

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

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
PJM Interconnection, LLC)	Docket No. ER09-1063-000
New York Independent System Operator, Inc.)	Docket No. ER09-1142-000

**POST-TECHNICAL CONFERENCE COMMENTS OF
THE ELECTRIC POWER SUPPLY ASSOCIATION**

The Electric Power Supply Association (EPSA)¹ appreciates the opportunity to submit these comments on the February 4, 2010 conference convened by the Federal Energy Regulatory Commission (“the Commission” or “FERC”) to address issues arising out of Order No. 719 compliance filings submitted by the RTO/ISOs. Specifically, the February 4 Conference concerned issues related to RTO/ISO responsiveness to their customers and other stakeholders.²

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA has intervened in all of the above named dockets. EPSA did not intervene in ER09-1192-000, but will provide service to parties named in that docket.

² *Notice providing agenda for technical conference on RTO/ISO Responsiveness, Docket No. ER09-1048 et al.* (January 8, 2010). (“Notice”)

I. COMMENTS

A. SCOPE OF THIS PROCEEDING

Certain panelists at the February 4 conference made recommendations that implicate issues far outside the scope of this proceeding. Namely, there were several attacks on the structure of RTO markets as a whole rather than specific comments addressing RTO responsiveness and board governance issues. The scope here was narrow and clear – this conference was convened to obtain feedback on a specific provision from Order No. 719 that requires RTOs to incorporate certain principles as part of an overall responsiveness program.³ Representatives from the Electricity Consumers Resource Council (ELCON), the American Public Power Association (APPA) and the Portland Cement Association all openly admitted that they were raising “structural issues” with RTO markets, and even in that vein offered “little new content” in their recommendations.⁴

FERC has given extensive time and consideration to challenges to the RTO/ISO wholesale market structure itself. Through a series of technical conferences, an ANOPR, a NOPR and Order No. 719, the Commission has carefully assessed competitive wholesale markets and addressed how they might be improved. This technical conference explored one of the four areas identified by Order No. 719, referencing a specific proposal for reform from the

³ Id., Further, the Notice cites a specific NASUCA proposal that asks the Commission to consider a number of things, including requiring open board meetings and the ability to obtain state consumer advocate funding through an RTO tariff mechanism.

⁴ Comments of Dr. John A. Anderson, President Electricity Consumers Resource Council (ELCON) at the Technical Conference on RTO/ISO Responsiveness, Docket No. ER09-1048 et al. (February 4, 2010), p. 3. (“ELCON Statement”)

National Association of State Utility Consumer Advocates (NASUCA). This conference is an inappropriate venue to rehash general concerns with the organized market structure, particularly without the benefit of suggested solutions.⁵

On the topic of RTO Responsiveness specifically, it is not clear that RTOs have moved the ball in the wrong direction; as Tamara Linde from PSEG pointed out, “RTOs and ISOs by their very nature have expanded options and opportunities for stakeholder participation.”⁶ The alternative -- traditional bilateral utilities -- offer exponentially less opportunity to solicit adequate responses or input from stakeholders.⁷ Patrick McCullar, speaking on behalf of APPA, complained that RTOs have an inherent “lack of transparency” to end use consumers; but, as Commissioner Spitzer pointed out, the context must be, “compared with what?”⁸ Indeed, this proceeding itself is a testament to the fact that FERC and RTOs are constantly evolving and working to respond to various stakeholder interests.

⁵ Paul Williams speaking on behalf of Portland cement noted that he did not have specific proposals to address the problems he raised. Statement made during the question and answer session at the end of the first panel. Video available here: <http://capitolconnection.gmu.edu/ferc/ferc.htm>

⁶ Presentation of Tamara L. Linde On Behalf Of The PSEG Companies, Docket No. ER09-1048, et al. (February 4, 2010), p. 2. (“PSEG Statement”)

⁷ As an example, in the Entergy region, three full years after the Order No. 890 was issued by FERC, the state commissions in the Entergy region have begun to work together in an unprecedented and constructive manner in a new Regional State Committee which is working with stakeholders to ensure that numerous improvements are finally implemented to achieve meaningful open access and transparency in that region. Notice of Conference, Entergy Services Inc., Docket Nos. ER05-1065-000 and ER09-555-000, issued April 17, 2009.

⁸ Statement made during the question and answer session at the end of the first panel. Video available here: <http://capitolconnection.gmu.edu/ferc/ferc.htm>

Having noted that the complaints over the wholesale market structure generally are inappropriate in this venue, EPSA would like to respond to two general pronouncements repeated at the conference:

- (1) It was alleged that Order No. 719 was a “failure;” and,
- (2) The complaint was made that the voluntary nature of RTOs allows transmission owners to exert undue influence over the stakeholder process, particularly overshadowing the voice of consumer side stakeholders.

On the first point, the Commission deliberated and examined the RTO/ISOs for over two years, culminating in Order No. 719. On broad market structure complaints, APPA and others asked for rehearing and were denied based on an extensive record in the proceeding.⁹ As support that Order No. 719 has failed, these groups noted that in reference to RTO Responsiveness, “the six ISOs/RTOs uniformly took the position that they were already meeting [Order No. 719’s Responsiveness] criteria.”¹⁰ John Anderson of ELCON cited this as proof that Order No. 719’s call for reform in RTO responsiveness was “a failure.” Though the RTOs did note that they were already in compliance with the principles set forth for RTO Responsiveness in Order No. 719, ELCON is incorrect in implying that the Final Rule did not lead to any reforms. Even though the RTOs/ISOs believed they were in compliance with Order No. 719, several still formed RTO responsiveness task forces to investigate how they could better fine-tune governance and responsiveness issues. “Although ISO-NE believed it was compliant with Order No. 719, ISO-NE welcomed the opportunity for further

⁹ *Order Denying Rehearing and Providing Clarification*, 129 FERC ¶ 61,252, Docket No. RM07-19-002 (December 17, 2009).

¹⁰ ELCON Statement, p. 2.

evolution,” according to the ISO-NE presentation at the conference.¹¹ Further, ISO-NE notes, “a stakeholder working group was established to consider responsiveness issues.”¹² What’s more, these responsiveness taskforces have accomplished meaningful reforms. In speaking about ISO-NE’s Consumer Liaison Group (CLG), Jed Nosal from the Massachusetts Attorney General’s Office noted:

From my perspective, the CLG has been very productive... While ISO-NE did not incorporate all of the proposals that we presented to the working group, our Office was encouraged by the overall success of the stakeholder process.¹³

Clearly, Order No. 719 has inspired beneficial changes in the area of RTO responsiveness; to color the Final Rule as a failure is unsupported and polemic.

On the second point regarding the stakeholder process and the structure of the RTOs, it is simply untrue that because participation in an RTO by transmission owners in particular is voluntary, this allows them to exert undue influence over the independently-administered RTOs. APPA notes, “if the transmission owner becomes dissatisfied, it can withdraw.” ELCON adds that an RTO has a “strong motivation to keep [these resources] satisfied.” These serious allegations challenging the impartiality of RTOs are made with no specific evidence to justify them. In fact, independence is essential to making RTOs work because owners of generation and transmission assets effectively commit billions

¹¹ *Presentation of ISO New England, Inc.*, Docket No. ER09-1048 et al., (February 4, 2010), p. 5.

¹² *Id.* PJM and other RTOs also instituted similar groups in response to Order No. 719. For example, PJM formed the Governance Assessment Special Team (GAST). PJM February 4 testimony at 2.

¹³ *Statement of Jed M. Nosal to Support the Oral Testimony Presented at the February 4, 2010 Technical Conference Regarding RTO Responsiveness*, Docket No. ER09-1048-000 et al. (February 4, 2010), p. 8.

of dollars of assets to RTO markets. These asset owners must have faith that the RTO is going to operate the assets and run the markets in an independent manner.

It is also important to note that at the conference, the terms “supply-side” and “transmission owner” were used interchangeably, when, in fact, several supply-side resources own generation only and not transmission. There are issues on which these two sectors do not agree. Further, there are clear issues that emerge from the stakeholder process that favor the demand side. The supply side, be it generation or transmission owners, are not always victorious in the stakeholder process. As one example, recently PJM filed pro forma tariff provisions reflecting certain changes to the current Economic Load Response Program (ELRP or Economic Program).¹⁴ In that proceeding, PJM sought to re-introduce demand response subsidy payments that had been instituted with a sunset date of December 2007. Supply-side resources have posited that the subsidy is unnecessary at this time to incent or retain demand response. This issue is still pending before the Commission. Regardless of the outcome at the Commission, it is a clear example of the fact that RTO stakeholder processes do not inherently favor supply-side resources and that RTO boards act independently.

Further, APPA, ELCON and Portland Cement Association representatives spoke about the ability to leave RTOs as if it were a simple, straightforward decision accomplished with little effort. In fact, proceedings where entities apply

¹⁴ [Supplemental Report And Submittal of PJM Interconnection, L.L.C. In Support Of Further Commission Action On Rehearing](#). Docket No. EL09-68-000 (August 26, 2009).

to withdraw from an RTO are expensive and labor-intensive, sometimes resulting in the entity remaining an RTO member after the costs and benefits of leaving are weighed.¹⁵ Transmission owners and other supply-side market participants do not get special treatment from independently-administered RTOs due to some constant fear that participants will leave the voluntary organization. In fact, market participants have numerous, extensive contractual obligations that include specific consequences for leaving the RTO. The voluntary nature of RTO membership does not pose threats to the wholesale electricity system or how it is operated, and it is in fact the reason that Order No. 2000 focused so intently on creating independence in RTOs.

Ultimately, Vince Duane from PJM summed it up best when he noted, "We need to be aware of complaints about procedural deficiencies versus dissatisfaction with the outcome of specific stakeholder initiatives."¹⁶ Several of the complaints advanced at the February 4 conference were not commentaries on procedural responsiveness and governance issues, but rather expressed dissatisfaction with competitive wholesale electric markets broadly. These are issues that the Commission has considered at length and on which the Commission has issued a Final Rule. The time and resources of the Commission are appropriately spent in this proceeding responding to the specific proposals set forth by NASUCA, the initial impetus of the February 4 Conference.

¹⁵ See *Order Approving Settlement Agreement, re: Duquesne Power and Light*, 126 FERC ¶ 61,074, (January 29, 2009), in which Duquesne had filed a petition to withdraw from PJM and a petition to join MISO, but then decided to stay in PJM upon further analysis.

¹⁶ Statement made during the question and answer session at the end of the second panel. Video available here: <http://capitolconnection.gmu.edu/ferc/ferc.htm>

B. RESPONSES TO SPECIFIC NASUCA PROPOSALS

i. FEWER MEETINGS

There was a broadly held sentiment expressed at the February 4 Conference that RTO and ISO participants suffer from “meeting fatigue.” The extraordinary amount of stakeholder meetings held by RTOs (led by MISO, who held 611 meetings in the calendar year 2007) is certainly daunting due to the limited time and resources of many stakeholder groups. Ray Harper, speaking on behalf of ISO-NE, noted that the real problem is that with fewer meetings comes less transparency.¹⁷ RTO representatives at the February 4 Conference all noted that they were open to suggestions on how to properly balance burdensome meeting loads with necessary transparency for all stakeholders. In fact, though there is not one silver bullet solution to this problem, several constructive suggestions arose at the February 4 conference that EPSA advocates as potential tools for solving this problem.

There are some structural changes RTOs can make to address the “too-many-meetings” problem. Namely, as the Ohio Consumers’ Counsel suggested, all issues presented to an RTO Board should first go through a central advisory committee.¹⁸ This would ensure that market participants who fear missing issues at lower committees have a centralized opportunity to be informed of issues and

¹⁷ Statement made during the question and answer session at the end of the first panel. Video available here: <http://capitolconnection.gmu.edu/ferc/ferc.htm>

¹⁸ *Handout for the FERC Technical Conference on RTO/ISO Responsiveness Submitted by the Office of the Ohio Consumers’ Counsel*, Docket No. ER09-1048, et al. (February 4, 2010), p. 13. For the purposes of these comments, EPSA will use the term “advisory committee,” as this was proposed by the Ohio Consumer’s Counsel who used MISO vernacular. This centralized committee is called by different names in different RTOs. The Illinois Commerce Commission also proposes changes to the PJM Members’ Committee (Advisory Committee equivalent), asking for more inclusiveness at page 2 of its comments.

weigh in before the board or FERC receives them. An Advisory Committee is well positioned to make decisions on tariff changes and other important RTO governance procedures, as it has carefully weighted sectors with proportionate voting rights. Without a requirement that all tariff changes go through an Advisory Committee, there is an ability for proposals to be approved at lower-level working groups and then submitted directly to FERC for approval without all stakeholders having the opportunity to weigh in. This is counterintuitive to Order No 719's directive regarding fairness in balancing diverse interests because many of the lower-level working groups are not weighted by sector. Alternatively, several issues that originate in lower level working groups are escalated too quickly to allow ample time for Advisory Committee members to consider the issue and implications to particular sectors before a vote. FERC rules on how centralized Advisory Committees should work and a requirement that all issues ultimately must pass through one central committee may go a long way to alleviate the anxiety of consumer side representatives that they cannot keep abreast of all of the current issues passing through the RTO stakeholder process. This change will preserve both the structural integrity of the RTO's stakeholder process and transparency between stakeholders and the board of directors. Some RTOs already take all issues through a central committee, while other RTOs are less strident. Advisory Committee/stakeholder voting process reform at the FERC level is a positive tangible step that RTOs should take to address the meeting fatigue problem.¹⁹

¹⁹ In fact, in Order No. 719, the Commission stated that "it views the board advisory committee as a particularly strong mechanism for enhancing responsiveness, and expects each RTO and ISO

Another potential solution arising from the February 4 Conference is that RTO staff coordinate monthly calls with consumer advocates in order to inform them of the issues that have come up during the month.²⁰ This seems like a reasonable, inexpensive way to keep consumer advocates informed of the RTO's activities and considerations while maintaining the necessary number of meetings required to maintain transparency and conduct business. Perhaps as a regular agenda item on these calls, the RTO could provide highlights for upcoming meetings that may interest consumer advocates. Ultimately, more communication between RTO staff and consumer advocates is a way to solve this problem. At the February 4 Conference Commissioner Moeller asked whether RTO best practices for communication with consumer advocates, especially with regard to the number of meetings, would be helpful.²¹ Most consumer advocates on the panel agreed that it might help. Other practices like holding monthly calls with consumer advocates might surface, as well. EPSC believes it is in the Commission's best interest to develop a list of recommendations for reducing meeting volume and communicating with consumer advocates.

ii. HYBRID BOARD REQUIREMENTS

Independence of the RTO boards is essential. In Order No. 719, the Commission declined to require hybrid boards and similarly declined to *disallow*

to work with its stakeholders to develop the mechanism that best suits its needs." *Order No. 719: Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071, Docket No. RM07-19-000 (October 17, 2008), P. 534.

²⁰ *Comments of PJM Interconnection, LLC to Support the Participation of Andrew L. Ott and Vincent P. Duane in the Panel Discussion at the February 4, 2010 Technical Conference on RTO/ISO Responsiveness*, Docket No. ER09-1048-000 et al. (February 4, 2010), p. 8.

²¹ Statement made during the question and answer session at the end of the first panel. Video available here: <http://capitolconnection.gmu.edu/ferc/ferc.htm>

hybrid boards. Instead, the Commission found that “a one-size-fits-all approach is not appropriate.” To reverse the Commission’s finding here to require hybrid boards would mean granting rehearing of Order No. 719 and may not be procedurally appropriate in this context. In the Order No. 719 rulemaking process, EPSA did not advocate a particular board structure, but agreed with the Commission that “a case-by-case review of each RTO board structure [is] best.”²² This continues to be the case. It is clear from the February 4 Conference that in certain markets, the inclusion of a consumer advocate on the RTO board would compromise the board’s independence. In other areas of the country, market participants have seen fit to propose that a certain percentage of the board be required to have specific prior expertise in consumer advocacy.²³ In this proceeding, the Commission should reaffirm what it found initially in Order No. 2000 and then again in Order No. 719 – that each RTO should be free to construct its board as it and stakeholders deem appropriate, and any review of board structure by FERC should be done on a case-by-case basis.

iii. RTO FUNDING FOR CONSUMER ADVOCATES

Though not extensively discussed at the February 4 conference, the idea of RTO-wide funding for consumer advocates through an RTO tariff charge was mentioned. Stemming first from the NASUCA proposal, a group known as the PJM Consumer Advocates were the most vocal supporters of such a tariff charge. Specifically, the PJM consumer advocates:

²² Order No. 719, P. 537, reaffirming Order No. 2000.

²³ Support for option to have consumer advocates on the board varies even among different consumer advocates and state commissions. See remarks of Ohio Consumers Counsel and the Illinois Commerce Commission.

seek an arrangement parallel to that of state commissions in PJM and Midwest ISO that would provide for reimbursement of travel expenses and assistance from dedicated professional staff who could monitor PJM developments and assist consumer advocates in timely addressing PJM issues that affect retail customers.²⁴

EPSA opposes an RTO-wide tariff charge to fund consumer advocates for several reasons. First and foremost, each state commission has been tasked with protecting and representing consumer interests in their states, and are so funded by their states. Such a tariff charge would be duplicative and unfair to ratepayers who are already represented by and before state commissions. Under the Federal Power Act, RTOs are public utilities independently operating transmission assets, while FERC and state commissions are charged with protecting the public interest. It would be outside of the scope of an RTO's mission to administer and divide among states a tariff charge.

Additionally, NASUCA and other consumer advocates have not explained how this charge will be divided among the consumer advocates in a given RTO, nor how the advocates will justify its use. Each office of consumer advocate is under different jurisdiction, accountable to the retail ratepayers and in most instances the state commissions in their states. Will the consumer advocate then become accountable to the RTO to show that the tariff monies have been put to good use? Will NASUCA take charge of the money and then distribute it to its members? Will state commissions be involved in the disbursement of money? Are the funds to be used for activities related to the RTO stakeholder process, other regional proceedings, or FERC proceedings?

²⁴ *Statement of PJM Consumer Advocates*, Docket No. ER09-1048 et al. (February 4, 2010), p. 2.

Any attempt to assess additional tariff charges to ratepayers should be accompanied by a clear and transparent plan concerning how the money will be spent. Simply stating that consumer advocates need more money is not sufficient justification for such a charge. Additionally, each RTO is so vastly different in size and consumer-base that there is hardly a one-size-fits all approach here. PJM, for example, has a 13-state RTO whereas ISO-NE has six states. Each of those states has separate consumer advocacy offices that are governed and funded by retail rate laws within the state. If consumer advocacy groups within an RTO would like funding through its tariff, they should come up with a specific proposal with clear proposed charges and a plan of how that money will be spent, and then present that proposal to the RTO stakeholder process for consideration, concluding with approval from FERC.

This proceeding concerns RTO responsiveness and governance issues, and there have been several good ideas advanced on how to better involve consumer advocates and state regulatory agencies. Assessing a tariff charge with little proposed structure or concrete examples of how it will benefit consumers would be hasty and potentially very costly.

II. CONCLUSION

EPSA supports the Commission and the RTOs in their efforts to continually improve responsiveness and governance issues. EPSA requests that the Commission clearly reaffirm the scope of this proceeding, and clarify that each RTO should comply with the requirements of Order No. 719 in a manner

that allows for clear and sufficient communications with consumer advocates as well as all stakeholders.

Respectfully submitted,



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March 8, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. March 8, 2010.



Nancy Bagot, VP of Regulatory Affairs