

ISO New England Inc. and)
New England Power Pool) **Docket No. ER09-1051**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 and 385.214, and the Commission’s Combined Notice of Filings #1, dated May 1, 2009, the Attorney General of the Commonwealth of Massachusetts (“Massachusetts Attorney General” or “MA-AG”) moves to intervene as a full party in the above-captioned proceeding and submits comments in support of the Regional Transmission Organization (“RTO”) Responsiveness section of the filing by ISO New England Inc. (“ISO-NE”) and New England Power Pool (“NEPOOL”) in Response to Commission Order No. 719, dated April 28, 2009 (“Compliance Filing”).

On October 17, 2008, the Commission issued Order No. 719 requiring each RTO to make reforms to improve the operation of the organized wholesale markets in the areas of demand response, long-term power contracting, market monitoring policies and RTO responsiveness. *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64100 (October 28, 2008), FERC Stats & Regs ¶ 31,281 (2008) (“Order No. 719”), *reh’g pending*. In addressing these four areas, the Commission required each RTO to consult with its stakeholders and make a compliance filing that explains how existing policies comply with Order No. 719 or it plans to

achieve compliance. *See* Order No. 719 at P 14. In response to Order No. 719, ISO-NE and NEPOOL collaborated and formed a working group to address RTO responsiveness (“Working Group”). After several months of collaboration, ISO-NE and NEPOOL made its Compliance Filing addressing all four areas set forth in Order No. 719. For the reasons set forth in detail below, the Massachusetts Attorney General supports ISO-NE’s response to Order No. 719’s RTO Responsiveness directive.

I. PLEADINGS AND OTHER COMMUNICATIONS

Service of all documents filed in this proceeding should be addressed to the following persons whose names and addresses should be placed on the official service list compiled by the Secretary for this proceeding:

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II. MOTION TO INTERVENE

A. Description of Movant

The Massachusetts Attorney General is authorized by common law and by statute to institute such proceedings before state and federal courts, tribunals and commissions as she may deem to be in the public interest. Massachusetts General Laws c. 12, § 10; *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E.2d 1262, 1266 (1977); *Secretary of Administration and Finance v. Attorney General*, 367 Mass. 154, 163, 326 N.E.2d 334, 338 (1977). The Massachusetts Attorney General is further authorized by statute to intervene on behalf of Massachusetts ratepayers in proceedings before the Commission. Massachusetts General Laws, c. 12, § 11E.

B. Basis for Intervention

The Massachusetts Attorney General seeks to intervene in this proceeding to represent the interests of the Massachusetts retail customers. Good cause exists for the Commission to grant the Massachusetts Attorney General leave to intervene. The Massachusetts Attorney General is a public officer charged with representing the Commonwealth of Massachusetts, the public interest and the people of the Commonwealth with respect to electric or gas industry matters that affect electric or gas consumers in Massachusetts. Resolution of this matter may directly affect the interests of those customers and the rates they pay. Customer interests will not be adequately protected without the Massachusetts Attorney General's intervention. No other party to this proceeding represents the interests of these retail customers. The interests of the Massachusetts Attorney General in this matter are direct and substantial, and no other party can represent adequately those interests. For these reasons, granting intervention is

in the public interest, and the Commission should grant the Massachusetts Attorney General leave to intervene in this proceeding with full rights as a party.

III. MASSACHUSETTS ATTORNEY GENERAL'S COMMENTS IN SUPPORT OF THE RTO RESPONSIVENESS SECTION OF THE COMPLIANCE FILING

A. Order No. 719's Directive Concerning RTO Responsiveness

As the Compliance Filing describes, Order No. 719 directed RTOs to make reforms “to improve the operation of the organized wholesale electric markets in areas of demand response, long-term power contracting, market monitoring policies and RTO...responsiveness.” Order No. 719 at P 14. Order No. 719 required each RTO “to consult with its stakeholders and make a compliance filing that explains how its existing practices comply with [Order No. 719] or its plans to attain compliance” with the Commission’s directives in each of the four subject areas. *Id.* Specifically, in regards to RTO responsiveness, Order No. 719 provides:

The Commission requires RTOs and ISOs to establish a means for customers and other stakeholders to have a form of direct access to the board of directors, and thereby to increase the boards of directors’ responsiveness to these entities. (By responsiveness, we mean an RTO or ISO 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.) The Commission requires each RTO or ISO to submit a compliance filing demonstrating that it has in place, or will adopt, practices and procedures to ensure that its board of directors is responsive to customers and other stakeholders.

Id. at P 477.

Further, Order No. 719 obligated each RTO to “post on its web site a mission statement or organizational charter” and encouraged each RTO to include in its mission statement “among other things, the organization’s purpose, guiding principles, and

commitment to responsiveness to customers and other stakeholders, and *ultimately to the consumers who benefit from and pay for electricity services.*” *Id.* at P 556 (emphasis added).

B. Stakeholder Process: Order No. 719 Working Group

In response to Order No. 719’s directive to examine ISO-NE’s RTO Responsiveness, ISO-NE and NEPOOL initiated a comprehensive stakeholder process designed to consider ISO-NE’s current compliance and how to best implement improvements to attain compliance with Order No. 719. *See Compliance Filing*, at p. 107. ISO-NE and NEPOOL formed a working group that was open to all interested stakeholders. *Id.* Kevin Conroy, Chief of the Business and Labor Bureau of the Office of the Massachusetts Attorney General, represented State Consumer Advocates on the Working Group’s steering committee. *Id.* The Working Group met eight times, meeting agendas were posted on the ISO-NE website, and participants were encouraged to raise issues with ISO-NE’s responsiveness and proposed solutions to remedy these issues. *Id.*, at pp. 107-108.

Through the Working Group, the MA-AG outlined several concerns regarding ISO-NE’s responsiveness. The MA-AG conveyed these concerns and, working with the other State Consumer Advocates, consumer organizations and individual consumers, offered solutions throughout the Working Group process. The MA-AG’s concerns centered on the fact that end-use consumers are not able to consistently provide effective input about their interests because the ISO-NE and NEPOOL decision-making process is complicated and extremely time-intensive, and most consumers and their advocates lack the resources required to meaningfully monitor and participate in the stakeholder process.

In its review of RTOs' performance, the Government Accountability Office ("GAO")¹ noted that some stakeholders reported that attending the stakeholder meetings was resource intensive and that often decisions within the RTOs did not place a sufficient emphasis on how they might ultimately affect the prices consumers pay for electricity. For instance, the GAO report noted that ISO-NE had 184 stakeholder meetings in 2007 alone.² The lack of adequate ratepayer involvement in the ISO-NE/NEPOOL stakeholder process can lead to decisions that are not in the best interests of end-use consumers.

As such, the MA-AG offered and/or supported several initiatives designed to address specific consumer concerns about the existing ISO-NE/NEPOOL stakeholder process. A summary of the MA-AG's primary concerns and proposed solutions is provided below:

1. State Consumer Advocates' Relationship with ISO-NE: The MA-AG along with the other State Consumer Advocates³ expressed concerns over their difficulties directly engaging ISO-NE staff compared to other participant groups. For instance, ISO-NE issues monthly memoranda to NECPUC representatives detailing current issues before ISO-NE and the NEPOOL technical committees. ISO-NE also holds monthly conference calls with NECPUC representatives to discuss issues in the memoranda, along with any other concerns that may arise. *Compliance Filing*, at p. 108. The MA-AG argued that State Consumer Advocates should receive similar treatment as NECPUC.

2. ISO-NE's Mission Statement: ISO-NE's stated "Objectives"⁴ did not require ISO-NE to assess the costs of initiatives to ratepayers prior to their adoption.

¹ GAO Report to the Committee on Homeland Security and Governmental Affairs, September 2008, *Electricity Restructuring, FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefit and Performance*.

² The 184 stakeholder meetings excluded lower-level committee and working group meetings related to the regional system plan process.

³ The region's State Consumer Advocates represent ratepayers on issues affecting electricity rates and energy policy. The entities that were active in the Working Group included the MA-AG, Connecticut Office of Consumer Counsel, Rhode Island Attorney General's Office, New Hampshire Office of the Consumer Advocate, Maine Office of the Public Advocate, and Vermont Division of Public Advocacy.

⁴ Currently, ISO-NE's "objectives" are set forth in the ISO Tariff, Participants Agreement, and Second Restated NEPOOL Agreement. *Compliance Filing*, at p. 105.

Accordingly, the MA-AG along with other State Consumer Advocates, requested that ISO-NE incorporate concepts of cost consciousness and economic analysis into its objectives. *Id.* at p. 115. While the MA-AG did not insist that the term “lowest reasonable cost” be incorporated into ISO-NE’s mission statement like some Working Group participants, it did urge ISO-NE to include some recognition of cost consciousness and economic analysis. *See id.* at p. 117.

3. Consumer Representation on the Board: Considering that the ISO-NE regional market and bulk transmission system are designed to benefit consumers who pay for electric services, it is critically important for some Board members to have electric industry experience in representing or advocating for consumers in issues relating to retail electricity rate regulation. Such a perspective would ensure that the costs and other impacts of ISO-NE Board decisions on consumers paying for the services (as passed through in retail rates) are represented and considered during the Board’s deliberative process.⁵ Accordingly, the MA-AG proposed revisions to the Participants Agreement whereby two Board members would possess prior relevant experience in consumer advocacy. *Id.*

4. Consumers’ Lack of Resources to Meaningfully Participate in Stakeholder Process: As noted above, the MA-AG and others expressed concerns that the State Consumer Advocates and individual consumers lacked the necessary resources and expertise to meaningfully participate in ISO-NE/NEPOOL stakeholder process. *Id.* at p. 109. Therefore, the MA-AG requested a consumer liaison representative within ISO-NE that would regularly interact with consumer advocates and individual consumers and explain current ISO-NE initiatives, as well as field consumer concerns to be addressed with ISO-NE Staff and Board. *Id.*

5. ISO-NE’s Board Lacks Appropriate Transparency: The MA-AG recommended that ISO-NE make its Board meetings open to the public. *Id.* at p. 112. The MA-AG reasoned that open or public meetings eliminate any actual or perceived secrecy surrounding the process by which the Board’s deliberated decisions are made.⁶ Open or public meetings provide insight into the decision-making process and the rationale behind a chosen course of action beyond end results. Open or public meetings increase transparency and stakeholder involvement, as well as ensure that Board members are accountable and ultimately responsive to the region’s needs.

⁵ Maine Public Utilities Commission Staff concluded in its recent Recommended Decision that the “‘governance’ provisions of the current ISO-NE arrangements are significantly ‘flawed’ because they fail to require that ISO-NE ensure that costs of reliability and other improvements are reasonable or to choose the most cost effective solution.” The Recommended Decision concluded that remedying those “flaws” would require, among other things, increasing representation of consumer interests on the ISO-NE board, for example either by having board member slots reserved for candidates that have extensive background in representing consumers or adjudicating issues relating to retail electric rate regulation. *See ISO-NE Memorandum re: Maine Inquiry Regarding Continued Participation of Maine Utilities in ISO-NE*, dated Jan. 8, 2009, citing Maine PUC, Docket No. 2008-156, dated Dec. 16, 2008.

⁶ Currently, California ISO, Midwest ISO and ERCOT, hold board meetings that are open to the public.

C. Outcome of 719 Working Group

Some of the proposals put forth by the MA-AG, namely making Board meetings open to the public and revising Board member qualifications, met considerable resistance from ISO-NE and other NEPOOL participants. However, overall, the Working Group was open to consumer concerns and the solutions offered to remedy these concerns. Significant effort was put forth by all parties to reach a set of mutually-agreeable compromises to sufficiently address consumer concerns. A summary of the agreed-upon initiatives developed and adopted in response to the MA-AG's concerns is presented below:

1. State Consumer Advocates' Relationship with ISO-NE: ISO-NE agreed to provide the State Consumer Advocates with similar treatment as NECPUC by preparing monthly memoranda for and holding monthly conference calls with State Consumer Advocate representatives. *See Compliance Filing*, at pp. 108-109. ISO-NE issued its first monthly memorandum and held its first conference call with the State Consumer Advocates in April. Additionally, ISO-NE proposed to hold an initial meeting between the highest level officials in the State Consumer Advocate offices and the Board. *Id.* at p. 109.
2. ISO-NE's Mission Statement: Pursuant to Order No. 719's mandate, ISO-NE offered revisions to its mission statement committing it to strive to be cost-effective and provide information on proposed initiatives that will allow stakeholders to evaluate the implications of ISO-NE's activities. *Id.* at pp. 116-117. ISO-NE also removed the provision precluding independent causes of action based on its objectives/mission statement. *Id.*
3. Consumers' Access to the ISO-NE Board and the Board's Responsiveness to Consumer Concerns: ISO-NE and other Working Group participants declined to adopt the MA-AG's proposals to make Board meetings open to the public and revise the composition of the Board to require consumer advocacy qualifications. *Id.* at pp. 110-115. However, ISO-NE and NEPOOL did agree to amend the Participants Agreement to (i) post agendas of the Board Committee meetings, (ii) clarify that any stakeholder can submit written comments for the Board's consideration, and (iii) enhance the CEO's reports of Board and Committee actions in his monthly reports to the NEPOOL Participants Committee. *Id.* at pp. 112-113. Furthermore, the Chairman of the ISO-NE Board of Directors issued a

memorandum to the Working Group setting forth the Board's commitment to work with the Joint Nominating Committee to ensure that the Board always retains expertise in consumer advocacy. *Id.* at p. 111.

4. Consumers' Lack of Resources to Meaningfully Participate in Stakeholder Process: In an effort to achieve a workable outcome, various end-users, advocacy organizations, and State Consumer Advocates came to an agreement with ISO-NE to form a "Consumer Liaison Group." *Id.* at pp. 109-110. ISO-NE committed to provide a specific point of contact ("POC") in ISO-NE's External Affairs Department. *Id.* As detailed more fully in the Compliance Filing, the POC will facilitate meetings of the CLG and provide it with information on matters of concerns to consumers. *Id.* The CLG will also provide input to the POC on various ISO-NE initiatives that affect consumer interests. *Id.* The POC will then relay those concerns to ISO-NE Staff and the Board, when appropriate. *Id.* As the MA-AG understands, ISO-NE plans to convene a working group over the next several months to address the specifics of this initiative and anticipates holding the inaugural CLG meeting soon.

While ISO-NE did not incorporate all of its proposals presented to the Working Group, the MA-AG was encouraged by the overall success of the Working Group's process and ISO-NE's commitment to take steps to improve its responsiveness to consumer concerns. The agreement on the initiatives presented in the Compliance Filing only represents the first step. Now all of the participants (including ISO-NE, State Consumer Advocates, and individual consumers) must put forth significant effort to further develop and implement the initiatives in order to achieve their objectives. The MA-AG intends to actively participate in this process, and looks forward to working with ISO-NE and other participants to improve ISO-NE's responsiveness to consumer concerns as directed by Order No. 719.

IV. CONCLUSION

The Massachusetts Attorney General respectfully requests that the Commission:

1. Grant this Motion to Intervene and order that she be allowed to participate fully as a party in this proceeding;
2. The Commission should approve the section of the Compliance Filing that addresses ISO-NE's response to Order No. 719's RTO Responsiveness directive; and
3. Grant such further relief as the Commission deems just and proper.

Respectfully submitted,

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ATTORNEY GENERAL

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Dated: May 26, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts this 26th day of May, 2009.

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