

133 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

ISO New England Inc. and
New England Power Pool

Docket No. ER09-1051-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued October 21, 2010)

1. On April 28, 2009, ISO New England Inc. (ISO-NE) and the New England Power Pool Participants Committee (NEPOOL) (jointly, Filing Parties) submitted a compliance filing addressing the market reform requirements established by the Commission in Order No. 719.¹ In an order issued January 21, 2010, the Commission accepted Filing Parties' compliance filing, subject to conditions, but reserved for judgment in a separate order Filing Parties' compliance proposal regarding one of Order No. 719's four broad policy mandates, i.e., regarding the requirement that regional transmission organizations (RTO) and independent system operators (ISO) adopt procedures and/or structural reforms, as necessary, ensuring that their board of directors is responsive to the needs of its customers and stakeholders.² The January 21 Order noted that the record on this issue would be developed further in a technical conference, on a generic RTO/ISO-wide basis, with a separate order addressing Filing Parties' compliance with Order No. 719 to follow.³

¹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719 or Final Rule), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

² *ISO New England Inc. and New England Power Pool*, 130 FERC ¶ 61,054, at P 20 (2010) (January 21 Order).

³ The Technical Conference was held February 4, 2010.

2. For the reasons discussed below, we find that ISO-NE satisfies the RTO/ISO governance requirements of Order No. 719.

I. Background

A. Order No. 719

3. In Order No. 719, the Commission amended its regulations under the Federal Power Act (FPA) to improve the operation of organized wholesale electric power markets. With respect to RTO/ISO responsiveness, Order No. 719 required RTOs and ISOs to adopt procedures and/or structural reforms, as necessary, ensuring that their board of directors is responsive to the needs of its customers and other stakeholders.⁴ Specifically, the Commission adopted four responsiveness criteria addressing: (i) inclusiveness; (ii) fairness in balancing diverse interests; (iii) representation of minority positions; and (iv) ongoing responsiveness.⁵

4. With respect to these criteria, the Commission held that the business practices and procedures of each RTO or ISO must ensure that any customer or other stakeholder affected by the operation of the RTO or ISO, or its representative, is permitted to communicate its views to the RTO's or ISO's board of directors. The Commission also held that the interests of customers or other stakeholders must be equitably considered and that deliberation and consideration of RTO and ISO issues must not be dominated by any single stakeholder category. The Commission found that, in instances where stakeholders are not in total agreement on a particular issue, minority positions must be communicated to the RTO's or ISO's board of directors at the same time as majority positions. In addition, the Commission found that stakeholders must have input into the RTO's or ISO's decisions with mechanisms available to provide RTO or ISO feedback to stakeholders to ensure that information exchange and communication continue over time.

5. Order No. 719 also required each RTO and ISO to post on its website a mission statement or organization charter.⁶ Finally, Order No. 719 encouraged, but did not require, that RTOs and ISOs ensure that management programs, including executive

⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 477.

⁵ *Id.* P 502.

⁶ *Id.* P 556.

incentive compensation, give appropriate weight to responsiveness to customers and other stakeholders.⁷

B. Filing Parties' Compliance Filing

6. Filing Parties assert that ISO-NE satisfies the RTO/ISO responsiveness requirements of Order No. 719. Filing Parties state that the region formed the RTO Responsiveness and Governance Working Group (Responsiveness Working Group) to provide an open forum for all interested parties to explore potential improvements to stakeholder and governance processes used in New England. With respect to the inclusiveness requirement, Filing Parties note that ISO-NE's Board meets with the New England Power Pool Participants Committee (NEPOOL), the New England Conference of Public Utilities Commissioners (NECPUC), state public utilities commissions, and other stakeholders; and that through the director nomination process, a representative of NECPUC and each NEPOOL sector join members of the Board in nominating ISO-NE's directors. Filing Parties assert that inclusiveness is also satisfied through a mechanism that permits any stakeholder to provide documents directly to the Board.

7. With respect to the Commission's second responsiveness criterion, fairness in balancing diverse interests, Filing Parties state that ISO-NE's business practices and procedures are designed to ensure that the interests of customers and other stakeholders are equitably considered and that deliberation and consideration of issues are not dominated by any single stakeholder category. Filing Parties explain that these business practices include the provision in the Participants Agreement pursuant to which ISO-NE receives input and obtains formal, voted positions from NEPOOL on any changes to the tariff.⁸ Additionally, Filing Parties point to NEPOOL's structure itself, which grants equal voting weight to six sectors representing the universe of stakeholder concerns: generation, transmission, supplier, alternative resources, publicly-owned entity, and end user. Filing Parties assert that provisions exist for supermajority votes in order to ensure no individual participant or sector can control outcomes and that the Participants Agreement sets out a negotiated system resulting in ISO-NE receiving balanced and varied feedback on all its initiatives.

8. With respect to the Commission's third responsiveness criterion, representation of minority positions, Filing Parties state that ISO-NE's business practices and procedures

⁷ *Id.* P 561.

⁸ ISO-NE is required to inform the Commission and the ISO-NE Board of Directors of the results of the stakeholder process and cannot propose changes to its tariff without receiving the input of all stakeholders who want to participate.

are designed to ensure that when stakeholders are not in agreement on a particular issue minority positions are communicated to the Board at the same time as majority positions.⁹

9. With respect to the Commission's fourth responsiveness criterion, ongoing responsiveness, Filing Parties assert that ISO-NE complies with Order No. 719 through the Participants Agreement, which outlines ISO-NE's relationship with NEPOOL and a mechanism for making changes thereto. In addition, Filing Parties state that ISO-NE ensures that management and the Board receive stakeholder input in order to submit the annual budget to the Commission and establish priorities, as well as through annual customer surveys, reports to the Board regarding stakeholder meetings, and the Regional State Committee. In turn, ISO-NE has in place a mechanism to provide feedback to stakeholders from the Board through Chief Executive Officer (CEO) reports to the Participants Committee on Board activities.

10. With respect to budget development, Filing Parties explain that NEPOOL committees first review and vote on ISO-NE's proposed budget and that ISO-NE management reports to the Board the results of votes as well as other stakeholder feedback, including feedback from NECPUC and other state officials. Following the budget process, ISO-NE develops detailed priorities for the year, which it shares with state officials and NEPOOL with the goal of reaching consensus on regional priorities. Filing Parties state that ISO-NE anticipates that going forward these priorities will include smart grid projects and planning efforts to support the integration of renewable resources.

11. Filing Parties further note that ISO-NE conducts a yearly survey designed to assess customer satisfaction and obtain feedback on services. ISO-NE reports these results to the Board, and employee compensation is directly affected by the survey results. Filing Parties note that the survey results are also shared with NECPUC and, at the request of the Responsiveness Working Group, are posted on the working group's website. Filing Parties state that the CEO must report to Participants on actions taken by

⁹ Filing Parties reference three specific business practices: (i) the stakeholder reporting process, in which the Board has the opportunity to make further inquiries regarding the stakeholder minority viewpoint after being briefed by ISO-NE management; (ii) the "jump ball" provision in the Participants Agreement, which requires ISO-NE to present to the Commission any alternative participant-sponsored market rule proposal that is approved by a vote of at least 60 percent of the Participants Committee; and (iii) "inclusiveness," or the means available to stakeholders to communicate directly to the Board.

the Board on market rules or tariff issues, and Board members who attend Participants Committee meetings must report to the Board on the topics discussed. Furthermore, the Filing Parties state that ISO-NE sends a briefing report to the states each month via NECPUC summarizing ISO-NE activities that may be of interest to the states, organizes conference calls with NECPUC after the reports are released, and regularly holds meetings and conference calls between ISO-NE management and NECPUC.

12. Filing Parties also cite the New England States Committee on Electricity (NESCOE) as an additional forum through which ISO-NE meets the ongoing responsiveness criterion. NESCOE was formed with the intention of increasing communication among the parties on issues within the scope of NESCOE's responsibilities.

13. To address stakeholder concerns that NEPOOL processes are too complicated and resource-intensive, Filing Parties state that ISO-NE will provide a newly established Consumer Liaison Group comprising consumer representatives with a point of contact in the ISO-NE External Affairs Department; the contact will regularly provide information, facilitate meetings, and organize speakers, as well as provide ISO-NE resources to help end-users and consumer representatives understand stakeholder processes and key issues. Filing Parties commit to actively engage with and inform consumer organizations, advocates, ratepayers, and consumers about issues and NEPOOL processes through various meetings and reports. In addition, Filing Parties state that ISO-NE will prepare an Annual Report summarizing Consumer Liaison Group activities and ISO-NE actions during the year that concern economic impacts resulting from ISO-NE activities.

14. Although some consumer advocate and public utility stakeholders proposed that two or more seats on the Board be dedicated to persons with experience in consumer advocacy or retail ratemaking, Filing Parties state that this issue never reached consensus in the stakeholder process. ISO-NE asserts that, while such experience is important, it would not make a formal commitment to include dedicated consumer advocates on the Board because this may make it difficult to fill a Board slot in any given year due to business relationship restrictions on candidates under ISO-NE's Code of Conduct as well as the Commission's rules on interlocking directorates,¹⁰ which prohibit directors from holding simultaneous positions at multiple entities. ISO-NE further contends that mandatory qualification criteria for Board membership may limit the independence of the Board and lead to similar requests for dedicated seats from other "special interest" groups.

¹⁰ 18 C.F.R. § 45.1-9 (2009).

15. Filing Parties note that consumer advocates, end users, and public utility commission representatives expressed concerns about Board transparency and proposed opening Board meetings to the public and/or the publication of meeting minutes. Filing Parties disagree with such proposals, stating that, because ISO-NE is a private corporation, such proposals are fundamentally flawed. Filing Parties express concern that such proposals could hinder frank debate and jeopardize private stakeholder information. Filing Parties state that, instead, stakeholder concerns would be addressed through the following actions: posting to ISO-NE's website Board committee meeting agendas prior to meetings, in addition to Board agendas, which are already posted; clarifying in the Participants Agreement that any stakeholder can submit written materials to the Board at any point; and providing more detail in the CEO's monthly reports to the Participants Committee regarding activities of the Board and committees.

16. Filing Parties also agree to provide consumer advocates with the same type of information and staff support that are provided to NECPUC, including monthly briefings and conference calls. Last, Filing Parties state that they are inviting the highest level officials from each state consumer office to meet with the Board in an open discussion forum; and ISO-NE will then determine appropriate steps regarding interaction between the Board and officials.

17. Filing Parties assert that ISO-NE's mission statement complies with Order No. 719. Nonetheless, Filing Parties state that they have agreed to modifications in order to address stakeholder concerns, including: (i) recasting the mission statement's objectives; (ii) deletion of the provision precluding an independent cause of action based on the objectives; and (iii) new language to express ISO-NE's commitment to be cost effective in all of its functions and services and to provide stakeholders with qualitative and quantitative information on major initiatives.¹¹ Filing Parties assert that the Participants Committee approved these changes with a vote of approximately 80 percent.

¹¹ Filing Parties propose the following:

In fulfilling this mission and consistent with the preceding principles, the ISO shall strive to perform all of its functions and services in a cost effective manner, for the benefit of all those served by the ISO. To assist stakeholders in evaluating any major ISO initiative that affects market design, system planning or operation of the New England bulk power system, the ISO will provide quantitative and qualitative information on the need for and the impacts, including costs, of the initiative.

18. According to Filing Parties, an alternative version proposed during the stakeholder process by the public utilities commissions of Maine, Vermont, Connecticut and New Hampshire, various end users, municipal entities, and consumer advocates, failed with a vote of less than 60 percent.

19. ISO-NE's primary objection to the alternative mission statement is the use of the phrase "lowest reasonable cost." Filing Parties state that the proposing stakeholders made clear that part of the motivation for this phrase is the desire to minimize transmission costs. According to Filing Parties, these stakeholders state that ISO-NE should be responsible for proposing the "lowest reasonable cost" alternative that meets the system need.

20. Filing Parties argue that this attribution of responsibility to ISO-NE reflects a misunderstanding of the ISO-NE OATT and ISO-NE's role in the region. Filing Parties submit that ISO-NE cannot determine the relative costs and benefits of alternatives to transmission and advocate the alternative with the "lowest reasonable cost." According to Filing Parties, doing so would replace ISO-NE's function as the operator of regional markets with a regulatory role in which the ISO determines the alternatives that meet the region's needs. Furthermore, ISO-NE believes that this would put investment risk back on the shoulders of customers, and would force it to predict many future costs and outcomes, a function it does not believe it could fulfill effectively. Finally, even if ISO-NE were to determine that a lower cost alternative existed, Filing Parties contend that it has no ability to require the implementation of that solution.

21. Filing Parties note that, on the other hand, the "cost effective" language in the proposed mission statement is consistent with ISO-NE's role in the region and, specifically, Attachment K to Section II of the ISO Tariff. The language of Attachment K, according to Filing Parties, gives ISO-NE the option to identify a "cost effective" option without creating the potential for litigation.

22. Finally, Filing Parties assert that the reference to just and reasonable rates in the alternative mission statement is inapposite, as it is the Commission's role, not ISO-NE's, to ensure just and reasonable rates.

II. Notice of Filing and Responsive Pleadings

23. Notice of Filing Parties' compliance filing was published in the *Federal Register*, 74 Fed. Reg. 21,795 (2009), with interventions, comments, and protests due on or before May 26, 2009. Motions to intervene and notices of intervention were accepted by the Commission in the January 21 Order. Comments and protests addressing RTO/ISO responsiveness issues were filed by the Attorney General of the State of Connecticut (Connecticut AG); Bangor Hydro-Electric Company (Bangor Hydro); Central Maine Power Company (Central Maine); Connecticut Department of Public Utility Control (CT DPUC); Connecticut Office of Consumer Counsel (Connecticut OCC); Consumer

Demand Response Initiative (CDRI); the Electricity Consumers Resource Council (ELCON), Industrial Energy Consumers Group (IECG); Maine Public Utilities Commission (Maine PUC); Massachusetts Department of Public Utilities (Mass. DPU); Massachusetts Office of Attorney General (Mass. AG); NEPOOL Industrial Customer Coalition; State of Maine's Public Advocate's Office (Maine PAO); Portland Cement Association and ArcelorMittal USA (Industrial Consumers); Vermont Department of Public Service (Vermont DPS) and Vermont Public Service Board (Vermont PSB); and, collectively, Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and New Hampshire Electric Cooperative, Inc. (Public Systems).

24. On June 10, 2009, NEPOOL and New England Power Generators Association, Inc. (NEPGA) filed answers. On June 15, 2009, and July 2, 2009, respectively, answers were filed by ISO-NE and Public Systems.¹²

A. Protests and Comments

1. Communications with the Board

25. Protesters question the responsiveness of the ISO-NE Board. Maine PUC and IECG¹³ support open Board meetings and the publication of Board meeting minutes. Maine PUC and IECG also dispute ISO-NE's contention that, as a private corporation, it has no obligation to increase the transparency of Board meetings. They counter that, because ISO-NE is a not-for-profit corporation imbued with a public purpose, it is reasonable to expect a higher degree of transparency. Maine PUC and IECG also point out that CAISO, Midwest ISO, and SPP hold open Board meetings.

26. Bangor Hydro supports open Board meetings and posting on the ISO-NE website of Board meeting agendas and minutes, including those of any Standing or Special Board Committees. Vermont DPS and Vermont PSB support posting agendas prior to every Board meeting and posting minutes within 14 days after each meeting. They add that, as a Commission-approved RTO, ISO-NE must be operated in a manner such that its customers and stakeholders have confidence in ISO-NE's decision-making process.

¹² Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the answers submitted by NEPOOL, NEPGA, ISO-NE and Public Systems because they have provided information that assisted us in our decision-making process.

¹³ The Maine PAO supports the Maine PUC's Comments.

Central Maine argues for the publication of all Board and Board committee meeting minutes, as opposed to open meetings, on the grounds that this proposal strikes an appropriate balance between ISO-NE's concern that open meetings would chill frank debate and the stakeholders' desire for increased transparency.

27. Maine PUC, IECG, Bangor Hydro, Vermont DPS, and Vermont PSB argue that, to further enhance Board transparency, the Commission should require ISO-NE management to provide dissenting opinions to the Board in writing. Maine PUC and IECG contend that, currently, there is no *direct* feedback mechanism to show that the Board has considered or taken any action in response to a position advanced by a stakeholder but is not necessarily supported by ISO-NE management. Maine PUC and IECG argue that "routinely" informing the Board and assurances that the CEO is reporting orally to the Board are not effective methods of obtaining feedback.

2. Mission Statement

28. Maine PUC argues that ISO-NE's mission statement fails to set forth ISO-NE's purpose, guiding principles, and commitment to responsiveness. Connecticut AG and CDRI propose that the mission statement be revised to include an ISO-NE commitment to provide services at the lowest reasonable cost consistent with operating a reliable electric system. Maine PUC, NEPOOL NICC, Bangor Hydro, and other parties argue that it is the ISO's role to ensure the delivery of service at the lowest reasonable cost, as stated in Order No. 888, Order No. 2000, and Order No. 697-A. In addition, MPUC states that the tariff already requires ISO-NE to make "reasonableness" determinations per Schedule 12C of the Tariff.

29. Alternatively, Maine PUC argues that rather than mandating a change in language, the Commission should interpret ISO-NE's proposed mission statement to require ISO-NE to identify the lowest reasonable cost transmission solution in the Regional System Plan process and adopt in other areas, such as resource adequacy and reliability determinations, an approach that avoids the imposition of unreasonable costs on consumers.

30. CT DPUC¹⁴ argues that ISO-NE views its mission too narrowly and, by refusing to adopt a "lowest reasonable cost" standard, seeks to shirk the fundamental responsibility that it necessarily assumes when making FPA section 205 filings. CT DPUC states that ISO-NE assumes a regulatory function by determining which among

¹⁴ The Connecticut OCC joins the comments of Connecticut DPUC and requests that the Commission deny the ISO-NE and NEPOOL proposals and adopt more robust reforms.

multiple just and reasonable alternatives it will support. Maine PAO supports Maine PUC's comments and adds that the language adopted by ISO-NE is not responsive, as the cost effective language is not helpful to consumers and does nothing to reign in costs.

31. Public Systems add that ISO-NE has decades of public utility experience in long-term planning and market design and, therefore, question ISO-NE's purported inability to predict future costs and outcomes. CT DPUC asserts that ISO-NE is imbued with a broader, public interest mission and argues that if ISO-NE can assess cost effectiveness, it should be able to determine the relative cost effectiveness of different approaches and choose the one that produces the lowest reasonable consumer costs.

32. Public Systems recognize that progress has been made through the proposed elimination of language contained in section 2.3 of the Participants Agreement that rendered the existing "objectives" unenforceable. However, they argue that providing stakeholders with information is not the same thing as requiring cost-benefit analyses and does not by itself fulfill the requirement that ISO-NE carry its burden of proof to demonstrate that its changes are just and reasonable. Further, Public Systems stress that their revised version of the alternative mission statement would not put ISO-NE in a position of guaranteeing the lowest reasonable rates consistent with reliability but instead in the position of striving to do so to the greatest extent. Public Systems recommend directing ISO-NE to provide stakeholders with a written explanation of the bases it uses to determine whether a proposed market rule change is non-major and therefore does not trigger the obligation to provide information.

33. Mass. DPU supports ISO-NE and NEPOOL and notes its concern with proposals that would give ISO-NE responsibility for making policy decisions related to weighing costs and benefits of transmission projects or selecting a least cost alternative. Mass. DPU argues that such authority would inappropriately alter ISO-NE's role. Mass. DPU states that it believes ISO-NE must remain neutral with respect to market outcomes, since it believes that public interest policy decisions should remain with the federal and state commissions.

3. Additional Protests and Comments

34. ELCON asserts that the RTO/ISO stakeholder processes should not displace the Commission's independent review of the Order No. 719 filings. ELCON explains that the Commission's careful review of ISO and RTO compliance filings is particularly important in view of the comments on the stakeholder process made by the General Accountability Office in its September 2008 report regarding the existing shortcomings

in the stakeholder process.¹⁵ ELCON states that RTO/ISO stakeholder processes have failed, yielding outcomes that inhibit rather than promote demand response in direct contravention of the principles and directives of Order No. 719. ELCON claims that, because the RTO/ISO stakeholder processes are flawed, the Commission should conduct its review of the Order No. 719 filings on a *de novo* basis and should promptly implement new initiatives, including adoption of a pro forma tariff and/or a Commission-headed national conference among the six ISOs and RTOs, as necessary, to bring the ISOs and RTOs into compliance with Order No. 719.

35. Industrial Consumers argue that end-use customers should be given a larger voice in RTO/ISO governance. Industrial Consumers also argue that RTO/ISO governance must be simplified and that the current numbers of stakeholder meetings being held must be reduced. With respect to sector voting, Industrial Consumers argue that the end-use customer sector should be limited to true direct end-use customers or their legally authorized consumer advocate representatives, and that this sector should have at least 50 percent of the sector weighted vote. Industrial Consumers also assert that RTO Boards should have a committee dedicated to understanding the impact of RTO actions on end use-customers and that the Board and RTO/ISO management should include an end-use customer or consumer advocate representative. Finally, Industrial Consumers state that there needs to be a feedback loop such that changes are evaluated after the fact.

36. Maine PUC, IECG, Central Maine and Bangor Hydro support the creation of a regional consumer advocate position. While Maine PUC and IECG do not object to the consumer liaison function proposed by Filing Parties, they argue that there remains a need for expert representation of consumers and regulators in order to ensure that they are able to fully and productively participate in the stakeholder process. Central Maine adds that such expert representation may be especially helpful in transmission planning and market development, both of which can result in significant cost impacts on customers.

37. Maine PUC, IECG, Vermont DPS, and Vermont PSB argue that ISO-NE responsiveness to its customers will be greatly improved if executive compensation is linked to cost control in the cost containment provisions of the ISO-NE mission statement. Central Maine states that though this may be a worthwhile reform, the issue should be vetted through the appropriate stakeholder process before Commission consideration. These parties contend that the annual customer survey to which the compensation of ISO-NE employees is partly tied does not include questions about costs or cost effectiveness. Accordingly, they request that the Commission direct ISO-NE to

¹⁵ See U.S. Government Accountability Office, *Electricity Restructuring – FERC Could Take Additional Steps to Analyze Regional Transmission Organization’s Benefits and Performance* (Sept. 2008).

add cost concerns to both the customer survey and the incentive payment mechanisms. Maine PUC and IECG assert that the survey should be given to state regulators and consumer representatives. Vermont DPS and Vermont PSB also support the development of metrics to objectively evaluate ISO-NE's management practices and measure responsiveness and to which executive compensation would be linked.

38. Finally, Public Systems urge the Commission to require that ISO-NE post on its website any documents, reports, or other written information that is shared with NECPUC, the consumer advocates, or the Consumer Liaison Group.

B. Answers

39. With respect to the proposal for open Board meetings and greater Board transparency, ISO-NE responds that while it recognizes that the fulfillment of its purpose has an indisputable impact on the public, it is a private corporation, not a government agency or regulator, and, therefore, it reserves the right to keep Board meetings private and not post Board minutes. NEPOOL responds that open meetings, among other transparency reforms, were discussed during stakeholder deliberations, and stakeholders instead accepted a proposal that requires posting of all Board and Board committee meeting agendas and enhanced monthly reporting by the CEO of all activities of the Board and its committees. NEPOOL urges the Commission not to institute open Board meetings or publication of meeting minutes at this time and in this proceeding, arguing that Maine PUC or any other interested party will have the opportunity to reintroduce their proposal in the stakeholder process if the changes to enhance reporting already agreed upon are found to be inadequate.

40. Addressing the request that the Commission require ISO-NE management to provide dissenting opinions to the Board in writing, ISO-NE responds that reporting on minority positions to the Board is part of management's obligation to the Board and is an existing business practice. Moreover, it asserts that stakeholders are free to reinforce their positions by posting information to the ISO-NE website or in discussions at one of the many meetings with the Board.

41. With respect to the proposed establishment of a regional consumer advocate, ISO-NE responds that while a regional consumer advocate may be desirable, there was a lack of support for it among the stakeholders who would ultimately pay. NEPOOL urges the Commission not to institute the proposal for a regional consumer advocate as part of this proceeding without prejudice, allowing any interested party the opportunity to reintroduce such a proposal in the stakeholder process if the Consumer Liaison Group proves inadequate.

42. With respect to executive compensation, ISO-NE responds that executive compensation is appropriately influenced by a broad customer survey. ISO-NE and NEPOOL state that the concept of linking employee compensation to the cost-related

provisions of its mission statement was not raised during the stakeholder process. NEPOOL also observes that this proposal was not raised during any of the Responsiveness Working Group discussions. NEPOOL urges the Commission to reject such requests at this time and allow proponents to offer such a proposal in the stakeholder process. Regarding Maine PUC and IECG's suggestion that state regulators and consumer advocates be given the survey, ISO-NE notes that it approached NECPUC to secure state participation as recently as last year, but that the states declined to participate. ISO-NE states that it will revisit the issue with stakeholders before the next survey is issued. ISO-NE further states that its survey questions are intentionally kept at a high-level in order to elicit wide-ranging comments, and past surveys have elicited comments about cost concerns.

43. With respect to the proposed posting of material shared with the Consumer Liaison Group, ISO-NE responds that all meetings of the Consumer Liaison Group will be open to stakeholders and all materials will be publicly available on its website. Regarding materials provided to other groups, including NECPUC, ISO-NE contends that a change in long-standing practices is not warranted.

44. ISO-NE clarifies that the alternative version of the mission statement was supported by representatives of four New England states, but it failed to win NEPOOL's support and was opposed by two other states. ISO-NE also states that it objects to the addition of the "just and reasonable" language to the mission statement, because such language represents a legal standard of which ISO-NE is not the final arbiter. ISO-NE argues that it is not in a position to guarantee that a tariff change is just and reasonable and that only the Commission can rule definitively on that issue.

45. ISO-NE reiterates that its Tariff does not grant it the authority to determine the relative costs and benefits of alternatives to transmission and advocate the alternative with the lowest reasonable cost. ISO-NE argues that its tariff only gives it the responsibility for transmission system planning and requiring transmission construction if a reliability need exists. ISO-NE states that if the market meets the identified need, through generation, demand response, or otherwise, the transmission need determination will be withdrawn. Further, ISO-NE states that identification of alternatives would require a complex change in ISO-NE's responsibilities, essentially converting it into the body responsible for integrating resource planning with the decisional authority over regional resource needs, procurement, and decisions.

46. In its answer, NEPOOL urges the Commission to uphold the approval of the mission statement version ultimately proposed and not order any further changes without prejudicing the ability of any interested parties to re-raise such issues at a later time once the region gains experience with the proposed version. In its answer, NEPGA supports ISO-NE's proposed version of the mission statement.

47. In their answer, Public Systems contend that ISO-NE failed to respond to a portion of their comments regarding the mission statement. Specifically, Public Systems state that ISO-NE ignored their remarks that the mission statement only improves on the status quo and does not go far enough to ensure ISO-NE is appropriately responsive to stakeholders and consumers. Public Systems reiterate their belief that ISO-NE would not be in the role of regulator or required to produce the lowest reasonable cost; they argue that a clear standard needs to be established for the Commission to judge ISO-NE's efforts to fulfill its function. Lastly, Public Systems state that, in the event the Commission does not require "least cost" language in the mission statement, it could alternatively accept ISO-NE's compliance filing with respect to the mission statement, but reiterate its expectation that ISOs and RTOs should seek to provide reliable service at the lowest reasonable cost.

48. With respect to Public Systems' recommendation that ISO-NE provide stakeholders with a written explanation of the bases it uses to determine whether a proposed market rule change is non-major and therefore does not trigger the obligation to provide information, ISO-NE agrees and states that it will work with stakeholders to implement new language, with the intention of reaching consensus on both the concepts of "major" initiatives and the information to be provided.

III. Technical Conference on RTO/ISO Responsiveness

49. On February 4, 2010, the Commission held a technical conference to provide an additional forum for interested parties to discuss issues related to both ISO-NE's compliance filing as well as broader RTO/ISO responsiveness issues concerning all RTOs and ISOs. Panels were established to address: (i) stakeholder processes and (ii) board processes and other governance issues.

50. In its notice establishing the technical conference, the Commission noted that various parties had filed specific proposals in the Order No. 719 compliance proceedings to address perceived problems with stakeholder and board processes and configurations. The notice stated, for example, that the Ohio Consumers' Counsel had filed a motion to lodge a report on RTO/ISO governance written by the National Association of State Utility Consumer Advocates (NASUCA).¹⁶ The notice stated that, in addition to the

¹⁶ In its report, NASUCA argued that existing RTO/ISO structures prevent effective participation by end-use consumers because: (i) the decision making process is complicated and time intensive and (ii) most consumers and their advocates lack the resources required to meaningfully monitor and influence the stakeholder process. NASUCA argued that for these reasons, there is a lack of adequate retail consumer involvement under the current structure, which may lead to decisions that do not

(continued...)

proposals made by NASUCA, other commenters had argued that RTOs and ISOs must take further steps to satisfy the criteria established in Order No. 719 on responsiveness to customers and other stakeholders, including proposals to reduce the number of RTO and ISO meetings by streamlining approval processes and to include language in RTO and ISO mission statements reflecting consumer interests.

51. Notices of the technical conference proceeding were published in the *Federal Register*, 74 Fed. Reg. 59,975 (2009); 75 Fed. Reg. 3223 (2010); and 75 Fed. Reg. 5779 (2010). Comments were submitted by the entities listed in Appendix B to this order. Comments addressing generic RTO/ISO-wide issues are summarized in Appendix A. In addition, comments specific to ISO-NE are summarized below, as submitted by Consumer Groups Representing Residential Ratepayers,¹⁷ ELCON, the Electric Power Supply Association (EPSA), Financial Marketers,¹⁸ Mass. AG, Maine PUC,¹⁹ NASUCA, and Steel Producers.

52. On March 23, 2010, answers to post-technical conference comments were filed by ISO-NE and NEPOOL.²⁰

adequately consider the price of electricity to residential consumers. To address these concerns, NASUCA recommended that the Commission take action to reorganize the RTO/ISO stakeholder process and governance structure.

¹⁷ Consumers Union, National Consumer Law Center, AARP, Consumer Federation of America, and Public Citizen filed collectively as Consumer Groups Representing Residential Ratepayers.

¹⁸ EPIC Merchant Energy, L.P.; EPIC Merchant Energy CA, LLC; EPIC Merchant Energy Midwest, L.P.; EPIC Merchant Energy, NE, L.P.; EPIC Merchant Energy, NJ/PA, L.P.; EPIC Merchant Energy NY, L.P.; SESCO Enterprises LLC; Jump Power, LLC; Energy Endeavors LP; Big Bog Energy, LP; Silverado Energy LP; Gotham Energy Marketing LP; Rockpile Energy LP; Coaltrain Energy LP; Longhorn Energy LP; BJ Energy LLC; Franklin Power LLC; and GLE Trading LLC filed collectively as Financial Marketers.

¹⁹ Comments filed by Maine PUC are supported by the Connecticut PUC and the Vermont PSB.

²⁰ Pursuant to the Commission's notice, the record remained open for 30 days following the technical conference. For good cause shown, we will accept the post-technical conference answers submitted by ISO-NE and NEPOOL.

A. Post-Technical Conference Comments

53. Maine PUC argues that because ISO-NE is focused on system reliability and market development, it is not concerned with identifying in the regional system plan the lowest reasonable cost resources that will meet the system's needs. Maine PUC argues that more active oversight by the Commission will help to advance RTO responsiveness. It also asserts that ISO-NE is lacking in responsiveness with respect to being prepared to discuss some items at stakeholder meetings despite these items being posted on the meeting agenda by ISO-NE and its working group chairs.

54. Maine PUC offers several suggestions: (i) require board meetings to be open to the public (and require CEII clearance for those attending meetings where CEII matters will be discussed); (ii) have one or more positions at the Commission tasked with overseeing compliance with RTO responsiveness provisions; and (iii) require RTOs to file quarterly reports outlining the steps they are taking to comply with the responsiveness measures adopted by the Commission.

55. Maine PUC reiterates that ISO-NE is an organization focused on reliability rather than on consumer cost concerns. Maine PUC also clarifies its position regarding the mission statement language, stating that it does not believe that "lowest reasonable cost" and "lowest cost" are the same thing; there may be lower cost options that cost more in the long run. Similarly, Maine PUC argues that ISO-NE has not carried through with its commitment to provide qualitative and quantitative information and cost analyses relating to major ISO-NE initiatives, despite repeated requests for such information. The Mass. AG states that it supports the inclusion of cost control principles in RTO's mission statements, but notes that requested quantitative and qualitative impact analyses, to date, in accordance with the revised mission statement, have resulted in only mixed success.

56. Maine PUC offers, in addition to the items listed in the section on RTO responsiveness, the following for Commission consideration: (i) requiring lowest reasonable cost language in the mission statement; (ii) requiring ISO-NE to explain in any filing before the Commission why it did not include cost analyses of the impact of the proposal or action and requiring rejection as deficient ISO-NE proposals without sufficient justification for failing to provide such an analysis; and (iii) requiring greater Commission consideration on the cost impacts of RTO proposals.

57. Noting various initiatives that ISO-NE agreed to implement in response to Order No. 719, the Mass. AG contends that ISO-NE's stated commitment to improve its responsiveness to consumers is encouraging, and continues to support the compromise achieved in the ISO-NE compliance filing. In addition, the Mass. AG reiterates its previous comments, stating that the Board should: (i) open Board meetings to the public; (ii) include consumer advocate experience on the Board, and (iii) publicly post Board meeting minutes. The Mass. AG also supports requiring such measures, if the

Commission is considering a uniform rule principle as a result of the Technical Conference. In addition, the Mass. AG states that it would support a detailed explanation of the Board's decisions within the Board meeting minutes, if the Commission does not order RTOs to implement open board meetings. Similarly, the Mass. AG also requests that the Commission require RTOs to post the Board's voting records.

58. Finally, the Mass. AG also expresses support for increased Commission involvement at the RTO and stakeholder level. The Mass. AG requests that, if the Commission approves ISO-NE's compliance filing, ISO-NE should be required to file a report in one year to update the Commission on the progress of implementation of ISO-NE's Order No. 719 initiatives.

59. EPISA supports ISO-NE's efforts to improve ISO responsiveness. EPISA notes that ISO-NE, even though it believed it was already in compliance with Order No. 719, still formed an RTO responsiveness task force to investigate how it could better fine-tune governance and responsiveness issues and then accomplished meaningful reforms, including the Consumer Liaison Group.

B. Answers

60. In response to the Mass. AG's advocacy for open Board meetings with publicly posted minutes, NEPOOL states that it has addressed the Mass AG's underlying concerns with a reform that has been supported by the Mass. AG, namely, a requirement that the ISO-NE CEO issue a full report of the Boards actions to the NEPOOL Participants Committee, with a follow-up opportunity provided to address follow-up questions. NEPOOL submits that any additional concerns with these arrangements should be raised within the stakeholder process. NEPOOL further submits that Commission-mandated changes regarding these processes would not be warranted.

61. With respect to Maine PUC, CT DPUC, and Mass. AG's proposal to require additional reporting on responsiveness, including a report in one year and quarterly reports, ISO-NE responds that an ongoing dialogue on responsiveness will be more efficient and productive than a series of compliance filings, comments, and answers. Finally, ISO-NE requests that the Commission approve the compliance filing as submitted on April 28, 2009.

62. With regard to the addition of language to the mission statement on requiring evaluation of major ISO-NE initiatives, ISO-NE states that given the stakeholder consensus regarding the importance of the initiative, it agreed to begin the process of implementing it immediately. ISO-NE adds that it agreed to do so, even though the Commission had not yet issued an order approving the changes to the mission statement. It also notes that it had acknowledged that a number of important factors had not been fully developed, including a new definition of "major" initiatives and methodologies for determining the costs and impacts of major initiatives, as stated in its June 15, 2009

answer to comments on the compliance filing. ISO-NE states that it remains committed to developing broadly accepted methodologies and definitions but that it is wary of efforts to expand impact analysis so that it becomes a barrier to progress of any kind.

63. ISO-NE also disagrees with Maine PUC and CT DPUC's request that ISO-NE include in any Commission filing in which ISO-NE did not provide an impact analysis an explanation of why it has not done so. ISO-NE argues that Maine PUC and Connecticut DPUC are proposing a *de facto* amendment to section 205 of the FPA that would require including explanations of why impact analyses were not provided in every section 205 filing.

IV. Discussion

64. For the reasons discussed below, we find that ISO-NE's existing governance policies and stakeholder processes, as modified by the reforms proposed by Filing Parties, meet the requirements of Order No. 719. Nevertheless, and as discussed further below, the Commission believes that many of the ideas presented and proposals made in this proceeding, and in response to the February 4, 2010 technical conference, while not required by Order No. 719, deserve consideration in stakeholder processes as RTOs and ISOs continue to evolve and improve.

65. RTO/ISO stakeholder bodies are comprised of numerous entities that frequently have divergent interests and positions. RTO/ISO boards must account for these divergent points of view in making their management decisions. As a general proposition and as required in Order No. 719, governance policies and stakeholder processes should be well-suited to enhance appropriate stakeholder access to RTO/ISO boards and, in turn, facilitate the boards' direct receipt and consideration of stakeholder concerns and recommendations, including minority views. In pursuing these objectives, RTOs and ISOs also have an ongoing obligation to operate independent of any market participant or class of market participants, as required by Order No. 2000.²¹

66. Before addressing the ISO-NE-specific governance policies raised in this proceeding, we note that participants in the February 4, 2010 Technical Conference proposed governance and/or stakeholder input measures. Among others, those measures include the proposals presented in the NASUCA report discussed above. While some of

²¹ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd, sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

those governance and/or stakeholder input measures may have merit as steps to improve existing RTO or ISO processes, we are not persuaded that adoption of those measures is required for an RTO or ISO to satisfy the requirements of Order No. 719.

67. In discussing the fourth RTO/ISO responsiveness criterion (ongoing responsiveness), we stated in Order No. 719 that, “[a]s with the overall operations of each RTO and ISO, responsiveness to customers and other stakeholders should continually be evaluated for improvement.”²² We recognize that existing RTO/ISO stakeholder and board processes present resource challenges for certain stakeholders, including many consumer advocates, and may present barriers to the full, open participation of stakeholders in RTO/ISO governance matters. In light of such concerns and consistent with our statement in Order No. 719 with respect to the ongoing responsiveness criterion, RTOs/ISOs, including ISO-NE, should continually evaluate their governance policies and stakeholder processes and consider how they may be improved. If parties continue to have concerns in these areas that are not being addressed, the Commission may revisit these issues. The Commission will also continue to monitor these matters and take appropriate action, as required.

68. In our analysis, below, we address ISO-NE’s compliance with each of the Order No. 719 governance criteria.

A. Inclusiveness

69. First, we address whether ISO-NE’s governance procedures and stakeholder processes satisfy Order No. 719’s inclusiveness requirement. With respect to this criterion, Order No. 719 found that an RTO’s or ISO’s practices and procedures must be adequate to bring the views of all customers or other stakeholders before the board. The Commission stated that meeting this criterion will demonstrate that the RTO or ISO actively provides for presenting customer and other stakeholder issues, concerns, or proposals to its board.²³

70. We find that ISO-NE’s governance procedures and stakeholder processes satisfy Order No. 719’s inclusiveness requirement. ISO-NE’s Board meets with stakeholders and interested parties in various settings including at NEPOOL meetings and with NECPUC. In addition, the Participants Agreement allows stakeholders to submit written

²² Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 509.

²³ *Id.* P 505.

materials to the Board at any time and gives stakeholders an opportunity to have input regarding the composition of the Board (through the Joint Nominating Committee).

71. Some parties propose specific representation on the Board for consumer advocates. Others propose to establish a regional consumer advocate position. With respect to board composition, the Commission held in Order No. 719 that it would not require RTOs or ISOs to adopt a specific form of board structure.²⁴ The Commission further held that it would not require that board advisory committees have open positions for state commissions and state consumer advocates, choosing instead to leave this issue for deliberation in the stakeholder process.²⁵ The Chairman of ISO-NE's Board has committed to retain consumer advocacy experience on the board. Further, the Filing Parties have committed to formally provide consumer representatives with an ISO-NE point of contact through the newly developed Consumer Liaison Group to help them understand stakeholder processes and key issues and their economic impact. We welcome the establishment of a Consumer Liaison Group as an improvement that should help address the concerns related to cost impacts that led to the request for a regional consumer advocate.

B. Fairness in Balancing Diverse Interests

72. We next consider whether ISO-NE's governance procedures and stakeholder processes satisfy Order No. 719's fairness in balancing diverse interests requirement. With respect to this criterion, Order No. 719 found that RTOs or ISOs must ensure that their practices and procedures for decision-making consider and balance the interests of their customers and stakeholders and ensure that no single stakeholder group can dominate.²⁶ Order No. 719 explained that this criterion was necessary to ensure that the RTO or ISO will make well-informed decisions that reflect the full range of competing interests that may be affected.²⁷

73. We find that ISO-NE's governance procedures and stakeholder processes satisfy Order No. 719's fairness requirement. First, Filing Parties assert, and we agree, that ISO-NE's business practices and procedures ensure that customers and other stakeholders are equitably considered and that deliberation and consideration of issues are not dominated

²⁴ *Id.* P 534.

²⁵ *Id.* P 535.

²⁶ *Id.* P 507.

²⁷ *Id.*

by any single stakeholder category. Filing Parties note, for example, that under the Participants Agreement, ISO-NE receives input and obtains formal, voted positions from NEPOOL on any changes to the ISO-NE tariff, as well as NEPOOL's structure, which grants equal voting weight to six stakeholder sectors. Under the Participants Agreement, proposed tariff changes and/or market rule revisions must be submitted to the appropriate NEPOOL technical committee for its deliberation and approval, except in the case of exigent circumstances. Following a vote by the technical committee or the lapsing of the relevant time period, ISO-NE is required to present the proposal to the NEPOOL Participants Committee, which again is permitted to either take action on the recommendation or let the time lapse. In order for ISO-NE to make an FPA section 205 filing with NEPOOL support, a market rule change must have received support of 60 percent or more of the aggregate voting share of the Participants Committee, while any other proposed tariff change is required to achieve a vote of two-thirds or more of the aggregate sector voting share in support.

C. Representation of Minority Positions

74. We next consider whether ISO-NE's governance procedures and stakeholder processes satisfy Order No. 719's requirement regarding the representation of minority positions. Order No. 719 found that this requirement was critical to ensure that customers and other stakeholders have confidence in the decisions that come out of RTO and ISO processes.²⁸ Order No. 719 also found that this requirement will ensure that the minority views of customers and stakeholders are forwarded to the board at the same time as the majority views.

75. The Filing Parties state that they comply with this requirement because when stakeholders are not in agreement on a particular issue, minority positions are communicated to the Board by ISO-NE management. Further, the Filing Parties note that the Participants Agreement contains a "jump ball" provision in the case of ISO-NE proposed market rule changes failing to receive sufficient support from the Participants Committee. Specifically, this jump ball provision requires ISO-NE to present to the Commission, in addition to its own section 205 market rule proposal, any alternative participant-sponsored proposal approved by a vote of at least 60 percent of the Participants Committee. In these circumstances, the Commission has the benefit of reviewing both proposals in the context of the initial section 205 filing. Finally, the Filing Parties reiterate that there are numerous means available by which stakeholders may communicate directly with the Board. For all these reasons, we agree that the Filing Parties' existing governance procedures and stakeholder procedures satisfy the minority representation requirement of Order No. 719.

²⁸ *Id.* P 508.

D. Ongoing Responsiveness

76. We next consider whether ISO-NE's governance procedures and stakeholder processes satisfy Order No. 719's ongoing responsiveness requirement. With respect to this criterion, Order No. 719 found that RTOs and ISOs must continue, over time, to consider customer and other stakeholder needs as the architecture or market environment of the RTO or ISO changes.²⁹

77. The Filing Parties assert that ISO-NE's governance processes provide for ongoing responsiveness by ensuring that information exchange and communication continue over time, both by providing meaningful stakeholder input into decisions and by providing necessary feedback mechanisms as between the Board and the Participants Committee, specifically by way of CEO monthly reports to stakeholders addressing the Board's votes and decision-making. In addition, the Filing Parties note that ISO-NE conducts a survey each year that is designed to assess customer feedback on the services provided by ISO-NE. We agree that these governance procedures and stakeholder processes satisfy the ongoing responsiveness criteria of Order No. 719.

78. Several parties propose open board meetings and the publication of board meeting minutes. Order No. 719, however, does not require that board meetings be open or that board minutes be published. Instead, the Commission stated that the details associated with greater access to RTO/ISO boards is left "for the RTOs and ISOs to work out with their own customers and other stakeholders."³⁰ We also note that the proposal to require open board meetings and publish board meeting minutes failed to pass in the NEPOOL stakeholder process. However, the Filing Parties have committed to posting to ISO-NE's website board committee/board meeting agendas prior to meetings, clarifying in the Participants Agreement that any stakeholder can submit written materials to the board at any point, and providing more detail in the CEO's monthly reports to the Participants Committee regarding activities of the board and committees. If these arrangements prove insufficient, we encourage parties to seek further change through the NEPOOL stakeholder process.

79. Addressing the argument raised by the state parties that executive compensation should be linked to the cost-related provisions of the ISO-NE mission statement,³¹ Order No. 719 states only that the Commission "continues to encourage, but not require, each

²⁹ *Id.* P 509.

³⁰ *Id.* P 511.

³¹ ISO-NE's mission statement is discussed *infra*.

RTO and ISO to ensure that its management programs, including executive compensation, give appropriate weight to responsiveness to customers and other stakeholders.”³² ISO-NE conducts an annual survey to assess customer satisfaction, the survey results are shared with the Board, and employee compensation is directly affected by the survey results. While the states seek the inclusion of questions concerning cost effectiveness in that survey, the Commission specifically noted in Order No. 719 that “cost-containment requirements” and “cost/benefit analyses” for each RTO/ISO decision “are not measures of responsiveness, but rather are practices and procedures that are best developed through the collaborative efforts of each RTO or ISO and their respective customers and stakeholders.”³³ As such, we will not mandate such a requirement here, where we are addressing ISO-NE’s responsiveness to customers and stakeholders.

80. With respect to requests that ISO-NE provide annual or quarterly progress reports on responsiveness, we agree with Filing Parties that an ongoing dialogue on responsiveness would be more efficient than a series of compliance filings and reports. Accordingly, we decline to require additional reports or filings on responsiveness at this time.

81. With respect to ELCON’s request that the Commission conduct thorough, independent analyses of all Order No. 719 compliance filings, we note that the Commission is required to ensure that rates, terms and conditions of service are just and reasonable and not unduly discriminatory or preferential, and the instant filing in this proceeding is no exception.

E. ISO-NE’s Mission Statement

82. We find that ISO-NE has satisfied Order No. 719’s requirement that ISO-NE post on its website its mission statement or organizational charter. With respect to this requirement, Order No. 719 encouraged RTOs and ISOs to include in their posting explanations of their purpose, their guiding principles, and their responsiveness to their customers, other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.³⁴ Order No. 719 further stated that an RTO’s or ISO’s mission statement or charter may include additional information, such as elements from the RTO or ISO governing documents relating to mission statement issues.

³² Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 561.

³³ *Id.* P 515.

³⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 556.

83. We accept Filing Parties' proposed revisions to its mission statement. Commenters raise numerous issues with respect to ISO-NE's mission statement that are beyond the scope of the requirements set forth in Order No. 719. Order No. 719 required only that each RTO or ISO "put on its website a mission statement or organizational charter."³⁵ The Commission encouraged inclusion of the organization's purpose, guiding principles, and commitment to responsiveness to customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electric services.³⁶ Filing Parties' proposed revisions to the mission statement, which include striving to perform its functions in a "cost-effective" manner and removal of the non-enforceability clause, demonstrate an overall responsiveness commitment to stakeholders and end-use customers. In this revised mission statement, ISO-NE commits to cost-effectiveness in all of its functions and services, including market design, operations and planning. We therefore accept the Filing Parties' proposed version of the mission statement.

84. With regard to the alternative mission statement proposed by the state parties and consumer advocate groups, we note that this proposal stems from cost overruns incurred on recent transmission construction in New England and a desire by some parties for more transparency in the Regional System Plan process. ISO-NE states that, although the alternative mission statement proposal did not gain NEPOOL support, it is aware of the concerns about cost. Therefore, along with NECPUC and the region's transmission owners, it has formed a Cost Estimate and Controls Working Group to address these issues. Thus, rather than pursue a remedy to these concerns in this proceeding (specifically in the language of ISO-NE's mission statement), we encourage the parties seeking the alternative "least cost" mission statement to pursue resolution of cost overrun issues (and any revised cost allocation proposals) in this working group. Again, as stated previously, Order No. 719 notes that "cost-containment requirements" and "cost/benefit analyses" for each RTO/ISO decision "are not measures of responsiveness."³⁷

85. We find that the concerns raised by some parties that ISO-NE has failed to consistently provide qualitative and quantitative information and cost analyses relating to major ISO-NE initiatives are premature, given that the Commission had not yet issued an order approving the changes to the mission statement. However, we expect that ISO-NE will, as provided for in its revised mission statement, provide such information on any

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* P 515.

major initiative that affects market design, system planning, or operation of the New England bulk power system.

86. Maine PUC proposes requiring ISO-NE to explain why it did not provide cost analyses of a particular proposal in any future filing at the Commission and suggests that the Commission reject any filing as deficient if there is not sufficient justification for not including such analysis. However, we find that such requirements go well beyond the scope of Order No. 719.

The Commission orders:

Filing Parties' compliance filing addressing the RTO/ISO responsiveness requirements of Order No. 719 is hereby accepted, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Panel Presentations and Post-Technical Conference Comments Addressing RTO/ISO Responsiveness Docket No. ER09-1048-000, et al.

A. Stakeholder Positions and Proposals

PSEG Companies (PSEG) argues that, as regional entities operating markets independent of asset owners, regional transmission organizations (RTO) and independent system operators (ISO) have, by their very nature, expanded options and opportunities for stakeholder participation and transparency, with governance models that are fundamentally just and reasonable. PSEG adds that, relative to non-organized markets, RTOs and ISOs offer better access to their boards with respect to important energy decisions.

PSEG also disputes claims made at the technical conference that transmission owners have the ability to voluntarily withdraw from RTOs/ISOs and therefore have greater influence in the stakeholder processes. PSEG asserts that, to the contrary, transmission owners' interests as well as the interests of other supply side entities are not given adequate weight in RTO/ISO stakeholder voting processes.

The Electricity Consumers Resource Council (ELCON) urges the Commission to require RTOs and ISOs to adopt numerous stakeholder reforms, including open board meetings and hybrid board structures. The National Association of State Utility Consumer Advocates (NASUCA) also proposes reforms to promote greater stakeholder participation, especially by consumer advocates. First, NASUCA endorses use of RTO/ISO staff "Issues Paper" at the outset of a stakeholder forum, and the posting of stakeholder comments. NASUCA also supports the utilization of regularly-convened symposia between RTO/ISO boards and consumer interests and the use of a separate high priority process for hot topic issues. In addition, NASUCA supports the use of consumer Liaison Committees, of the sort used by ISO New England, Inc. (ISO-NE) and PJM Interconnection, LLC (PJM) and the establishment of consumer liaisons with the RTO/ISO board.

NASUCA, the New York State Public Service Commission (New York Commission), and Consumer Groups³⁸ support the utilization of consumer advocate funding mechanisms of the sort currently used by PJM and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). NASUCA argues that these mechanisms should be used to assist consumer representatives with expenses related to travel, hiring expert staff, and participation in the stakeholder process. The New York Commission also supports funding mechanisms for residential and small commercial customer advocacy. Consumer Groups agree that financial support for consumer advocate offices is essential to provide advocates with the minimum resources to keep up with the most pressing concerns.

Electric Power Supply Association (EPSA) opposes an RTO/ISO-wide tariff charge to fund consumer advocates. EPSA argues that such an arrangement would be duplicative and unfair to ratepayers who are already represented by and before state commissions, governmental entities tasked with the responsibility of protecting and representing consumer interests. EPSA further argues that NASUCA and other consumer advocates have not explained how such a charge would be divided among the consumer advocates in a given RTO/ISO or how they would justify its use.

Xcel Energy Services Inc. (Xcel) questions whether funding mechanisms are appropriately drawn from RTO/ISO assessments applicable to all stakeholders. Xcel notes that such a policy would require difficult choices. For example, Xcel points out that determining funding levels and deciding who would, and who would not, receive funding may ultimately lead to inequitable results.

MidAmerican Energy Company (MidAmerican) argues that the Commission should not mandate RTO/ISO funding of private stakeholder groups. MidAmerican also argues that stakeholders should not be required to fund, or subsidize, their commercial counterparts. Old Dominion Electric Coop. (Old Dominion) and Xcel propose that RTO/ISO policies on these matters continue to be addressed individually within each RTO or ISO. Old Dominion urges, however, that responsiveness issues be evaluated and changes be developed through a bottom-up stakeholder process. The North Carolina Electric Membership Corporation (North Carolina Coop.) adds that the Commission should not act prematurely to address these matters here.

³⁸ Consumers Union, National Consumer Law Center, AARP, Consumer Federation of America, and Public Citizen.

Financial Marketers³⁹ raise concerns regarding stakeholder processes that place market participants with limited resources and new entrants at a disadvantage *vis à vis* large, incumbent utilities. Financial Marketers urge the Commission to actively monitor the independence of RTOs/ISOs. Financial Marketers, NASUCA, Transmission Agency of Northern California (TANC), and the American Public Power Association (APPA) also assert that RTOs/ISOs harbor an inherent bias in favor of the large transmission-owning stakeholders on whom their very existence depends. The Massachusetts Office of Attorney General (Mass. AG) adds that it is impractical to think that end users or their advocacy organizations can adequately compete with an energy company monitoring and/or influencing the stakeholder process.

EPSA disagrees that transmission or generation owners get special treatment from independently-administered RTOs/ISOs due to the alleged leverage they can wield regarding their RTO/ISO withdrawal rights. EPSA argues that it is not the case that supply-side resources (be they generation or transmission owners) benefit from any undue advantage in the stakeholder forum because, among other things, transmission and generation interests often vary and cannot be reconciled. Old Dominion points out that while the existing stakeholder process might allow asset owners to influence and develop proposals on market rules and market design at an early stage in the process, there is also the ability for other stakeholders to vet proposals and serve as a check on proposals arising through the working group process.

Financial Marketers request clarification that RTO/ISO independent market monitoring units are required to ensure that RTOs/ISOs act independently and are responsive to their stakeholders. The Illinois Commerce Commission (Illinois Commission) suggests improving the attention given to small consumer interests by establishing an independent consumer interest monitor, which would be focused on residential and small consumer interests. Several commenters advise the Commission to conduct *de novo* reviews of RTO/ISO decisions, limiting deference given to their decisions.

With respect to transparency, Old Dominion proposes publishing corporate goals that are aligned with the RTOs'/ISOs' annual plans and budgets. Old Dominion also

³⁹ EPIC Merchant Energy, L.P.; EPIC Merchant Energy CA, LLC; EPIC Merchant Energy Midwest, L.P.; EPIC Merchant Energy, NE, L.P.; EPIC Merchant Energy, NJ/PA, L.P.; EPIC Merchant Energy NY, L.P.; SESCO Enterprises LLC; Jump Power, LLC; Energy Endeavors LP; Big Bog Energy, LP; Silverado Energy LP; Gotham Energy Marketing LP; Rockpile Energy LP; Coaltrain Energy LP; Longhorn Energy LP; BJ Energy LLC; Franklin Power LLC; and GLE Trading LLC.

recommends an increased transparency in the budget process, and Steel Dynamics and Nucor Steel (Steel Producers) urge the Commission to audit RTO/ISO costs to ensure adequate cost-containment.

Several commenters support streamlining the stakeholder process and propose various suggestions to accomplish this goal. For example, TANC suggests engaging stakeholders earlier in the process, adding a “tracked schedule” to the tariff, and using a more collaborative process. New York State Consumer Protection Board (New York Consumer Board) and Steel Producers state that RTOs/ISOs should reduce the number of stakeholder meetings, arguing that it is not possible for many of the interested stakeholders to attend each of the meetings and that the stakeholder process is overly burdensome and expensive. EPSA proposes monthly calls between RTO/ISO staff and consumer advocates.

ELCON proposes meetings via internet or teleconference as well as meetings between the board or management and each stakeholder group at least once per year. Sunflower Electric Power Corp. and Mid-Kansas Electric Company, LLC (Sunflower Coop. and Mid-Kansas Coop.) state that a list of “best practices” should include direct access to the RTO/ISO board through written and oral comments prior to any board decision.

MidAmerican does not support mandating changes to the structure of RTO/ISO committees. PSEG, however, states that there is a need to revisit the current RTO/ISO voting structures to ensure that the votes of members having a direct interest in the outcome of a given decision are given sufficient weight. Dayton Power and Light Company (Dayton) maintains that the current sector-weighted voting utilized in the PJM stakeholder process is not just and reasonable; Dayton recommends adopting a bicameral or two-vote approach, which would promote proposals acceptable to both the majority of members and to a majority of those whose asset investments of billions of dollars are what make the existence of an RTO even possible. With respect to voting transparency, NASUCA proposes that RTO/ISO boards be permitted to view the individual sector voting on issues addressed in the stakeholder process, in order to allow the board to take into account the voting interests of all sectors.

Old Dominion proposes a “feedback loop” between RTO/ISO executive management and the RTO/ISO staff responsible for facilitating stakeholder participation in order for management to ensure it is fully informed so that it can be responsive to stakeholders.

Commenters also raise issues related to RTO/ISO board structures and processes. ELCON supports a specific requirement that RTOs/ISOs adopt hybrid boards (a board structure in which board members include independent, non-affiliated members, as well as members associated with a specific stakeholder sector, such as end-use consumers or

transmission owners). Other commenters oppose the use of hybrid boards.⁴⁰ ITC Companies⁴¹ contend that a hybrid structure will compromise and undermine board independence.⁴² ITC Companies assert that a hybrid board is likely to devote more attention to the operation of energy markets than to the development of transmission, because generation (not transmission) is the dominant interest of the stakeholders who will comprise a part of a hybrid board's make-up.

NASUCA states that it does not propose a hybrid-type board, where specific seats are designated to represent consumers, because it recognizes the importance of RTO/ISO independence from its stakeholders. The Mass. AG, however, maintains that it is important for some RTO/ISO board members to have electric industry experience in representing or advocating for consumers in issues relating to retail electricity rate regulation.

Several commenters support a stakeholder advisory committee in place of a hybrid board. ITC Companies state that an advisory committee can increase the responsiveness of RTO/ISO boards without compromising their independent governance.⁴³ Old Dominion agrees that an advisory committee, in conjunction with a well-articulated mission statement that includes a commitment to responsiveness, is the best way to facilitate stakeholder interaction. The Mass. AG endorses the use of a consumer liaison representative that would regularly interact with consumer advocates and individual consumers, explain current RTO/ISO initiatives, and field consumer concerns to be addressed with the RTO/ISO staff and board. The Illinois Commission points out that PJM's Liaison Committee fosters communications between PJM's Board and PJM's members but that not all stakeholders and interested parties are members of the RTO/ISO; for example, state commissions are not members in PJM.

Commenters also address the issue of whether an RTO's or ISO's board meetings should be open or closed. Financial Marketers, Old Dominion, PSEG, ELCON, and the Illinois Commission support better access for stakeholders to RTO/ISO boards, e.g., by regular meetings with interested market participants. The Illinois Commission points out

⁴⁰ *See, e.g.*, Illinois Commission at 1.

⁴¹ International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

⁴² Old Dominion at 10; North Carolina Coop. at 6; Xcel at 6; PSEG at 16-18; MidAmerican at 4-6.

⁴³ *See also* EPSA at 8.

that open meetings would also enable stakeholders to assess the performance of board members. The Mass. AG states that open meetings would eliminate any actual or perceived secrecy surrounding the board's decision-making process, would increase stakeholder involvement, and would ensure that board members are accountable and ultimately responsive to the region's needs.

Commenters also address the appropriate composition of an RTO/ISO board. Some argue in favor of the requirement that the board include consumer representatives.⁴⁴ Dayton disagrees, stating that such a requirement would be unduly preferential. The New York Commission suggests that, at a minimum, twenty percent of an RTO/ISO board should have expertise and experience in advocating on behalf of electric consumers, because this will provide a balance to the board that will help ensure consumer interests receive thorough and meaningful consideration.

Commenters also propose disclosing the names of board candidates that were not selected to sit on the board and the disclosure of the reasons supporting their rejection.⁴⁵ Commenters also propose staggering board members' terms.⁴⁶

Finally, commenters propose changes to the RTO/ISO mission statements. First, commenters recommend a mission statement confirming the RTO's/ISO's commitment to considering the impact of its decisions on end-use consumers.⁴⁷ The Mass. AG states that it has requested ISO-NE to incorporate a cost concept into its mission statement, as well as a commitment to provide economic analysis of RTO/ISO-initiated tariff changes and alternatives proposed by regional stakeholders.

B. RTO/ISO Positions

Generally, each of the RTOs and ISOs contend that its existing governance procedures and stakeholder processes are fundamentally responsive to its customers and other stakeholders. Certain of the RTOs and ISOs also indicate that they have

⁴⁴ New York Consumer Board at 4, 6 (supporting selection of consumer-oriented directors); *see also* NASUCA at 4, 16; New York Commission at 3; Consumer Groups at 2; Xcel at 4; Dayton at 10; MidAmerican at 4-6.

⁴⁵ *See* Financial Marketers at 6.

⁴⁶ *See* NASUCA at 19; ELCON at 5.

⁴⁷ *See* Old Dominion at 12-13; Steel Producers at 4; NASUCA at 5; ELCON at 4.

implemented recent reforms and/or initiated additional processes to further improve their responsiveness to their stakeholders.

PJM, for example, states that it has established a stakeholder process to assess PJM's governance and stakeholder processes, to identify stakeholder concerns, and, if determined to be necessary, to recommend a plan to address the issues that have been raised.⁴⁸ The New York Independent System Operator, Inc. (NYISO) states that it has implemented recent reforms, with input from its stakeholders, requiring: (i) that the NYISO Board publicly post its minutes on NYISO's website; (ii) that the NYISO staff communicate minority positions to the Board through the briefing materials that the directors consider in advance of each board vote; and (iii) that NYISO report market-related errors to the Commission and stakeholders.

The RTOs and ISOs also state that while they support enhanced communications, accountability, and adequate stakeholder input, governance reforms to promote these objectives must be balanced against the Order No. 2000 RTO/ISO independence principle, i.e., the principle that RTOs and ISOs be independent of any individual market participant or any one class of participants.⁴⁹

⁴⁸ PJM states that, to assist in this assessment, consultants have been engaged to facilitate discussions with interested members. PJM states that this process is currently considering, among other things: (i) increasing transparency by conveying the names of members who supported or opposed each major proposal at lower-level standing committees to PJM's Markets and Reliability Committee and Members Committee; (ii) fine-tuning proposal development, decision-making, and the elevation process by chartering working groups that have more clearly defined roles, established deadlines, and more frequent reporting back to higher level committees; (iii) improving meeting procedures and mechanics (voting procedures, phone participation, etc.) by clarifying existing voting rules and then applying them uniformly across similar levels (e.g., at the working group level); (iv) clarifying the roles and responsibilities of PJM members and staff through a facilitated discussion; and (v) creating clearer guidelines for sector placement enforcement based on existing and/or refined sector definitions.

⁴⁹ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 at 31,061 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd, sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

The RTOs and ISOs also address cost issues relating to stakeholder participation in the RTO/ISO decision-making process. PJM states that, to reduce the cost of participating, PJM provides internet and telephone participation for every stakeholder meeting. In addition, PJM states that it has funded the participation of some consumer advocates in some of its larger special meetings through scholarships to defray the cost of attendance.⁵⁰

The California Independent System Operator Corporation (CAISO) states that such funding is unnecessary as it applies to CAISO's stakeholder processes, because the costs of participating are relatively low. CAISO also states that it has taken steps to enable remote participation and that it posts stakeholder materials on its website.

The RTOs and ISOs also address the composition of their boards, NASUCA's proposal to seat board members specifically committed to consumer interests, and related proposals. CAISO opposes the creation of a board committee on consumer affairs. CAISO states that its departments are organized according to their function, rather than the stakeholder segment to which they provide service. PJM also opposes the dedication of specific board seats to specified consumer interests, noting that, were it required to adopt this practice, other sectors would have grounds for seeking the same preference. PJM adds that its operating agreement requires board members to have specific functional expertise, including the type of experience a former consumer advocate might have. PJM states, however, that no particular stakeholder interest is presently afforded a designated seat on the PJM board. ISO-NE also argues against the dedication of specific stakeholder seats on its board, suggesting that such a policy would undermine the board's independence. ISO-NE states that, instead, its board members are appropriately required to have a cross-section of skills.⁵¹

The RTOs and ISOs further address consumer advocate access to the board. PJM states that it actively engages with the consumer advocate offices within its footprint to

⁵⁰ PJM further states that it provides funding to state public utility commissions within its footprint to assist in participating in the stakeholder process and overseeing PJM's operations. The funding is provided to the Organization of PJM States, Inc. (OPSI) through a rate schedule in the PJM tariff, which in turn is provided to the state commissions.

⁵¹ On a related issue, ISO-NE acknowledges that its stakeholders want more turn-over of Board members, in part to ensure that the Nominating Committee has substantial impact on the board's composition. ISO-NE states, in response, that it has limited its directors to three consecutive three-year terms.

better understand their specific concerns regarding meaningful participation in the PJM stakeholder and governance processes. PJM states that, in addition, its Liaison Committee serves as a resource to consumer advocates as PJM's primary advisory committee to its Board.

Finally, the RTOs and ISOs address NASUCA's proposal regarding open board meetings. CAISO states that it has opened its Board meetings to permit any interested person to address the board during public session and for each item the board takes public comment before taking action. PJM, by contrast, argues in support of its closed Board meeting policy, noting that this policy is consistent with *Roberts Rules of Order*.

Appendix B**Technical Conference Proceeding Comments**
Docket No. ER09-1048-000, et al.

American Public Power Association
California Independent System Operator Corporation
Consumers Union, National Consumer Law Center,
AARP, Consumer Federation of America and
Public Citizen
Daystar Farms
Dayton Power and Light Company
Delaware Electric Municipal Corporation, Inc.
Electricity Consumers Resource Council
Electric Power Supply Association
EPIC Merchant Energy, LP, *et al.*
Illinois Commerce Commission
International Transmission Company, Michigan Electric Transmission
Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC
ISO New England Inc.
Maryland Office of People's Counsel
MidAmerican Energy Company
National Association of State Utility Consumer Advocates
New York Association of Public Power
New York Independent System Operator, Inc.
New York State Public Service Commission
New York State Consumer Protection Board
North Carolina Electric Membership Corporation
Office of the Massachusetts Attorney General
Office of the Ohio Consumers' Counsel
Old Dominion Electric Cooperative
PJM Interconnection, L.L.C.
PJM Power Providers Group
PSEG Companies
Public Power Association of New Jersey
Steel Producers
Sunflower Electric Power Corporation and
Mid-Kansas Electric Company, LLC
Transmission Agency of Northern California
Xcel Energy Services, Inc.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	Docket Nos. ER09-1063-000 ER09-1063-001
California Independent System Operator Corporation	Docket No. ER09-1048-000
Midwest Independent Transmission System Operator, Inc.	Docket No. ER09-1049-000
Southwest Power Pool, Inc.	Docket No. ER09-1050-000
ISO New England Inc. and New England Power Pool	Docket No. ER09-1051-000
New York Independent System Operator, Inc.	Docket Nos. ER09-1142-000 ER09-1142-001

(Issued October 21, 2010)

WELLINGHOFF, Chairman, *concurring*:

Today, the Commission issues orders finding that the governance procedures and stakeholder processes of each of the six RTOs and ISOs under our jurisdiction meet the requirements of Order No. 719.

I write to acknowledge the work of the many parties that participated in the stakeholder processes convened by the RTOs and ISOs following the issuance of Order No. 719. Those processes were convened to ensure that RTO/ISO procedures are responsive to the needs of customers and other stakeholders. The efforts of participating stakeholders culminated in the compliance filings which we approve today. In addition, I want to acknowledge the thoughtful proposals made by many parties in comments on the compliance filings and both at and following the technical conference that we held in these proceedings earlier this year.

Although today's orders find that many of the commenters' proposals made in these proceedings are not required to comply with Order No. 719, we also emphasize that RTOs/ISOs should continually evaluate their governance policies and stakeholder processes and consider how they may be improved. I would like to highlight that funding to facilitate participation in the RTO process by consumer advocates is among the proposals that I would encourage stakeholders to consider further in the future.

Jon Wellinghoff
Chairman