

To: New England Power Pool Participants Committee, New England Conference of Public Utilities Commissioners, New England Consumer Advocates and Attorneys General
From: Dave Doot, Secretary of NEPOOL Participants Committee and Ray Hepper, ISO New England Vice President and General Counsel
Date: December 10, 2008
Re: RTO Responsiveness and Governance Working Group

We write to invite and encourage you to participate in a new working group that is being formed for two reasons. First, as referenced by Gordon van Welie at the November Participants Committee meeting, in response to FERC Order No. 719 (the “Order”), this working group will explore issues relating to the responsiveness of ISO New England Inc. (“ISO-NE”) to its customers and stakeholders. The Order requires a compliance filing, on or before April 28, 2009, following a collaborative stakeholder process. Second, in response to feedback from NEPOOL members and others, as well as suggestions in the Order, this working group will provide a forum for all interested persons to explore potential improvements to processes used in New England to ensure maximum availability to, and participation in, dialogues concerning regional electric issues. The following people have been asked to and agreed to assist in chairing this working group: Anne George, on behalf of the ISO-NE; Kevin Conroy, from the Massachusetts Attorney General’s office, on behalf of consumer advocates; John Burke, from the Vermont Public Service Board (and past NECPUC President), on behalf of the New England Conference of Public Utilities Commissioners (“NECPUC”); and Brian Forshaw, a NEPOOL Participants Committee Vice-Chair, on behalf of NEPOOL. We will be posting background materials on the ISO-NE website over the next few weeks. Please forward this memo to others that you believe have an interest in participating in this process. **An initial meeting to explore the scope and schedule for this group has been planned for Monday, January 12, 2009 in Boston. More details of that meeting will be sent closer to the meeting date.**

The remainder of this memo provides background for the working group efforts. Section I of this memo outlines the responsiveness requirements of Order No. 719 with which ISO-NE must demonstrate compliance, as well as the features of the existing stakeholder processes that we have cited previously in response to FERC’s inquiry on these issues. In Section II of this memo, we identify other governance-related topics with respect to the NEPOOL Participant Processes for consideration by this working group. Finally, in Section III of this memo, we include additional details regarding the proposed working group.

Section I: Order No. 719’s Requirements Regarding Responsiveness

Order No. 719, which was issued on October 17, 2008 and is entitled “Wholesale Competition in Regions with Organized Electric Markets,” obligates each RTO to have a means for customers and other stakeholders to directly access the Board of Directors, and thereby aims to increase the Board’s responsiveness to these entities. The FERC defines responsiveness as a Board’s “willingness, as evidenced in its practices and procedures, to directly receive concerns and recommendations from customers and other stakeholders, and to fully consider and take actions in response to the issues that are raised.” Each RTO must demonstrate in its compliance filing that it is achieving or has plans to achieve responsiveness based on the following criteria: (a) inclusiveness; (b) fairness in balancing diverse interests; (c) representation of minority positions; and, (d) ongoing responsiveness.

We have included below detailed descriptions of the criteria, along with the related features of the existing stakeholder process that we have cited previously to demonstrate ISO-NE’s responsiveness.

A. *Inclusiveness.*

An RTO's business practices and procedures must ensure that any customer or other stakeholder affected by the operation of the RTO is permitted to communicate its views to the RTO's Board of Directors. The FERC explains that meeting this criterion will demonstrate that the RTO actively provides for presenting customer and other stakeholder issues, concerns or proposals to its Board. Existing processes for ISO-NE that relate to the inclusiveness criterion are:

- *Meetings with NEPOOL.* The Participants Agreement requires at least two meetings annually of the Board and NEPOOL, as well as director attendance at Participants Committee meetings upon request. Additionally, members of the Board meet with NEPOOL and other stakeholders in the context of ISO-NE's Regional System Plan. Members of the Board are also available upon request for consultation with NEPOOL and other stakeholders on other matters.
- *Interaction with States.* As a matter of practice, the Board meets with NECPUC at least twice annually, and also in conjunction with the Regional System Plan. Moreover, the Board has instituted a practice whereby individual directors are assigned to one or more state public utilities commissions and meet regularly with representatives of those agencies.
- *Director Nomination Process.* The Participants Agreement establishes a Nominating Committee for the nomination of ISO-NE's directors. The Committee is composed of representatives of each of NEPOOL's six sectors, a representative of NECPUC, and up to seven members of the ISO-NE Board. If there is a vacancy on the Board, the Committee meets frequently, often monthly or more, for most of the year preceding an election. The nomination process provides for multiple rounds of votes and meetings if a slate recommended by the Nominating Committee is not endorsed by NEPOOL. The need for more than one NEPOOL vote, however, has not arisen. In addition to granting stakeholders the ability to influence the composition of the Board, the process provides access to a majority of the ISO-NE directors through the Committee's meetings.
- *Ability to Submit Documents to the Board.* As required by the Participants Agreement, the ISO-NE's website includes agendas for Board meetings and a link for sending documents to the Board.

B. *Fairness in Balancing Diverse Interests.*

The RTO's business practices and procedures must ensure that the interests of customers or other stakeholders are equitably considered and that deliberation and consideration of RTO issues are not dominated by any single stakeholder category. Existing processes for ISO-NE that relate to this criterion are:

- *NEPOOL Structure.* The Participants Agreement contains provisions regarding NEPOOL's membership, structure and Committees. NEPOOL is comprised of six sectors, each of which, if fully formed, has an equal vote on matters acted upon by NEPOOL. Within the sectors, individual Participants each have a vote. There are various provisions for supermajority votes in order to ensure that no individual or sector can control the outcome.
- *Stakeholder Process.* ISO-NE is contractually obligated under the Participants Agreement to follow the processes outlined in that agreement for receiving market participant input except in exigent circumstances. Consequently, changes to market rules, the tariff and the installed capacity requirement, among others, cannot be made unilaterally by ISO-NE without receiving

the input of NEPOOL. This process includes submitting all such ISO-NE proposals to the appropriate NEPOOL technical committee for deliberation and vote. Following consideration at the technical committee level of an ISO-NE proposal, the proposal is then presented to the NEPOOL Participants Committee for its vote. Following Participants Committee action (or failure to take action according to the provisions of the Participants Agreement), ISO-NE is then free to file its proposal with the FERC, so long as it informs the FERC and the ISO-NE Board of Directors of the results of the NEPOOL process concerning that proposal.

C. *Representation of Minority Positions.*

The RTO's business practices and procedures must ensure that, in instances where stakeholders are not in total agreement on a particular issue, minority positions are communicated to the Board at the same time as majority positions. The Commission established this criterion after receiving reports that RTO decisions have been made based only on the single view of the majority vote. Existing processes for ISO-NE that relate to this criterion are:

- *Coordination of Meetings.* The Participants Agreement requires that NEPOOL Participants Committee meetings be coordinated to occur before regularly scheduled Board meetings. This permits completion of the NEPOOL processes before a matter is finally considered by the ISO-NE Board.
- *Reporting on NEPOOL Votes.* The Chief Executive Officer of ISO-NE, who is also a Board member, attends virtually all Participants Committee meetings and is required by the Participants Agreement to report on the NEPOOL process to the Board, noting in particular the issues raised and discussions held. When combined with the various means available to stakeholders to communicate directly to the Board (see the *Inclusiveness* criterion, above), the Board is made aware of contested issues and stakeholders have the opportunity to ensure that directors receive details regarding their positions.

It is also worth noting that, while not a minority position issue, New England has a provision that ensures any market rule or ICR proposal that is broadly supported by NEPOOL but not by ISO-NE is presented to the FERC for consideration on the same legal footing as an ISO-NE proposal. This understanding in the Participants Agreement, which is referred to as the "jump ball" provision, requires ISO-NE to present to the Commission any alternative participant-sponsored Market Rule proposal that is approved by a vote of at least 60% of the Participants Committee.

D. *Ongoing Responsiveness.*

The RTO's business practices and procedures must provide for stakeholder input into RTO decisions as well as mechanisms to provide feedback to stakeholders to ensure that information exchange and communication continue over time, as the architecture or market environment of the RTO changes. The Commission points out that responsiveness, as with overall operations, should continually be evaluated for improvement. Existing processes that relate to this criterion are:

- *Documentation in the Participants Agreement.* As indicated above, the Participants Agreement contains a full exposition of the relationship between ISO-NE and NEPOOL, including the structure of NEPOOL, interaction with the Board, and the specific processes by which NEPOOL provides advice to the ISO-NE on matters including the budget and changes to the tariff, market rules, operating procedures and other governing documents. This documentation ensures that NEPOOL's input will continue unless agreed to by the parties and approved by the FERC.

- *Agreement Concerning NESCOE.* In addition to the Participants Agreement and the active efforts to involve state regulators fully in the stakeholder process in New England, ISO-NE, NEPOOL, and the six New England states recently agreed on arrangements for the formation, funding, and involvement of the New England States Committee on Electricity (“NESCOE”) to address specific issues assigned to that Committee.
- *Establishment of Priorities.* Following an extensive stakeholder process on the budget, as described in the Participants Agreement, the ISO-NE develops a detailed set of priorities for the year, consistent with its budget and business plan. This document is shared with NECPUC and NEPOOL for discussion to reach consensus on upcoming priorities.
- *Customer Surveys.* ISO-NE conducts a survey each year to assess customer satisfaction. The survey is also a means of obtaining feedback from customers and NECPUC regarding the services provided by ISO-NE. Its results are reported to the Board, thereby providing another means of ensuring that the Board is aware of stakeholders’ concerns, as well as ensuring that the Board and management are continually evaluating stakeholder satisfaction and making enhancements as necessary.

Section II: Related Governance Issues for Consideration by the Working Group

There have been a variety of governance matters since the formation of the RTO that NEPOOL members and others have raised and that this working group would be well positioned to discuss. The following are some examples, although by no means an exclusive list, of matters raised previously for potential discussion by this working group:

- Further streamlining the NEPOOL committee process so that interested stakeholders can more efficiently and effectively participate in higher level issues of greatest concern to them, while leaving details to be worked out by the ISO-NE and other interested stakeholders.
- Enhancing the active and effective participation in the NEPOOL process by state regulators and consumer advocates.
- Modifying NEPOOL sector membership qualifications.
- Exploring alternative and more cost-effective means of ensuring minority concerns are fully considered by NEPOOL than the current NEPOOL Board of Review.
- Facilitating the opportunities for Market Participants to refine with NEPOOL and ISO-NE assistance a broadly supported alternative proposal to an ISO-NE proposal.
- Modifying the quorum and voting requirements for technical committees.
- Making the Budget and Finance Subcommittee and Membership Subcommittee voting Principal Committees that formally vote on recommendations to the Participants Committee.
- Expanding discussions by the Nominating Committee members to permit earlier and more informed input from members who are not on the Committee.

More closely related to issues of Order No. 719 and ISO-NE responsiveness, some stakeholders have sought to impose or to make more express the obligations of ISO-NE on forecasting financial impact of market and transmission changes on consumers. Certain people have urged consumer representation on the ISO-NE Board and/or the creation of an separate advisory committee of the ISO-NE Board. Others have sought to revisit the current Participants Agreement provisions concerning performance audits.

The FERC in Order No. 719 has encouraged such wide-ranging discussions.

Section III: Proposed Working Group

To consider the issues related to responsiveness and governance generally, a new working group is being formed to be comprised of representatives from all interested entities, including at least representatives from the following institutions or groups: the ISO-NE, state regulators and their staffs, market participants, consumer advocates, large end users and power plant and transmission developers. The steering committee identified above would work between meetings of the working group to maximize the effectiveness of the meetings. The plan for the initial meeting in Boston on January 12, 2009 is to attract and gather as many interested entities as possible, representing all interests, and to explore the requirements of Order 719 and other issues concerning stakeholder process and RTO governance. Hopefully, the working group early on can agree on a scope of effort, from which a working group schedule can be prepared. In any event, this working group would be scheduled to complete its work in time for the April 28, 2009 deadline for an Order No. 719 compliance filing. The group would meet as often as the group dictates, beginning after the holidays and continuing through April, disbanding promptly once its work is complete.¹

Conclusion

We look forward to discussing means to improve ISO New England's responsiveness and stakeholder governance in general with the diverse group composing the stakeholders in New England.

¹ We considered meeting in December, including following the PAC meeting on December 17, but there was no available time slot.