

September 1, 2020

Regulatory Commission of Alaska
701 W. 8th Avenue, Suite 300
Anchorage, AK 99501

Re: R-20-001

Dear Commissioners:

Renewable Energy Alaska Project (REAP) respectfully submits the following comments to supplement comments it made in this matter on June 1, 2020 and July 22, 2020 with a focus on the draft regulatory language submitted by Matanuska Electric Association (MEA) on August 19, 2020. These comments follow the same format as the MEA letter.

Definition of Independent Board Member

REAP believes MEA's proposed regulatory language for an independent board member is sufficient.

REAP is not advocating for a fully independent board at this time. However, unlike MEA, REAP believes that someday the Railbelt *could* support a fully independent board. The Railbelt Reliability Council (RRC) attracted 11 candidates for its two unaffiliated seats and REAP believes that interest in serving on an ERO in the Railbelt by qualified persons will only continue over time. REAP has already stated in previous comments why an independent board is important, and this is backed up by the number of independent boards that serve similar organizations in other states. In the case of the Railbelt ERO, an independent board would assure that there were no conflicts of interest when the ERO established and enforced reliability standards, developed non-discriminatory open access interconnection standards and cost recovery mechanisms for transmission investments or engaged in integrated resource planning. Research is demonstrating that governance structures of similar organizations can have measurable impacts on market and system outcomes.¹

¹Yoo, Kyungjin, and Seth Blumsack. "RTO Governance Structures Can Affect Capacity Market Outcomes." Proceedings of the 53rd Hawaii International Conference on System Sciences. 2020.

Yoo, Kyungjin, and Seth Blumsack. "Can capacity markets be designed by democracy?." Journal of Regulatory Economics 53.2 (2018): 127-151.

Yoo, Kyungjin, and Seth Blumsack. "The Political Complexity of Regional Electricity Policy Formation." Complexity 2018 (2018).

Lenhart, Stephanie, et al. "Electricity governance and the Western energy imbalance market in the United States: The necessity of interorganizational collaboration." Energy Research & Social Science 19 (2016): 94-107.

Paine, Nathan, et al. "Why market rules matter: Optimizing pumped hydroelectric storage when compensation rules differ." Energy Economics 46 (2014): 10-19.

Definition of a Balanced Board of Directors

REAP does not believe its previous comparisons to governance structures in other regions of the country are a total mismatch. Those structures are put in place to protect consumers. In contrast, it is arguable that the *lack of structure* in the Railbelt over the last several decades is what has already increased costs for Railbelt consumers.

If the two unaffiliated members of the Railbelt Reliability Council (RRC) fit the definition of an independent board member, the RRC will be applying to become the Railbelt's ERO under the combination independent and balanced stakeholder board option described in SB 123. REAP would like to see regulations that allow such combination boards to evolve toward a fully independent boards.

REAP does not believe there is a problem with requiring an ERO applicant to define the stakeholder groups that make up its proposed board structure. This would allow any ERO applicant in any part of the state to determine *which* stakeholder groups are represented on its board without requiring that any or all ERO applicants have *certain* stakeholder groups. Requiring an ERO applicant to delineate which stakeholder groups it is composed of would assist the Commission in making a finding about whether a board was "balanced" under SB 123.

While REAP agrees with the general principle contained in MEA's proposed regulatory language that "[t]he ERO board governance structure shall be constructed so that each board member receives only one vote and that no single alignment of interests can vote as a majority to dominate decisions nor impede progress," REAP does not believe that that language proposed by MEA is sufficient to ensure that a single alignment of interests does not indeed dominate decision making. For that reason, REAP strongly supports the Commission's suggestion that an ERO's voting structure require at least three stakeholder groups to join an affirmative vote. REAP also believes that regulations should state that no single stakeholder group can have a majority of seats on an ERO board.

Requiring at least three stakeholder groups to join in a majority decision of an ERO will not unduly force other ERO in Alaska to manufacture stakeholder groups to be part of a balanced board. REAP would argue that *any* proposed ERO in the state could easily include all five of the stakeholder groups that are currently represented within the RRC because all five of those important stakeholder groups do or could exist anywhere in Alaska. Those five stakeholder groups are:

- 1) Load serving entities (LSEs)
- 2) State government
- 3) Consumers
- 4) Independent Power Producers
- 5) Independent board members

REAP does not believe that the RCA should necessarily fix the number of board members an ERO governing board should have. Instead, the Commission can help ensure balance in decision-making by requiring that each ERO indicate which stakeholder groups are part of its proposed governance structure, and then requiring that “more than half” of those stakeholder groups be part of an affirmative vote of an ERO. In the case of the RRC, more than half would be three out of five.

Different stakeholder or interest groups are a reality that the Commission should acknowledge up front but allow each ERO applicant to define. REAP also strongly believes that all ERO board members must self-designate only one stakeholder group to identify with, regardless of whether the board member could theoretically fit into more than one stakeholder group.

REAP believes that regulations should state that an employee, i.e., CEO or President of an ERO, cannot cast tie-breaking votes on board decisions. In other jurisdictions, rank-choice voting is being used and considered to avoid stalemates on contentious issues.²

In other states, quickly evolving policy environments and rapid technology innovations are increasing the breadth and depth of stakeholders that are interested in the electric grid and there is no reason to think those factors will not also influence Alaska. The design of the decision-making process for the ERO should consider ways in which the process can evolve along with the environment in which the ERO operates.³

“Balance” in Committees or Sub-organizations

REAP believes committees can be a good way to harness technical expertise, but these committees should be carefully structured to encourage broad participation

REAP urges the Commission to include in regulation language that is similar to what MEA proposes to ensure that subcommittees of an ERO have a fair representation of stakeholder interests.

² Yoo, Kyungjin, and Seth Blumsack. "RTO Governance Structures Can Affect Capacity Market Outcomes." Proceedings of the 53rd Hawaii International Conference on System Sciences. 2020.

Johnson, Nicholas, Stephanie Lenhart and Seth Blumsack. “The evolution of participatory decision-making in the PJM power grid,” unpublished manuscript presented at the Energy Policy Research Conference, Portland OR, 2013.

³ Simeone, Christina. "PJM Governance: Can reforms improve outcomes." Kleinman Center for Energy Policy (2018).

Johnson, Nicholas, Stephanie Lenhart and Seth Blumsack. “The evolution of participatory decision-making in the PJM power grid,” unpublished manuscript presented at the Energy Policy Research Conference, Portland OR, 2013.

Stakeholder Group Delineation

As noted above, REAP does not believe that RCA needs to require a certain group or number of stakeholders be part of each ERO governing board. However, REAP cannot imagine a place in the state that would not include *at least* the five stakeholder groups that are represented in the RRC (load serving entities, State government, consumers, independent power producers and independent board members). By requiring each ERO applicant in the state to delineate which stakeholder groups (and the number in each) compose its proposed board structure, the Commission will be better able to determine whether the governance structure is “balanced”.

In contrast to the regulatory language proposed by MEA, REAP would not allow “an entity registered with the ERO” to self-identify with “one *or more* of the various interest segments”. Rather, REAP believes that each board member should only identify with *one* stakeholder group or interest segment. Furthermore, REAP believes that RCA regulations should prohibit load serving entities from spreading their influence on a board by allowing one vertically integrated LSE to self-identify as a distribution utility and another vertically integrated LSE to self-identify as a generation utility, thereby increasing the number of stakeholder groups that are filled with LSEs. REAP believes that if a utility provides more than one of the three functions of generation, distribution and transmission that it should simply self-identify an LSE.

REAP is not opposed to regulations that list stakeholder groups that are *permissible*.

Board of Director Initial Selection and Renewal

REAP suggests the following changes in **bold** to the regulatory language proposed by MEA:

The ERO’s bylaws shall include rules governing the qualifications and selection of ERO Board members, Board members’ terms of service and Board members’ renewal or replacement. ERO Board members must have recognized competence and **wide** experience in the area of electric power generation, **law, mediation,** transmission, finance, or other business management-related fields. The ERO bylaws shall clearly articulate the four primary fiduciary duties applicable to each Board member: (i) duty to act prudently, (ii) duty of loyalty, (iii) duty to act independently, and (iv) duty to follow the law and ERO articles, bylaws, code of conduct, and policies and procedures. The ERO’s bylaws shall include grounds for the removal of a sitting Board member, including processes for reconsideration of any such decision by the ERO, with the right of appeal to the Commission by an aggrieved party.

ERO Certification and Decertification Process

REAP believes that regulations should:

- 1) Provide the specific criteria for certification or decertification of an ERO.

- 2) Set an interval of every three years and criteria for regular re-certification that includes a self-assessment as part of re-certification, and the authority of the Commission to audit self-assessments.
- 3) Include application requirements information to show the ERO is able to handle the responsibilities and duties set for in AS 42.05.762.

Standards for measuring financial, technical, and managerial fitness for certification of an ERO

REAP does not have strong feelings on these standards, believing that most, if not all, are covered by the CPCN process and the requirements of SB 123.

Guidance to ensure the Board of Directors acts independently of user, owners, and operators of the interconnected electric energy transmission network

REAP feels strongly that the regulations should provide guidance to an ERO applicant that can be used in the ERO bylaws or tariff a complaint or reporting process to ensure that ERO Board and committee members are complying with that guidance.

REAP supports the language proposed by MEA but would replace one word in the middle of that language:

A certificated ERO's bylaws ~~or~~ **and** code of conduct shall include rules:...

Regulations Governing Openness and Transparency and Procedures

REAP believes the language proposed by MEA is significantly consistent with the regulatory language proposed in the Commission's straw man, and supports it.

Fair and Impartial Procedures for the Enforcement of Reliability Standards

REAP believes the language proposed by MEA is significantly consistent with the regulatory language proposed in the Commission's straw man, and supports it.

ERO Budget Approval Process

REAP believes the language proposed by MEA puts the ERO on notice of what is expected in an annual budgeting process. The Commission will sit on the ERO board, and will have input into the budget process. If the Commission feels that this is enough input into the budget process, then REAP would support the language proposed by MEA.

Compensation of Board Members

REAP strongly believes that all ERO board members should be compensated to ensure active and equal participation. It is not hard to imagine an ERO board member that has many responsibilities and finds it difficult to attend all ERO meetings because of other

financial obligations. Equal compensation for all board members would allow members with less financial means to more easily justify their participation. A member could even use the compensation to hire an employee whose primary responsibility is ERO board representation, thus increasing that board member's capacity to participate.

If an LSE's board representative is paid by the LSE, the LSE should not be allowed to "double collect" the representative's salary, and should be required to subtract the amount the representative is paid by the ERO from the costs of operation that it reports to the RCA.

REAP does not agree with MEA's proposed language that would allow some ERO board members to be compensated, but not others. Instead, all ERO board members should be compensated "commensurate with the duties" of that board member.

REAP does not believe that compensating ERO board members will have a significant impact on rates. On the contrary, increasing the capacity of a range of voices on the board may lead to ideas and decisions that could lead to more stable rates over time.

Allocating ERO Costs to the Load Serving Entities.

REAP supports the administrative costs of the ERO being allocated on a Net Energy for Load basis but has no problem with the flexible regulatory language proposed by MEA.

Conclusion

REAP believes that some combination of board composition and voting structure is necessary for a board to be "balanced" and accountable to the public interest. REAP urges the Commission to balance prescription with description to ensure that ERO applicants meet the requirements of SB 123.

REAP thanks the Commissioners for all their hard work and consideration.

Respectfully,



Chris Rose
Executive Director