

133 FERC ¶ 61,072  
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.

New York Independent System Operator, Inc.

Docket Nos. ER09-1142-000  
ER09-1142-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued October 21, 2010)

1. On May 15, 2009, as amended on June 17, 2009, New York Independent System Operator, Inc. (NYISO) submitted a compliance filing addressing the market reform requirements established by the Commission in Order No. 719.<sup>1</sup> In an order issued November 20, 2009, the Commission accepted NYISO's filing, subject to conditions, but reserved for judgment in a separate order, NYISO's 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.<sup>2</sup> The November 20 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 NYISO's compliance with Order No. 719 to follow.<sup>3</sup>

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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> *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,164, at P 19 (2009) (November 20 Order).

<sup>3</sup> The Technical Conference was held February 4, 2010.

2. For the reasons discussed below, we find that NYISO 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.<sup>4</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>5</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>6</sup> Finally, Order No. 719 encouraged, but did not require, that RTOs and ISOs ensure that management programs, including executive

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

<sup>5</sup> *Id.* P 502.

<sup>6</sup> *Id.* P 556.

incentive compensation, give appropriate weight to responsiveness to customers and other stakeholders.<sup>7</sup>

**B. NYISO's Compliance Filing**

6. NYISO states that its existing governance procedures comply with Order No. 719. With respect to sector representational interests, NYISO states that, under its ISO Agreement, its Board must have a concurrence of 58 percent of the stakeholder Management Committee before making a section 205 filing. NYISO states that this shared governance requirement has worked well. NYISO adds that stakeholders have ample opportunities to interact, both collectively and individually, with the Board. NYISO notes that no stakeholder proposed changes to these procedures in the stakeholder process that preceded the instant filing.

7. However, NYISO notes that stakeholders have expressed support for revised procedures applicable to the solicitation of stakeholder input on NYISO compliance filings submitted in response to major Commission rules.<sup>8</sup> NYISO states that while, currently, it has no express requirements addressing these rights, it is preparing a preliminary draft of a proposed procedure for stakeholder consideration.

8. With respect to Order No. 719's inclusiveness requirement, NYISO asserts that its shared governance procedures ensure that all NYISO customers and stakeholders are permitted to communicate their views to NYISO's Board. NYISO explains that it holds monthly Liaison Committee meetings that provide stakeholders with a regular opportunity to communicate directly with the Board. NYISO states that it also sponsors an annual joint Board/Management Committee meeting that provides an informal opportunity to exchange views and ask questions on subjects of concern. NYISO states that individual stakeholders may also appeal any Management Committee action directly to the Board. In addition, NYISO states that stakeholders also participate directly in the selection of new NYISO directors by way of the Board Selection Subcommittee.

9. With respect to Order No. 719's requirement regarding fairness in balancing diverse interests, NYISO states that its existing shared governance framework ensures that the interests of customers and other stakeholders are equitably considered. Specifically, NYISO argues that its requirement that a measure receive the support of 58 percent of the voting weight of its stakeholders guarantees that no two stakeholder sectors will dictate the outcome of a stakeholder proceeding because the support of at least some

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<sup>7</sup> *Id.* P 561.

<sup>8</sup> *See supra* summary of responsive pleadings.

members of a third sector will also be required. NYISO asserts that there is no indication that its stakeholder processes are not fairly balanced. In support of that assessment, NYISO points to a recent stakeholder proceeding addressing the allocation of operating costs to customers.

10. With respect to Order No. 719's requirement regarding the representation of minority positions, NYISO states that minority interests already have direct access to the NYISO Board through the appeals process and the Liaison Committee. NYISO explains that its staff alerts the Board in the normal course when there is significant opposition to initiatives or proposals. However, NYISO states that, going forward, its staff will be required to communicate minority positions to the Board through the briefing materials that the directors consider in advance of each Board vote.

11. With respect to Order No. 719's requirement regarding ongoing responsiveness, NYISO states that its shared governance procedures ensure that stakeholders will continue to have input into RTO or ISO decisions relating to tariff filings and will continue to have influence over the selection of directors and NYISO budgeting matters. NYISO states that it also conducts regular customer satisfaction surveys that provide feedback on an ongoing basis. In addition, NYISO states that the Liaison Committee process provides a mechanism for the Board to provide feedback to stakeholders by facilitating direct communications between stakeholders and the Board. NYISO states that the Board also ensures the responsiveness of executives and managers by setting performance and incentive compensation criteria based in part on responsiveness considerations.

12. Finally, NYISO states that it is in compliance with Order No. 719's requirement regarding the posting of its mission statement. NYISO states that its mission statement sets forth guiding principles and core values.

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

13. Notice of NYISO's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 25,527 (2009), with interventions, comments, and protests due on or before June 12, 2009. Motions to intervene and notices of intervention were accepted by the Commission in the November 20 Order. Comments and protests addressing RTO/ISO responsiveness issues were filed by Electricity Consumers Resource Council (ELCON); the Portland Cement Association and ArcelorMittal USA, Inc. (Industrial Consumers); the New York Transmission Owners;<sup>9</sup> Energy Curtailment Specialists, Inc. (ECS);

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<sup>9</sup> Orange and Rockland Utilities, Inc., New York Power Authority, Central Hudson Gas & Electric Corporation, New York State Electric and Gas Corporation, Long

(continued...)

CPower, Inc. (CPower); and Independent Power Producers of New York, Inc. (Independent Power Producers). On June 26, 2009, Independent Power Producers submitted an answer to a protest.<sup>10</sup>

14. 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 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.

15. 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 a 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

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Island Power Authority, Niagara Mohawk Power Corp. d/b/a/ National Grid, Rochester Gas & Electric Corporation, and Consolidated Edison Company of New York, Inc.

<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 or answer, unless otherwise ordered by the decisional authority. We will accept Independent Power Producers answer because it has 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).

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.

16. New York Transmission Owners argue that, because many of NYISO's Commission-directed compliance filings accord compliance discretion, market participants should be able to provide input through clearly defined procedures (a process, as noted above, that NYISO has agreed to consider). New York Transmission Owners assert that meaningful stakeholder involvement should include a requirement that NYISO solicit the opinion of the Management Committee through a stakeholder vote, with the results of the vote noted in the compliance filing.

17. CPower and ECS state that in a ruling issued by the Board on May 18, 2004, on the appeal of a Management Committee vote, the Board directed NYISO staff to monitor the balance of Management Committee votes. CPower and ECS assert that this oversight is appropriate and should continue. In addition, CPower and ECS argue that it would be useful if the reports on this oversight activity were publicly issued on a quarterly basis.

18. Independent Power Producers, in their answer, respond to the New York Transmission Owners' proposal that NYISO be required to solicit the Management Committee's vote on compliance filings to the Commission. Independent Power Producers argue that this proposal is not required by Order No. 719. Independent Power Producers argue that, regardless, the New York Transmission Owners fail to address the purpose or need for such a report. Independent Power Producers assert that what matters in a compliance filing is whether it complies with the Commission order, not how stakeholders vote in an advisory process after the Commission has already acted. The Independent Power Producers add that involvement by the Management Committee may be unworkable for many compliance filings that have short filing deadlines.

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

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

20. 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).<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.

21. 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 NYISO are summarized below, as submitted by NYISO, the New York Transmission Owners, and the New York Association of Public Power.

**A. NYISO's Comments**

22. NYISO reiterates its position that its existing governance procedures satisfy the RTO/ISO governance requirements of Order No. 719. In addition to the processes summarized above, NYISO notes that it allows representatives of the Commission and the New York Public Service Commission to attend meetings of the NYISO Board. NYISO states that it has also made recent improvements to its governance procedures that require: (i) posting of all NYISO Board minutes on the NYISO website, (ii) communication of minority positions to the Board in advance of Board votes, and (iii) reporting of market-related errors to the Commission and stakeholders.

**B. Additional Post-Technical Conference Comments**

23. New York Transmission Owners respond to the concerns raised at the technical conference regarding the need to ensure that RTOs and ISOs consider the interests of retail consumers. New York Transmission Owners assert that NYISO's governance provisions are adequate in this regard. Specifically, New York Transmission Owners

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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.

note that these provisions allow for the direct representation of consumer interests and require that end-use consumers comprise one of the NYISO's five voting sectors.

24. The New York Association of Public Power (Public Power) agrees that the NYISO's shared governance model generally works, subject to proposed changes summarized below. Public Power argues that, as such, the hybrid board proposal, as proposed by certain participants at the technical conference (*see* Appendix A, comments of ELCON), should not be imposed on the NYISO.

25. With respect to governance revisions, Public Power proposes that NYISO Board meetings be open. Public Power argues that open Board meetings would enhance transparency and responsiveness. Public Power also proposes changes regarding the terms of a directorship. Public Power states that NYISO Board members currently serve until they choose to retire or are no longer eligible to serve due to age. Public Power recommends requiring directors to stand for election at the end of defined terms. Public Power also proposes changes regarding budgetary matters. Public Power states that currently, the Management Committee's annual vote on the budget is purely advisory. Instead, Public Power proposes that stakeholders, acting through the Management Committee, approve the NYISO budget. Public Power also proposes that the NYISO mission statement be revised to make clear that NYISO's goal is to provide consumers with electricity at the lowest production cost possible.

#### **IV. Discussion**

26. For the reasons discussed below, we find that the NYISO'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.

27. 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>

28. Before addressing the NYISO-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.

29. 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 NYISO, 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.

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

**A. Inclusiveness**

31. First, we address whether NYISO’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

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<sup>13</sup> *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), *sub nom. aff'd*, *Public Utility District 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.

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>

32. We find that NYISO has satisfied Order No. 719's inclusiveness requirement. Specifically, we find that NYISO's existing governance procedures and stakeholder processes are sufficient to ensure that the views of all customers and other stakeholders will be made known to the NYISO's Board. For example, NYISO's governance procedures ensure that any customer or other stakeholder is permitted to communicate its views to NYISO's Board. For example, NYISO's Liaison Committee meets monthly, thus providing stakeholders with a regular opportunity to communicate directly to the Board. NYISO also sponsors an annual joint Board/Management Committee meeting that is open to all stakeholders. In addition, individual stakeholders that are aggrieved by decisions made by other NYISO stakeholders are entitled to appeal any Management Committee action directly to the Board. Stakeholders also participate directly in the selection of NYISO's Board through the Board Selection Committee.

**B. Fairness in Balancing Diverse Interests**

33. We next consider whether NYISO'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>

34. We find that NYISO is in compliance with the fairness in balancing diverse interests requirements of Order No. 719. With respect to stakeholder voting rights, we note that NYISO's rules are designed to distribute these rights with the objective of preventing any single stakeholder category from dominating the decision-making process. Specifically, at least two sectors plus some members of a third sector must support a measure for it to pass, given the requirement that a measure receive the support

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

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

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

of at least 58 percent of stakeholders. Furthermore, the full universe of stakeholder interests are represented in NYISO's voting sectors, including end-use customers (as comprised by a small consumer subsector, a large consumer subsector, a governmental agency subsector, and governmental agencies that act as retail load aggregators) and public power/environmental parties (as comprised by state public power authority subsector, a municipal electric systems and cooperatively owned electric system subsector, and an environmental parties subsector).

35. Moreover, NYISO monitors Management Committee vote totals as they relate to the balance of sector interests. If procedural problems or concerns arise regarding the ability of a given sector, or subsector, to have its views equitably registered, or considered, NYISO is well-equipped to be aware of these problems or concerns on a timely basis.

36. CPower and ECS support the need and usefulness of this monitoring function, but urge the Commission to require that the voting reports prepared by NYISO's staff be publicly issued on a quarterly basis. We are not persuaded that a specific reporting requirement of this sort is required by Order No. 719. However, we encourage NYISO to work with stakeholders to explore viable means for maximizing the transparency and value of NYISO's reporting commitment. Given our findings here that NYISO meets the Order No. 719 requirements to balance diverse interests, we agree with NYISO that no further modifications to NYISO's existing governance structure are required by Order No. 719 at this time.

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

37. We next consider whether NYISO'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>18</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.

38. We find that NYISO is in compliance with the representation of minority positions requirement. Minority interests have access to the NYISO's Board through the Liaison Committee. Minority interests also have access to the Board through the appeals process, allowing any aggrieved stakeholder to appeal any Management Committee action directly to the Board. We also find that NYISO's proposal to communicate minority positions to

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<sup>18</sup> *Id.* P 508.

the Board through the briefing materials that the directors consider in advance of each Board vote is reasonable and in compliance with the requirement to ensure that minority positions are communicated to the Board at the same time as majority positions.

**D. Ongoing Responsiveness**

39. We next consider whether NYISO'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>19</sup>

40. We find that NYISO is in compliance with the ongoing responsiveness requirement. NYISO's business practices and procedures provide for stakeholder input into NYISO's decisions and allow for ongoing communication and input regarding such matters as tariff filings, selection of Board directors, and the budgeting process. In addition, NYISO conducts regular customer satisfaction surveys to solicit new ideas and feedback. NYISO is also working with its stakeholders to consider a modification to its committee structure to enhance participation by demand response resources and other developers in its governance process.

41. With respect to soliciting stakeholder input regarding compliance filings, we agree that stakeholder input is valuable and should be solicited when a compliance filing involves significant discretion. However, we also recognize that NYISO must timely comply with the Commission's directives. We find that the stakeholder process is the appropriate forum to further explore this issue and strike the necessary balance.

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

**E. NYISO's Mission Statement**

43. We find that NYISO has satisfied Order No. 719's requirement that NYISO 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

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<sup>19</sup> *Id.* P 509.

customers, other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.<sup>20</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.

The Commission orders:

NYISO'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 )

Kimberly D. Bose,  
Secretary.

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<sup>20</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 556.

## 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>21</sup> support the utilization of consumer advocate

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<sup>21</sup> Consumers Union, National Consumer Law Center, AARP, Consumer Federation of America, and Public Citizen.

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. Financial Marketers<sup>22</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.

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<sup>22</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.

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 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>23</sup> ITC Companies<sup>24</sup> contend that a hybrid structure will compromise and undermine board independence.<sup>25</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,

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<sup>23</sup> See, e.g., Illinois Commission at 1.

<sup>24</sup> International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

<sup>25</sup> Old Dominion at 10; North Carolina Coop. at 6; Xcel at 6; PSEG at 16-18; MidAmerican at 4-6.

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.<sup>26</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>27</sup> Dayton disagrees, stating that such a requirement would be unduly

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<sup>26</sup> See also EPSA at 8.

<sup>27</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.

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.<sup>28</sup> Commenters also propose staggering board members' terms.<sup>29</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>30</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>31</sup> The New York Independent System Operator, Inc. (NYISO) states that it has

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<sup>28</sup> See Financial Marketers at 6.

<sup>29</sup> See NASUCA at 19; ELCON at 5.

<sup>30</sup> See Old Dominion at 12-13; Steel Producers at 4; NASUCA at 5; ELCON at 4.

<sup>31</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,

(continued...)

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.<sup>32</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>33</sup>

The California Independent System Operator Corporation (CAISO) states that such funding is unnecessary as it applies to CAISO's stakeholder processes, because the

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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.

<sup>32</sup> *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), *Sub Nom. aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>33</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.

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.<sup>34</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>34</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.

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