and its public utility customers takes place under the aegis of Bonneville's discretionary business practices rather than under the terms of a formal contract.

On the other side are the RRG members that are satisfied with the current provisions regarding financial rights (though many of these recognize that the special issues list is already a compromise, and would favor financial rights being directly in the scope of Grid West's future action without the special hurdles of the special issues list). This group sees financial rights as a useful tool for achieving more efficient operation and increased short term access to the system, and is strongly opposed to their being taken off the table for future consideration in Grid West's operation. These tend to be the same RRG members who support the ultimate independence of the Board.

What Happens Next?

The RRG will meet again on November 18th and 19th to discuss these issues. There may or may not be a proposal from the Mediation / Facilitation group to bring to the RRG. It is, unfortunately, not clear what will happen at that RRG meeting, or how the discussion will be focused, nor at this point, what will happen at the December 9th RRG meeting.