

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**ISO New England
New England Power Pool**

) Docket No. ER09-1051-000

**AMENDED MOTION TO INTERVENE
OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE,
MOTION TO INTERVENE OUT OF TIME OF
THE VERMONT PUBLIC SERVICE BOARD
AND COMMENTS**

Pursuant to Commission Rules 212 and 215 and the Commission's May 1, 2009 Notice of Filing, the Vermont Department of Public Service ("VDPS") (1) amends the timely intervention that it filed on May 26, 2009 to adopt certain comments submitted by the Maine Public Utilities Commission ("MPUC") and (2) moves to include the Vermont Public Service Board ("VPSB") as a co-intervenor. VPSB also moves to intervene two days out of time and to join VDPS's comments in this proceeding. In support of their filing, VDPS and VPSB state as follows.

I. MOTION TO INTERVENE

A. Communications

In accordance with Rule 2010, 18 C.F.R. § 385.2010 (2007), VPSB hereby designates the following persons for service of documents in this proceeding:

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B. Basis for Intervention

The VPSB is a quasi-judicial board that supervises the rates, quality of service, and overall financial management of Vermont's public utilities: cable television, electric, gas, telecommunications, water and large wastewater companies. It also reviews the environmental and economic impacts of energy purchases and facilities, the safety of hydroelectric dams, the financial aspects of nuclear plant decommissioning and radioactive waste storage, and the rates paid to independent power producers. The Board's mission is to ensure the provision of high quality public utility services in Vermont at minimum reasonable costs, measured over time periods consistent with the long-term public good of the state. The Board strives to achieve this mission by providing an independent, fair and efficient means of resolving public utility disputes; and by guiding the development of state utility policies and rules for public services to best serve the long-term interest of Vermont and its residents, all as defined in Title 30 V.S.A.

VPSB had intended to file a timely joint intervention with VDPS, but internal administrative delays prevented it from doing so. VPSB, therefore, is filing its motion to intervene two days out of time. Because the proceeding is still at an early stage, and because it is joining the position taken by VDPS, which filed a timely intervention, VPSB does not believe that granting the motion two days out of time will disrupt the instant proceeding. Neither does

VPSB believe that any party will be prejudiced by its late intervention. Given VPSB's role in serving Vermont and its residents, VPSB's interest in this proceeding cannot be protected adequately by any other party. Based on the foregoing, VPSB respectfully requests that its motion be granted.

II. COMMENTS

On April 28, 2009, ISO New England, Inc. ("ISO-NE") and New England Power Pool submitted for filing their proposed reforms to improve the operation of organized wholesale electric power markets, including proposed revisions to the ISO Tariff and the Participants Agreement in response to Order No. 719, *Wholesale Competition in Regions with Organized Electric Markets*, 73 Fed. Reg. 64100 (October 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) ("Order No. 719"). The Maine Public Utilities Commission filed comments in response to that filing raising several concerns. VDPS and VPSB hereby amend VDPS's intervention to voice support for MPUC's comments pertaining to: 1) the need to strengthen the ISO-NE's proposed mission statement, 2) that executive compensation should be linked to cost aspects of the mission statement and the satisfactory attainment of various metrics¹ that are jointly developed by ISO and stakeholders and reported via management reports, and 3) increased transparency of Board of Director proceedings. These points are discussed in more detail below.

A. The ISO-NE's Mission Statement Can Be Further Strengthened.

Order No. 719 "require[s] each RTO and ISO to post on its web site a mission statement or organizational charter" and "encourages each RTO and ISO to include in its mission statement...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." Order No. 719 at P 478. In response to that directive, ISO-NE proposes:

¹ As outlined in the GAO Report <http://www.gao.gov/new.items/d08987.pdf>.

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

Filing at p. 117 (emphasis added). As suggested by the MPUC, the ISO-NE's proposed mission statement can be further strengthened by including in it a statement that the ISO-NE fulfill the mission "at lowest reasonable cost." In fact, such alternative language was advocated by several states, including Vermont, but not adopted by the ISO-NE. Filing at p. 118. The states of Vermont, Maine, Connecticut and New Hampshire proposed alternative language as follows:

[t]o ensure just and reasonable rates as mandated by the Federal Power Act and as determined by the Federal Energy Regulatory Commission, the ISO shall fulfill its mission at the *lowest reasonable cost*, consistent with the preceding principles ultimately to the benefit of all consumers who pay for electricity products and services.

(emphasis added). In refusing to make the change, the ISO-NE reasoned that if it were to adopt the such language, its function as the operator of regional markets will be replaced with a regulatory role in which it determines the alternatives that meet the region's needs. Filing at p. 118. Moreover, the ISO-NE states that its proposed language allows it the option to identify a cost effective option without requiring it to identify the lowest reasonable cost transmission solution or non-transmission solution. *See id.*

ISO-NE's proposed mission statement does not go far enough to satisfy the Commission's directive in Order No. 719 that requires each RTO and ISO to set forth in its mission statement... its "*commitment* to responsiveness to customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services." Order No. 719 at P 478 (emphasis

added). As argued by MPUC, the ISO-NE should not have the discretion to refuse to identify a lower cost solution in order to meet reliability. Rather, the ISO-NE should be required to consider the lowest reasonable cost solution and should identify the lower cost transmission alternatives, while at the same time ensuring reliability.

VDPS and VPSB support Commission adoption of the language proposed by MPUC detailing the further steps ISO-NE must take to improve its responsiveness as required by Order No. 719.

B. Executive Compensation Should be Tied to Cost Aspects of the Mission Statement.

In Order No. 719, the Commission stated with respect to executive compensation that it encourages, but does not require, RTOs and ISOs to ensure that their "executive compensation give appropriate weight to responsiveness to customers and other stakeholders." Order No. 719 at P 561. Addressing the Commission's suggestion, ISO-NE states in its filing that "compensation of all employees is tied, in part, to achievement of results on the annual customer survey." Filing at 107. As MPUC notes in its comments, this language does not go far enough to ensure ISO-NE's responsiveness and accountability.

ISO-NE responsiveness to its customers will be greatly improved if executive compensation is linked to cost control. By tying cost control and executive compensation, VDPS and VPSB believe that the ISO-NE will be more sensitive towards the consumer and cost containment. ISO describes a survey that it conducts each year, designed to assess customer satisfaction and obtain customer feedback. Filing at 104. The results of the survey, the ISO states, are reported to the Board. *Id.* But as noted by the MPUC, there are no questions on costs and cost effectiveness on the list of questions in ISO-NE's annual customer surveys. If the annual customer survey is intended, as the ISO-NE describes, to assess customer satisfaction,

and employee compensation is in fact tied to customer satisfaction, derived partly from the annual customer survey, VDPS and VPSB believe that it is fitting for the survey to reflect questions on cost control. That link between cost control and executive compensation will provide for a more responsive RTO. Thus, the Commission should direct ISO-NE to add questions about costs and cost effectiveness to both the customer survey and the incentive payment mechanisms.

The ISO also recognized in their filing on page 120: “The last issue that was raised but not pursued involved the development of metrics to objectively evaluate ISO-NE’s management practices and measure responsiveness....ISO-NE has indicated that it is open to continuing conversations on this topic outside of the working group process.” We believe establishing appropriate metrics to encourage continuous process improvement is of high value.

C. Increased Transparency of Board Proceedings.

In Order No. 719, the Commission directed that RTOs and ISOs must increase their responsiveness to the needs of customers and other stakeholders. Order No. 719 at P 502. The Commission further went on to state that,

As RTOs and ISOs developed, the Commission emphasized that their decision-making processes must be independent of control of any market participant or class of participants. RTO and ISO independence remains fundamental, and we will preserve it; however, we find that RTOs and ISOs must provide an avenue for customers and other stakeholders to present their views on RTO and ISO decision-making, and to have those views considered. Establishing practices and procedures that would allow RTO and ISO boards to be responsive to the concerns of customers and other stakeholders is important to providing these entities with confidence in RTOs’ and ISOs’ independent governance processes.

Id. at P 503.

VDPS and VPSB support increased transparency of Board proceedings, including the suggestions made by the MPUC that the ISO-NE must post the agenda on the ISO-NE website of

matters for discussion prior to every Board meeting; post minutes of the Board meeting after 14 days; and require that ISO-NE management report to the Board any NEPOOL dissent or differing position to an ISO-NE recommendation. While ISO-NE is correct that it is a private corporation, as MPUC also points out, it is also a “public utility” under the FPA and obliged to provide service that is just and reasonable. And as a Commission-approved RTO, ISO-NE must be operated so that it is not only responsive to the concerns of its customers and stakeholders, but that its customers and stakeholders have confidence in the ISO-NE's decision-making process. *See* Order No. 719 at P 503. As MPUC correctly maintains, this confidence cannot be achieved unless ISO-NE’s board meetings are open in the manner MPUC has urged.

III. CONCLUSION

For the reasons stated above, VPSB respectfully requests leave to intervene out of time. Further, VDPS and VPSB request that the Commission consider their comments.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

/s/ Harvey L. Reiter
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Dated: May 28, 2009

Their Attorneys

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document, via electronic mail or first class mail, upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 28th day of May, 2009.

/s/ M. Denyse Zosa