

WIRAB Staff Comments on Proposed Amendments to the Peak Bylaws

Biennial Elections

April 4, 2017

The Western Interconnection Regional Advisory Body (WIRAB) staff appreciates the opportunity to provide comments to the Peak Reliability Board of Directors on the Governance Committee's (GC's) *Biennial Elections* proposal. The GC, in an effort to reduce the cost and administrative burden associated with Peak's director election process, proposed cost- and time-saving amendments to the Peak Bylaws. Under the current Bylaws, director elections are held each year at the Annual Member Meeting. The Peak Board is comprised of seven directors elected by Peak's membership to serve three-year terms, not subject to term limits. Director terms are staggered, with two or three terms expiring each year.

In the GC's proposal for Biennial Elections, the GC proposes that the Peak Bylaws be amended to: 1) establish biennial director elections, held every other year (i.e., during odd-numbered years) at the Annual Meeting of Members, instead of annually; 2) extend director terms from three to four years so that terms expire during odd-numbered years; and 3) stagger director terms to support alternating expiration.

The WIRAB staff believes that the amendments proposed by the GC would effectively reduce the costs and administrative burden associated with the director election process. In general, the WIRAB staff supports the proposed Peak Bylaw amendments, with the following provision:

1. The Peak Bylaws should be amended to implement term limits for Board Directors.

The Peak Bylaws should be amended to include term limits that reasonably preserve the Board's organizational knowledge, while also encouraging the Board to embrace new perspectives and to foster new ideas on maintaining reliability in the Western Interconnection. Term limits force organizations to focus on developing new leaders and reduce the potential for a few directors to dominate Board discussions and decisions over the long term. The term limits adopted should allow a director to serve a total of three four-year terms. Establishing three four-year term limits would allow Peak directors to serve a total of twelve years.

The North American Electric Reliability Corporation (NERC) recognizes the importance of maintaining the important balance between director experience and fresh perspectives on the NERC Board of Trustees. Accordingly, NERC's Board members are subject to term limits, which allow directors to serve twelve years on the Board. Directors at ERCOT, MISO and NYISO are similarly subject to term limits.¹

Implementing three four-year term limits for Peak's Board Directors would reasonably preserve the Board's organizational knowledge while also promoting diversity and turnover on the Peak Board. Therefore, the WIRAB staff recommends that the Board adopt the Peak Bylaw amendments proposed by the GC—requiring biennial elections and extending Director terms to four years—and implement term limits for Board directors.

¹ See Peak Reliability – Governance Committee Proposal: Biennial Elections, draft for posting (03/06/17), Appendix B.

The WIRAB staff also makes an additional recommendation and the following observations related to the process the Peak Board uses to amend the Peak Bylaws:

2. The Board’s process for considering proposed Peak Bylaw amendments should support thorough and timely stakeholder engagement.

The Board’s process for considering proposed Bylaw amendments should provide MAC Member Classes and other interested stakeholders a reasonable opportunity to review, consider, and comment on proposed changes. Postings of proposed Bylaw changes should be clearly noticed on the Peak website. Further, the Board should engage in rigorous stakeholder engagement, providing MAC representatives and other interested stakeholders with sufficient time to engage in a well-informed discussion with their membership prior to submitting comments. The Board’s process for considering proposed Bylaw amendments should also guarantee that the Board has a reasonable opportunity to consider the comments received and to respond appropriately.

The WIRAB staff comments provided here do not reflect WIRAB’s position on the proposed Peak Bylaw amendments. Due to the timeframe given, the WIRAB staff did not have sufficient time to take this issue to the WIRAB Members. WIRAB’s membership is comprised of member representatives—including public utility commissioners and energy office personnel—from all states and international provinces that have load within the Western Interconnection. Pursuant to Section 215(j) of the Federal Power Act (FPA), WIRAB is authorized to advise the Federal Energy Regulatory Commission (FERC) on whether reliability standards, budgets and fees, governance, compliance, assessments, strategic direction and other activities conducted pursuant to Section 215 are just, reasonable, not unduly discriminatory or preferential, and in the public interest. FERC has relied on WIRAB’s advice when deciding matters related to Peak Reliability. “[D]eference to WIRAB is appropriate here because Peak Reliability funding implicates the . . . topics listed in FPA section 215(j) on which a Regional Advisory Body may give advice[.]”²

The WIRAB staff engages WIRAB Members in matters concerning Section 215 activities by reviewing issues, drafting comments and conducting informative webinars for the membership. After WIRAB Members have a sufficient opportunity to consider and ask questions about the draft comments, the WIRAB staff makes any revisions necessary to reflect the membership’s regional perspective. This process takes time.

Under the timeframe provided to consider the proposed Bylaw changes, MAC representatives and the WIRAB staff had eight business days to consider the changes posted on March 6, 2017—in the Board of Directors meeting agenda—prior to providing the Peak Board with a position on this issue. Following the informative discussions that took place at the MAC meeting on March 15, 2017 and the Board meeting on March 16, 2017, MAC representatives and the WIRAB staff had an additional thirteen business days to discuss these issues with their membership groups and submit comments to the Board. Still, notice of the opportunity to comment was not clearly posted on Peak’s website until March 23, 2017; eight business days before comments to the Board were due.

Engagement with the MAC representatives, with Peak members and with WIRAB is important to informing the Board’s actions. Therefore, the WIRAB staff recommends that the Board adopt a formal process for considering proposed Peak Bylaw amendments that ensures rigorous and timely stakeholder engagement.

² FERC Order on Rehearing, Docket No. EL 13-52 et al., P. 46 (Dec. 6, 2013).