

133 FERC ¶ 61,068  
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.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER09-1049-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued October 21, 2010)

1. On April 28, 2009, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing addressing the market reform requirements established by the Commission in Order No. 719.<sup>1</sup> In a notice issued November 13, 2009, in Docket No. ER09-1048-000, *et al.*, the Commission announced that its staff would hold a technical conference to further address one of Order No. 719's four broad policy mandates, i.e., 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.<sup>2</sup> The Commission's notice stated that the record on this issue would be developed further on a generic RTO/ISO-wide basis.

2. In this order, we address Midwest ISO's compliance with the governance requirements of Order No. 719. We reserve for judgment in a separate order Midwest ISO's compliance with all remaining Order No. 719 requirements. For the reasons discussed below, we find that Midwest ISO satisfies the RTO/ISO governance requirements of Order No. 719.

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<sup>1</sup> *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).

<sup>2</sup> The technical conference was held February 4, 2010.

## **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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Finally, Order No. 719 encouraged, but did not require, that RTOs and ISOs ensure that management programs, including executive incentive compensation, give appropriate weight to responsiveness to customers and other stakeholders.<sup>6</sup>

### **B. Midwest ISO's Compliance Filing**

6. Midwest ISO asserts that its Board is dedicated to maintaining an open line of communication with all of its stakeholders and customers. Midwest ISO states that this

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<sup>3</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 477.

<sup>4</sup> *Id.* P 502.

<sup>5</sup> *Id.* P 556.

<sup>6</sup> *Id.* P 561.

commitment to openness and stakeholder responsiveness is set forth in the Bylaws of Midwest ISO,<sup>7</sup> which mandate broad stakeholder representation through a standing Advisory Committee to the Board.<sup>8</sup> The Advisory Committee presides over an extensive and open subcommittee and working group structure that provides communication channels between Midwest ISO and its stakeholders. Midwest ISO states that the Board and the Advisory Committee have paid particular attention to stakeholder responsiveness issues and have adopted various formal and informal practices designed to promote and enhance customer and stakeholder responsiveness. The stakeholder meeting conducted by Midwest ISO to prepare this compliance filing, Midwest ISO states, has revealed that customers and stakeholders generally view Midwest ISO's process as open and responsive. Midwest ISO believes that its constituent documents and existing procedures, as proposed and amended, comply with the responsiveness requirements of Order No. 719.

7. With regard to inclusiveness, Midwest ISO maintains that the existing business practices and procedures ensure that: (i) any customer or other stakeholder affected by the operations of Midwest ISO is able to timely communicate its views to the Board; (ii) the interests of all stakeholders are equitably considered and that deliberation and consideration of issues is not dominated by any single category of stakeholders; and (iii) minority positions are communicated to the Board contemporaneously with majority positions.

8. Furthermore, Midwest ISO states that its Bylaws, at Article VII, require Board meetings, Advisory Committee meetings, and all other Board committee meetings to be open to stakeholders, except for certain technical working groups that restrict attendance on issues related to standards of conduct and Critical Energy Infrastructure Information. Stakeholders can attend in person or via telephone. Midwest ISO further states that all Board committee meetings include an agenda item for stakeholder input and questions. This open structure, Midwest ISO asserts, ensures that stakeholders are apprised of the Board's agenda and business in a timely manner and allows stakeholders to directly communicate their views to the Board and relevant committees.

9. Midwest ISO also maintains that its Advisory Committee is a crucial element in ensuring inclusiveness. The Advisory Committee constitutes Midwest ISO's highest stakeholder forum. As noted above, the Advisory Committee consists of twenty-three representatives from various stakeholder groups. It provides information and advice to the Board on matters of concern to the Advisory Committee or its constituents'

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<sup>7</sup> The Bylaws of Midwest ISO (Bylaws) are set forth in Appendix F to the Transmission Owners Agreement.

<sup>8</sup> Midwest ISO submitted a chart detailing its committee organization in Exhibit G of the compliance filing. In addition, the committee structure is available on Midwest ISO's website at: <http://www.midwestiso.org/page/Committees>.

stakeholder groups. It generally convenes on a monthly basis and serves as a forum for stakeholders to be kept apprised of Midwest ISO activities. Meeting materials are available on Midwest ISO's website.

10. In 2005, the Board instituted a process whereby important issues to the Midwest ISO and its stakeholders are identified, white papers are requested from each stakeholder sector, presentations on these issues are made to the Board by sector representatives, and members of the Board are engaged in direct dialogue with sector representatives on their positions during Advisory Committee meetings. Another practice highlighted by Midwest ISO to enhance stakeholder inclusiveness is the use of "hot topic" discussions as part of Advisory Committee meetings. In these discussions, stakeholders are given the opportunity to directly provide the Board with their comments on various issues throughout the year.

11. Midwest ISO states that it conducts annual meetings with stakeholders, which are held in both Carmel, Indiana, and St. Paul, Minnesota. These meetings, Midwest ISO asserts, are yet another forum for stakeholders to communicate their views to the Board. Midwest ISO maintains that these practices and procedures conform to the inclusiveness requirement of Order No. 719 and ensure effective communication of stakeholder views to the Board.

12. With regard to fairness in balancing diverse interests, Midwest ISO argues that its business practices and procedures also ensure that the interests of all stakeholders are equitably considered and that deliberation and consideration of issues are not dominated by any single stakeholder category. In particular, the Advisory Committee employs a Commission-approved weighted sector-voting scheme,<sup>9</sup> which Midwest ISO states prevents domination by any single stakeholder or stakeholder group. In order for an Advisory Committee meeting to convene and conduct business, a quorum of six of the nine sectors is required. Midwest ISO states that its Advisory Committee has adopted a formal Stakeholder Governance Guide. This requires each Midwest ISO member to declare its sector affiliation and the member will belong to its chosen sector for the calendar year. In addition, Midwest ISO states that the Stakeholder Governance Guide provides detailed procedures addressing administration and selection, as well as meeting and agenda preparation and reporting. Midwest ISO asserts that the formalized requirements set forth under the Stakeholder Governance Guide ensure predictability and fairness in balancing diverse stakeholder interests in Midwest ISO.

13. With regard to representation of minority positions, Midwest ISO maintains that its current business practices and procedures generally ensure that minority positions can

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<sup>9</sup> The basics of this mechanism are set forth in the Transmission Owners Agreement and the Bylaws, while the Board may revise or expand the stakeholder groups as circumstances and industry structures change.

be communicated to the Board at the same time as majority positions. It notes that the “hot topic” discussions provide a forum for all stakeholders to present their views, including both majority and minority positions. Through its open Board and committee meetings, Midwest ISO asserts that minority positions can be directly presented by stakeholders to the Board. In addition, the Stakeholder Governance Guide provides stakeholders with the opportunity to submit written minority positions to the Advisory Committee in anticipation of its review of an issue. Finally, Midwest ISO states that it will commit to formally include minority positions in its Advisory Committee minutes. By including the minority positions in the minutes, the Board will have an additional channel to be apprised of minority positions because all minutes are publicly available on Midwest ISO’s website.

14. With regard to ongoing responsiveness, Midwest ISO states that the stakeholder process leading to this compliance filing did not indicate a lack of responsiveness in Midwest ISO, and that several positive comments were communicated to the Board on this topic. Nonetheless, Midwest ISO states, to ensure that stakeholder positions always will be considered, Midwest ISO agrees to continually evaluate its responsiveness practices, and make improvements if and when problems are identified.

15. During the stakeholder process leading to Midwest ISO’s compliance filing, Midwest ISO states that one stakeholder suggested that Midwest ISO should provide stakeholders with advance copies of filings and pleadings that Midwest ISO plans to submit to the Commission. Midwest ISO declines this suggestion, arguing that given the openness of the Midwest ISO stakeholder process, only those not attending stakeholder meetings are surprised by the contents of filings.

16. Moreover, Midwest ISO states that providing parties with advance copies would be burdensome and would impair Midwest ISO’s ability to prepare thoughtful pleadings and filings on the same schedule as other parties. Shifting the effective due date, Midwest ISO states, would have the effect of granting those stakeholders who oppose a given position an extended time to which to reply. Another suggestion was to provide a matrix of all comments received during a stakeholder process, listing the comments and Midwest ISO’s response to each, prior to any filing. While Midwest ISO asserts that it considered these suggestions, it states that it decided not to implement such procedures because they would impose significant additional staffing costs, and could lead to complaints of “non-responsiveness” by stakeholders whose views are listed in the matrix, but who do not prevail on an issue. Midwest ISO states that it will entertain stakeholder requests to provide a position and response matrix on an *ad hoc* basis, leaving it to the discretion of technical staff whether they have sufficient resources to justify the additional effort for a given project or proposal.

17. With regard to posting Midwest ISO’s mission statement or organization charter on its website, Midwest ISO states that it has posted on its website its mission statement, which reads as follows: “Midwest ISO will provide our customers with valued services,

reliable systems and operations, dependable and transparent pricing, open access to markets, and planning for long-term efficiency.”

## **II. Notice of Filing and Responsive Pleadings**

18. Notice of Midwest ISO’s 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. Notices of intervention and timely motions to intervene were filed by the entities noted in Appendix C to this Order. Motions to intervene out-of-time were filed on May 27, 2009 by Comverge, Inc. (Comverge), Xcel Energy Services, Inc. (Xcel), and the Public Utilities Commission of Ohio (Ohio Commission); on June 26, 2009 by Portland Cement Association and ArcelorMittal USA, Inc. (Industrial Consumers); and February 26, 2010 by MidAmerican Energy Co. (MidAmerican). Comments and protests addressing RTO/ISO responsiveness issues were filed by Alcoa Inc. and Alcoa Power Generating Inc. (Alcoa); Electric Consumers Resource Council (ELCON); Electric Power Supply Association (EPSA); Industrial Consumers; Office of the Ohio Consumers’ Counsel (Ohio Counsel); Organization of Midwest ISO States (OMS); and Wal-Mart Stores, Inc. (Wal-Mart). On June 15, 2009 and August 27, 2010, respectively, Midwest ISO and ELCON submitted answers.<sup>10</sup>

19. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we grant the unopposed motions to intervene out-of-time submitted by Comverge, Xcel, the Ohio Commission, Industrial Consumers, and MidAmerican.

### **A. Protests and Comments**

20. 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.<sup>11</sup> ELCON states that RTO/ISO stakeholder processes have failed, yielding outcomes that inhibit rather than promote demand response in direct

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<sup>10</sup> 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 Midwest ISO’s and ELCON’s answers because they have provided information that assisted us in our decision-making process.

<sup>11</sup> See U.S. Government Accountability Office, *Electricity Restructuring – FERC Could Take Additional Steps to Analyze Regional Transmission Organization’s Benefits and Performance* (Sept. 2008).

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 RTOs and ISOs, as necessary, to bring the RTOs and ISOs into compliance with Order No. 719.

21. 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.

22. Wal-Mart states that it appreciates Midwest ISO's responsiveness to stakeholders' concerns, and has observed due regard on the part of Midwest ISO for the responsiveness criteria the Commission identified in Order No. 719. OMS believes that Midwest ISO's stakeholder relations institutions comply with the objectives of Order No. 719 and that both in design and in execution these institutions allow extensive stakeholder involvement in the decisions of the organization and it supports the customer responsiveness sections of the Midwest ISO's compliance filing.

23. While EPSA is generally pleased with Midwest ISO's responsiveness to its stakeholders, it believes that Midwest ISO's stakeholder process could be improved by enhancing both the overall structural integrity of the process and transparency between stakeholders and the Board. In particular, EPSA is concerned with a recent trend at Midwest ISO of proposing and approving tariff changes at lower-level working groups, then bypassing the Advisory Committee and submitting the proposed changes directly to the Commission for approval. It maintains that this is counterintuitive to fairness in balancing diverse interests because many of the lower-level working groups are not weighted by sector, as is the Advisory Committee.

24. Alternatively, EPSA states that several issues originating in lower-level working groups are escalated too quickly and may not allow ample time for Advisory Committee members to consider the issue and its implications to particular sectors before a vote. Thus, EPSA states, important tariff changes are often decided outside of a clear, formal process (i.e., outside the Advisory Committee). EPSA requests that the Commission direct Midwest ISO to resolve this issue and build a timeline and process by which tariff changes can be deliberated and proposed by unweighted, lower-level committees to the Advisory Committee, with all proposed tariff changes going through the Advisory

Committee. It argues that this would strengthen the structural integrity of the stakeholder process by ensuring that all market participants get a vote on tariff changes at an equally weighted level.

25. With regard to a need for greater transparency, EPSA contends that the Board should offer feedback to stakeholders about its perspective on particular issues. This is particularly important, EPSA asserts, when dealing with issues that have garnered extensive discussion from stakeholders. EPSA argues that a great deal of time and effort by market participants is dedicated to preparing and presenting “hot topic” discussions, and it is often unclear what weight the Board gave to stakeholders’ perspectives from that discussion without the Board closing the discussion loop by offering feedback on its reasoning and voting strategy. EPSA contends that this is a limited and discrete point that the Board should make more of an effort to close the loop through greater transparency as Midwest ISO has an otherwise very responsive Board.

26. Alcoa contends that Midwest ISO currently lacks sufficient responsiveness to its customers and other stakeholders. By way of example, Alcoa states that it has worked actively within many Midwest ISO stakeholder groups over the past two years and has identified numerous issues fundamental to the treatment of demand response resources that remain unresolved. It argues that this suggests that innovative processes and new demand response customers are of minor interest to Midwest ISO, and shows that Midwest ISO is not responsive.

27. Ohio Counsel also argues that Midwest ISO’s compliance filing does not satisfy the Order No. 719 responsiveness requirement because of the difficulty of participation by residential customers. Ohio Counsel argues that Midwest ISO appears to incorrectly interpret the Commission’s language as relating to its wholesale customers only, in spite of the fact that it is the retail customers who ultimately pay for electricity services. It focuses on inadequate retail consumer resources for the RTO stakeholder process and states that Midwest ISO should adopt an RTO governance structure that addresses barriers to end-use customer participation. Ohio Counsel argues that board members are not required to have, nor do they have, experience advocating for residential consumers, and that the perspective of such customers is not adequately addressed or represented on the Board.

28. Ohio Counsel proposes that the Midwest ISO’s governance structure provide: (i) two seats on the Midwest ISO Board (or about 20 percent of the board) for members with retail electricity consumer advocacy experience, at least one of which must have expertise in advocacy for retail residential electricity consumers; (ii) a standing board committee for ultimate consumers’ issues; (iii) a management function within Midwest ISO charged with the responsibility for addressing and furthering the interests of the consumer; and (iv) adequate access to funding necessary to engage consultants and permit travel to Midwest ISO stakeholder meetings. Finally, Ohio Counsel argues that the Commission should require Midwest ISO to change its mission statement to clearly include as a purpose that it is committed to be responsive to customers and other



stakeholders, and ultimately to the consumers who benefit from and pay for electricity services. Ohio Counsel filed a motion to lodge a report regarding RTO Governance completed by the National Association of State Utility Consumer Advocates (NASUCA) in June 2009.

**B. Midwest ISO Answer**

29. In response to EPSA's proposal that tariff revisions be submitted to the full Advisory Committee, rather than its working groups or subcommittees, before filing at the Commission, Midwest ISO states that EPSA misunderstands the role of working groups and subcommittees. Midwest ISO argues that these working groups and subcommittees provide initial content to deal with reliability or commercial issues that arise from time to time, or in response to Commission directive. However, these organizational entities are not policy committees with authority over substantive tariff revisions.

30. Midwest ISO adds that all policy decisions are reviewed at the Advisory Committee level at several stages of the process where subcommittees' recommendations and work product are subject to debate and motions to support or reject. Midwest ISO maintains that with a diverse stakeholder community, having all drafting, debate and final review being performed by a single Advisory Committee would stop all tariff revisions. Midwest ISO states that, as a Commission-approved RTO, it retains ultimate authority over the contents and filing of changes to its tariff. Accordingly, Midwest ISO states that the existing process correctly places policy review with the Advisory Committee, and technical drafting and review at the subcommittee and work group level.

31. In response to Alcoa's assertion that Midwest ISO is not sufficiently responsive to stakeholder concerns, Midwest ISO states that Alcoa's concerns are based on the substantive outcome of particular initiatives involving Midwest ISO's demand response program. Midwest ISO responds that its stakeholder forums, while unlikely to please all, are properly designed and function as intended.

**III. Technical Conference on RTO/ISO Responsiveness**

32. On February 4, 2010, the Commission held a technical conference to provide an additional forum for interested parties to discuss issues related to both Midwest ISO'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.

33. 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 Counsel had filed a motion to lodge a report

on RTO/ISO governance written by NASUCA.<sup>12</sup> The notice stated that, in addition to the 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.

34. 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 Midwest ISO are summarized below, as submitted by MidAmerican and Xcel.

35. MidAmerican maintains that the current Midwest ISO provisions for open board meetings are functioning well and that it is not aware of instances where the Board has improperly used the Transmission Owners' Agreement provision for limited private board meetings to limit public involvement. It asserts the Commission need not expand Midwest ISO's existing requirements for open board meetings. Furthermore, MidAmerican states these meetings provide candid stakeholder interaction with the Board that has been crucial to Midwest ISO's development, and that the Commission should not restrict this openness in the name of uniformity with other RTOs and ISOs.

36. MidAmerican asserts that the Commission should not mandate replacing "independent" boards (i.e., boards composed entirely of members that are independent of stakeholder groups) with "hybrid" boards (i.e., boards comprised of a combination of independent board members and members representing stakeholder groups). MidAmerican states that markets will be best served by independent boards that take wide-ranging public input, rather than hybrid boards containing advocates for narrow industry segments. It argues that independent board members are in the best position to accept stakeholder input, oversee RTO management, and ensure just and reasonable arrangements for market operations, transmission access, and reliable service.

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<sup>12</sup> 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 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.

MidAmerican further argues that Midwest ISO's governing documents provide for input from a wide variety of stakeholder interests via its Advisory Committee.

37. While several commenters at the technical conference complained that consumer interests are under-represented to the benefit of transmission and generation owners, MidAmerican asserts that Midwest ISO's Advisory Committee does not reflect such a bias. MidAmerican states that Midwest ISO's Advisory Committee consists of eleven members representing state regulatory boards, state consumer advocates, end-use customers, and transmission dependent utilities. MidAmerican points to only nine Advisory Committee members representing transmission owners, independent power producers, or power marketers, and notes that a number of the transmission owners are net purchasers of energy with interests comparable to those of load serving entities and end-users.

38. Xcel adds that OMS actively represents state regulators in Midwest ISO's stakeholder and governance processes and advises Midwest ISO of the viewpoints within their states of the regulation of retail rates. Xcel states that it does not suggest that the Commission dismiss the concerns expressed by the consumer advocate panelists; rather, Xcel recommends that the Commission consider these points in light of the already extensive participation in RTO stakeholder processes by the ultimate arbiters of retail electric rate impacts in their respective state jurisdictions.

39. In response to a number of comments raised at the technical conference concerning the complexity of committee structures and the proliferation of stakeholder meetings, MidAmerican acknowledges that participation in the stakeholder process is a burden. However, MidAmerican claims that the number of meetings has increased due to intervenors' requests to expand the opportunities for stakeholder input. MidAmerican maintains that stakeholders cannot simultaneously demand more meetings and complain about the resulting stakeholder burden. Furthermore, MidAmerican asserts that the complexity of the stakeholder processes does not indicate a need for Commission intervention. MidAmerican believes that the establishment of Midwest ISO and its related services has been a monumental effort that could not have occurred without an array of stakeholder committees and frequent meetings.

40. MidAmerican asserts Commission intervention only would be warranted if there were indications that certain stakeholder sectors were deliberately expanding the number of meetings to make it impossible for other stakeholder sectors to be adequately represented. However, MidAmerican has seen no evidence of this in Midwest ISO. The number of meetings, MidAmerican states, is the price that must be paid for the rapid development of RTOs and the accompanying desire for broad stakeholder input.

41. Xcel also acknowledges the burden of participating in the stakeholder process, but adds that the interest in decreasing the burden on stakeholder participants must be balanced with the need to ensure that all stakeholders have an adequate number of opportunities to be heard. Xcel asserts that the importance of fully vetting an RTO or

stakeholder proposal must take priority over any efforts to arbitrarily limit the number of stakeholder meetings.

42. With regard to comments at the technical conference concerning a proposal that consumer advocates receive funding from other stakeholders to facilitate their participation in the stakeholder process, MidAmerican states that consumer advocates in the Midwest ISO region already receive some funding via the budget of OMS. MidAmerican further states that the consumer advocates in the Midwest ISO region have remained within budgeted levels and the funding has enhanced their participation in the stakeholder process. While MidAmerican does not object to funding of consumer advocates at current levels, it states that it would be inappropriate for one group of market participants to fund the interests of their commercial counterparties. MidAmerican states each stakeholder sector can establish a means to discuss issues, formulate sector-wide opinions, and submit proxies if necessary to ensure representation at committee meetings.

43. Xcel states that creating a funding mechanism for consumer advocacy stakeholders would require a number of difficult, bright-line decisions. Determining what level of funding, Xcel adds, and which consumer advocate groups should receive supporting funding could leave other stakeholder participants with incrementally more internal resources on an unequal footing. Xcel further states that any funding mechanism would also need to reflect the fact that only a subset of RTO topics, subject areas, and initiatives may be of interest or relevance to consumer advocates.

#### **IV. Discussion**

44. For the reasons discussed below, we find that Midwest ISO's existing governance procedures and stakeholder processes 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.

45. 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.<sup>13</sup>

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<sup>13</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092

46. Before addressing the Midwest ISO-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 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.

47. 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.”<sup>14</sup> 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 Midwest ISO, 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.

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

**A. Inclusiveness**

49. First, we address whether Midwest ISO’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.<sup>15</sup>

50. We find that Midwest ISO’s governance procedures and stakeholder processes satisfy the inclusive requirements of Order No. 719. First, we note that, with the limited

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(2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>14</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 509.

<sup>15</sup> *Id.* P 505.

exceptions applicable to certain technical working groups, all Midwest ISO meetings are conducted on a fully open basis for any stakeholder interested in appearing and participating, either in-person or by call in. Specifically, this policy, as established under Midwest ISO's Bylaws, at Article VII, applies to all Board meetings, Advisory Committee meetings, as well as to all other Board committee meetings. Moreover, materials for these meetings are posted on Midwest ISO's website. In addition, Midwest ISO ensures inclusiveness through the operation and function of the Advisory Committee, a standing stakeholder committee reporting directly to the Board. The Advisory Committee generally convenes on a monthly basis.

## **B. Fairness in Balancing Diverse Interests**

51. We next consider whether Midwest ISO'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.<sup>16</sup> 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.<sup>17</sup>

52. We find that the Midwest ISO governance procedures and stakeholder processes satisfy this requirement of Order No. 719. Midwest ISO allows stakeholders to communicate their views to the Board and requires its Board to fully consider those views. Specifically, Midwest ISO's working groups and subcommittees allow customers and other stakeholders to provide initial comments on issues to the Advisory Committee,<sup>18</sup> which reviews policy decisions, holds open meetings, and communicates with the Board. In addition, the Advisory Committee utilizes a weighted sector voting structure, as set forth in the Transmission Owners Agreement and Bylaws that prevents any single stakeholder or stakeholder category from dictating the outcome of a vote.

53. Regarding EPSA's concern that certain tariff issues of significance may bypass the Advisory Committee, we agree with Midwest ISO's observation in its answer that the

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<sup>16</sup> *Id.* P 507.

<sup>17</sup> *Id.*

<sup>18</sup> As noted above, the Advisory Committee includes representatives of all sectors including transmission owners; municipal and cooperative electric utilities and transmission-dependent utilities; independent power producers and exempt wholesale generators; power marketers and brokers; eligible end-use customers; state regulatory authorities; public consumer groups; environmental and other stakeholder groups; and a Coordination Member.

Midwest ISO's working groups and subcommittees are not intended to function as policy committees with authority over substantive tariff revisions. Rather, Midwest ISO is authorized to submit section 205 tariff revisions without approval by the Advisory Committee on matters that do not represent new policy (regarding, for example, a compliance filing). Order No. 719 does not require otherwise. However, we encourage Midwest ISO to consider EPSA's concern regarding the need for feedback from the Board as it makes decisions, particularly on issues that involve extensive stakeholder discussions.

54. We are not persuaded, as Alcoa argues, that Midwest ISO's governance structure and stakeholder processes lack sufficient responsiveness to customers and other stakeholders based on consideration of issues related to the treatment of demand response. These concerns, which are substantive in nature, do not support the conclusion that Midwest ISO's procedural policies are unworkable or ineffective, or otherwise fail to satisfy the requirements of Order No. 719. Although each stakeholder may not be pleased by the results of the process, each participant is permitted access to the Board to raise its concerns. Accordingly, we find that Midwest ISO meets the Order No. 719 requirements to balance diverse interests and therefore modifications to Midwest ISO's existing governance structure are not required.

### **C. Representation of Minority Positions**

55. We next consider whether Midwest ISO'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.<sup>19</sup> 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.

56. We find that Midwest ISO's governance procedures and stakeholder processes satisfy this requirement of Order No. 719. First, we agree with Midwest ISO that, in instances where stakeholders are not in agreement on a given issue raised in a stakeholder forum, minority positions can and will be communicated to the Board contemporaneous with the transmittal of the majority position. Moreover, Midwest ISO's use of "hot topic" discussions expressly contemplates that appropriate consideration will be given to divergent views, including minority positions. We further note that, Midwest ISO has agreed to include minority positions in its publication of Advisory Committee minutes on its website, giving the Board an additional useful opportunity to be fully briefed on all views that have been expressed by stakeholders.

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<sup>19</sup> *Id.* P 508.

57. In addition, we note that the open availability of Board meetings allows stakeholders to participate fully and to present minority positions directly to the Board. Finally, Midwest ISO's Stakeholder Governance Guide provides stakeholders with the opportunity to submit written minority positions to the Advisory Committee in anticipation of its review of an issue.

#### **D. Ongoing Responsiveness**

58. We next consider whether Midwest ISO'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.<sup>20</sup>

59. We find that Midwest ISO's governance procedures and stakeholder processes satisfy the ongoing responsiveness requirements of Order No. 719. Midwest ISO's Advisory Committee is a standing committee well equipped to provide ongoing stakeholder input to the Board. As Midwest ISO notes in its filing, the Advisory Committee presides over an extensive and open subcommittee and working group structure that provides for multiple and effective communication channels between Midwest ISO and its stakeholders. We also note that the Midwest ISO Board has recently adopted a governance protocol, "The Midwest Independent Transmission System Operator, Inc. Principles of Corporate Governance," reaffirming the Board's commitment to openness and inclusiveness, specifically including the need for Midwest ISO's directors to be attentive to stakeholder concerns on an ongoing basis.

60. Midwest ISO states that in the stakeholder process that preceded its compliance filing, ongoing responsiveness concerns were raised. Specifically, a proposal was made that would require Midwest ISO to provide stakeholders with advance copies of Midwest ISO filings and pleadings to be submitted to the Commission. Another proposal would require Midwest ISO to provide a matrix of all comments received during a stakeholder process, listing the comments and the Midwest ISO response to each, prior to the submission of the filing.

61. Midwest ISO states that while it is committed to continually evaluating its responsiveness practices and to propose revisions, as necessary, the proposals set forth above should not be adopted. Midwest ISO asserts that the advance copy proposal is unnecessary, given the open architecture and transparency of the stakeholder process. Midwest ISO adds that shortening the time frame granted to other parties engaged in Commission practice by a week to ten days so that stakeholders can receive an advance copy of the filing would be burdensome and would impair the ability of the Midwest ISO to complete its required advance work.

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<sup>20</sup> *Id.* P 509.



62. Midwest ISO also states that a uniform issue matrix requirement would impose significant costs and is not otherwise necessary in every case. Nonetheless, Midwest ISO commits to consider such a request on an *ad hoc* basis.

63. We agree that Midwest ISO's satisfaction of its ongoing responsiveness obligations does not require the implementation of either the advance copy proposal or the uniform issue matrix requirement outlined above. We also agree that Midwest ISO's existing practices and its ongoing commitments to monitor these matters complies with Order No. 719. In particular, we note that Midwest ISO's efforts to facilitate cost-effective stakeholder participation by all participants, including those with more limited resources by extensively utilizing web and teleconferencing in stakeholder proceedings, have allowed participants with limited staff and resources a reasonable opportunity to participate in the stakeholder process.

64. Finally, 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 are just and reasonable and not unduly discriminatory or preferential, and the instant filing in this proceeding is no exception.

#### **E. Midwest ISO's Mission Statement**

65. We find that Midwest ISO has satisfied Order No. 719's requirement that Midwest ISO 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.<sup>21</sup> 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.

66. Regarding Ohio Counsel's request for revisions to Midwest ISO's mission statement, we note that Order No. 719 did not require modifications to RTOs' or ISOs' existing mission statements.<sup>22</sup>

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<sup>21</sup> *Id.* P 556.

<sup>22</sup> *Id.* P 534.

The Commission orders:

Midwest ISO's 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 Groups<sup>1</sup> support the utilization of consumer advocate funding mechanisms of the sort currently used by PJM and the Midwest Independent

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<sup>1</sup> Consumers Union, National Consumer Law Center, AARP, Consumer Federation of America, and Public Citizen.

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.

Financial Marketers<sup>2</sup> 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)

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<sup>2</sup> 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.

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 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.<sup>3</sup> ITC Companies<sup>4</sup> contend that a hybrid structure will compromise and undermine board independence.<sup>5</sup> 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

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<sup>3</sup> See, e.g., Illinois Commission at 1.

<sup>4</sup> International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

<sup>5</sup> Old Dominion at 10; North Carolina Coop. at 6; Xcel at 6; PSEG at 16-18; MidAmerican at 4-6.

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.<sup>6</sup> 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 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.<sup>7</sup> 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.

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<sup>6</sup> *See also* EPSA at 8.

<sup>7</sup> 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.

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.<sup>8</sup> Commenters also propose staggering board members' terms.<sup>9</sup>

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.<sup>10</sup> 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 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.<sup>11</sup> The New York Independent System Operator, Inc. (NYISO) states that it has implemented recent reforms, with input from its stakeholders, requiring: (i) that the

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<sup>8</sup> See Financial Marketers at 6.

<sup>9</sup> See NASUCA at 19; ELCON at 5.

<sup>10</sup> See Old Dominion at 12-13; Steel Producers at 4; NASUCA at 5; ELCON at 4.

<sup>11</sup> 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.



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.<sup>12</sup>

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.<sup>13</sup>

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

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<sup>12</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,061 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>13</sup> 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.

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.<sup>14</sup>

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 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*.

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<sup>14</sup> 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.

## 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.

## Appendix C

### **List of Intervenors** **Docket No. ER09-1049-000**

Alcoa Power Generating Inc.  
American Municipal Power-Ohio<sup>37</sup>  
Calpine Corporation  
Coalition of Midwest Transmission Customers  
Constellation Energy Commodities Group, Inc.  
Constellation NewEnergy, Inc.  
CPower, Inc.  
DC Energy Midwest, LLC.  
Demand Response Supporters<sup>38</sup>  
The Detroit Edison Company  
Duke Energy Corporation  
Dynergy Power Marketing, Inc.  
Electric Power Supply Association  
Electric Consumers Resource Council  
EnergyConnect, Inc.  
EnergyNOC, Inc.  
Exelon Corporation  
FirstEnergy Services Co.  
Illinois Commerce Commission  
Illinois Municipal Electric Agency  
Indiana Office of Utility Consumer Counselor  
MidAmerican Energy Co.  
Midwest Transmission-Dependent Utilities  
Office of the Ohio Consumers' Counsel  
Organization of Midwest ISO States  
Portland Cement Association and ArcelorMittal USA, Inc.  
Public Utilities Commission of Ohio  
RRI Energy, Inc.  
Steel Producers<sup>39</sup>  
Xcel Energy Services, Inc.

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<sup>37</sup> American Municipal Power-Ohio, Inc. changed its name on July 1, 2009, to American Municipal Power, Inc.

<sup>38</sup> CMTC, EnerNOC, EnergyConnect, CPower, Viridity Energy, Inc., and Comverge, Inc.

<sup>39</sup> Nucor Steel Marion, Inc., Nucor Steel-Indiana, and SDI-Pittsboro.

Wal-Mart Stores, Inc.  
Wisconsin Electric Power Co.  
Wisconsin Industrial Energy Group  
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.

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Jon Wellinghoff  
Chairman