

133 FERC ¶ 61,071  
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.

PJM Interconnection, L.L.C.

Docket Nos. ER09-1063-000  
ER09-1063-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued October 21, 2010)

1. On April 29, 2009, as amended on May 1, 2009, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing addressing the market reform requirements established by the Commission in Order No. 719.<sup>1</sup> In an order issued December 18, 2009, the Commission accepted PJM's compliance filing, subject to conditions, but reserved for judgment in a separate order, PJM'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 December 18 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 PJM'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> *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,250, at P 19 (2009) (December 18 Order).

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

2. For the reasons discussed below, we find that PJM 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 incentive compensation, give appropriate weight to responsiveness to customers and other stakeholders.<sup>7</sup>

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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.

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

## B. PJM's Compliance Filing

6. PJM states that its Board and stakeholder governance policies satisfy Order No. 719's four responsiveness criteria. Specifically, PJM asserts that it has implemented reforms providing stakeholders and customers direct access to the PJM Board, including reforms requiring: (i) the posting, on PJM's website, of any written *ex parte* communications sent to the Board from any stakeholder; (ii) Board member attendance at the PJM annual meeting and Members Committee meetings; (iii) the submission of stakeholder voting reports to the Board, including an allowance permitting the submission of any minority position;<sup>8</sup> (iv) the establishment of the Liaison Committee; and (v) semi-annual meetings held between PJM's Board members and the PJM membership as a whole.<sup>9</sup>

7. PJM further states that, in 2007, it implemented a protocol to allow for stakeholder input into the development of compliance filings that PJM is required to make at the direction of the Commission. PJM states that, pursuant to this protocol, it is required to notify stakeholders within five days of the receipt of the compliance directive if that directive calls for a material modification of PJM rules and the outcome has not been directed with specificity, such as when the order leaves open one or more substantively different option to meet the compliance directive.

8. PJM notes that, while it is not proposing any additional revisions as part of its governance responsiveness compliance filing, its stakeholders are now considering voting reforms applicable to PJM's lower stakeholder committees and working groups.<sup>10</sup> In addition, PJM states that its stakeholders are also considering voting reforms applicable to its Members Committee.<sup>11</sup> PJM states that a new *ad hoc* stakeholder body has been

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<sup>8</sup> PJM notes that a minority report form is being developed and will be posted on its web site to enable stakeholders to identify their minority positions directly to PJM and the board. This form has been posted on PJM's website. *See supra* note 57.

<sup>9</sup> At these meetings, stakeholders and the board participate in panel discussions on topics jointly developed by the board and the Liaison Committee.

<sup>10</sup> PJM's pending stakeholder proceeding is discussed in greater detail, below, in Section III.A of this order.

<sup>11</sup> Specifically, PJM states that transmission and generation owners have proposed a revision to the sector-weighted voting methodology under which an additional counting of the votes cast would be done, weighting votes according to transmission and generation asset ownership. Under this proposal a supermajority would be required

(continued...)

established to consider this proposal, in conjunction with an unaffiliated, third-party consultant, i.e., an independent external facilitator.

9. With respect to the requirement that RTOs and ISOs post their mission statements or organized charters on their websites, PJM states that its website includes both its mission statement and a comprehensive discussion of the various methods employed by PJM and its stakeholders to ensure PJM's responsiveness to its stakeholders and end-users.

10. Finally, with respect to Order No. 719's suggestion that RTOs and ISOs consider ways in which their management policies, including their policies regarding executive compensation, give appropriate weight to their managers' responsiveness to customers and other stakeholders, PJM states that its existing policies reflect this consideration. Specifically, PJM states that all incentive compensation, for which any PJM employee is eligible, is tied to stakeholder responsiveness.

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

11. Notice of PJM's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 21,795 (2009), with interventions, comments, and protests due on or before June 26, 2009.<sup>12</sup> Motions to intervene and notices of intervention were accepted by the Commission in the December 18 Order. On March 8, 2010, the Delaware Municipal Electric Corporation, Inc. (Delaware Cities and Towns) submitted a motion to intervene out-of-time. Given its interests and the absence of undue prejudice or delay, we will grant the unopposed late-filed intervention submitted by the Delaware Cities and Towns.

12. Comments and protests addressing RTO/ISO responsiveness issues were filed by Electricity Consumers Resource Council (ELCON); Constellation Energy (Constellation); Dayton Power and Light Company (Dayton); Electric Power Supply Association (EPSA); PJM Power Providers Group (P3); Office of the Ohio Consumers' Counsel and Maryland Office of People's Counsel (Joint Consumer Counsel); the Portland Cement Association and ArcelorMittal USA, Inc. (Industrial Consumers); the Illinois Commerce Commission (Illinois Commission); and Old Dominion Electric Cooperative, Southern Maryland Electric Cooperative, Inc., PJM Industrial Customer Coalition, District of Columbia Office of the People's Counsel and Public Power Association of New Jersey (ODEC, *et al.*).

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under both vote counts for a motion to pass. The current voting structure requires that a proposal receive a two-thirds sector-weighted majority, i.e., a minimum of 3.335 votes out of 5.00. *See* PJM Operating Agreement at Section 8.4.

<sup>12</sup> *See* May 20, 2009 notice extending comment date.

### **Protests and Comments**

13. 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>13</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 RTOs and ISOs, as necessary, to bring the RTOs and ISOs into compliance with Order No. 719.

14. 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 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 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.

15. Dayton, Constellation, EPSA and P3 raise the issue of whether PJM's existing sector-weighted voting rules satisfy the four responsiveness criteria set forth by the Commission in Order No. 719. Specifically, these intervenors question the existing voting rights accorded to generation and transmission owners.

16. Dayton asserts that, while the vast majority of the investment in, and assets attributable to, PJM are held by these entities (i.e., by approximately twenty companies that, collectively, serve more than 90 percent of PJM's load), there are now hundreds and may soon be thousands of potential voting members participating in PJM's stakeholder processes. Dayton notes, for example, that currently, approximately 60 percent of the

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<sup>13</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).

voting interest in PJM is in the hands of entities that own no substantial investment in generation or transmission facilities, have no responsibility to maintain the reliability and adequacy of the electric system, and do not share the default costs of the PJM members in proportion to their voting interest. Dayton adds that, today, when sector voting is invoked, this 60 percent voting block routinely supports proposals that allocate costs based on load-ratio share such that investor-owned utilities and their customers absorb most of the costs at issue.<sup>14</sup>

17. To address this concern, Dayton proposes retaining sector voting but also establishing a second way in which votes would be counted weighted by investment in transmission and generation assets. Constellation notes that this recommendation and related issues, as noted above, are now being considered by PJM's stakeholders. Constellation and EPSA request that PJM be required to file, for informational purposes, the consultant's report, when prepared, along with any recommendations for reform.<sup>15</sup> P3 asserts that while modifications to the voting protocols are necessary, it has no pre-determined notion of the ultimate steps that should be taken. P3 states a number of options could be taken to address the issue.

18. Intervenors also propose PJM Board changes. The Joint Consumers Counsel and the Illinois Commission propose that the PJM Board conduct open meetings. In addition, the Joint Consumers Counsel proposes that PJM be required to dedicate one seat on its Board for a director having experience in advocating for residential consumer interests. Joint Consumers Counsel also propose that two seats on the PJM Board be reserved for directors with retail electricity consumer advocacy experience, with at least one of those two seats reserved for directors with expertise in advocacy for retail residential electricity consumers. The PJM Industrial Customer Coalition requests that PJM be required to consider, in a stakeholder proceeding, publication of all Board votes on market issues. Industrial Consumers request that PJM be required to establish a standing Board committee to address issues relating to PJM's ultimate consumers.

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<sup>14</sup> Constellation points out that, currently, neither voting block has enough sector-weighted votes to reach the required two-thirds majority, such that PJM and its members frequently find themselves at an impasse, with no clear recommendation to the PJM board and little incentive for further compromise. *See also* P3 comments at 9-10.

<sup>15</sup> EPSA requests that the report identify: (i) all issues raised in the stakeholder process; (ii) the options and/or alternatives considered to rectify or resolve these issues; (iii) a timeline for implementation of any changes that will be proposed, as well as other actions or steps that may be undertaken by PJM; and (iv) the perspective and recommendations of the third party, independent facilitator regarding the process, issues and potential resolutions and outcomes of these issues.

19. Intervenors also request changes to PJM management and the means by which stakeholders are able to participate in PJM governance matters. Joint Consumers Counsel proposes that PJM establish a department, or division, within PJM to promote consumer interests. Additionally, Joint Consumers Counsel requests funding for consumer advocates covering travel to PJM stakeholder meetings and the hiring of consultants.

20. ODEC, *et al.* requests that PJM's mission statement be amended to provide that PJM's mission includes a commitment to be "responsive to customers, other stakeholders and ultimately to the consumers who benefit from and pay for electricity services."<sup>16</sup> ODEC, *et al.* assert that such a revision is consistent with the Commission's statement, in Order No. 719, encouraging RTOs and ISOs to include this language in their mission statements."<sup>17</sup> ODEC, *et al.* note that PJM has included a paraphrased form of this commitment on the governance page of its web site, which states, in part, that "PJM's commitment to responsiveness to its stakeholders and the ultimate electric consumer is underpinned by an effective Stakeholder Process." However, ODEC, *et al.* argues that embedding this in the governance section of PJM's website does not meet the Commission's objective to improve communications between RTOs and ISOs and their stakeholders and the community at large.<sup>18</sup>

21. Finally, the Illinois Commission argues that PJM's business practices and procedures fail to provide entities that are not PJM members, namely state commissions, with methods of meaningful participation and representation. The Illinois Commission requests that PJM be encouraged to meet with state commissions both individually and collectively for the purpose of exploring ways to address states commission's lack of a formal role within PJM's stakeholder and governance processes. The Illinois Commission notes that solutions could include the adoption of a Board advisory committee, similar to that which is currently used by the Midwest ISO, where state commissions have representatives on the Advisory Committee, or placing a state commission representative on PJM's Liaison Committee.

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<sup>16</sup> See also Joint Consumers Counsel protest at 11 (proposing the following italicized text: "[PJM's Vision is to] be the electric industry leader – today and tomorrow –in reliable operations, efficient wholesale markets, [and] infrastructure development *and in considering the needs of an ability to afford these services by the ultimate consumers of electricity.*").

<sup>17</sup> ODEC, *et al.* protest at 24-25, *citing* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 556.

<sup>18</sup> See also protest of the Office of the Ohio Consumers' Counsel and Maryland Office of People's Counsel at 10-12.

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

22. On February 4, 2010, the Commission held a Technical Conference to provide an additional forum for interested parties to discuss issues related to both PJM'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.

23. 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>19</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.

24. 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 PJM are summarized below, as submitted by PJM, PSEG, P3, American Public Power Association (APPA), North Carolina Electric Membership Corporation (North Carolina Coop), ODEC, and the Public Power Association of New Jersey (New Jersey Public Power).

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<sup>19</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.

**A. PJM's Comments**

25. PJM states that it is currently considering further enhancements to its stakeholder and governance processes through a stakeholder forum known as the Governance Assessment Special Team (GAST). PJM states that it expects GAST to make its final recommendations by the end of 2010.

26. With respect to issues raised at the technical conference, PJM states that a committee it has established, the Public Interest and Environmental Organization User Group, is illustrative of the meaningful role afforded to consumer advocates. PJM states that this committee, which is comprised of representatives of consumer advocates, public interest and environmental organizations, meets annually with the PJM Board to discuss public interest and environmental issues. PJM states that it has also implemented a protocol to allow for stakeholder input into the development of compliance filings that PJM is required to make at the direction of the Commission. PJM also states that it provides state public utility commissions located in its footprint funding to assist in participating in PJM's stakeholder processes.

27. PJM also states that it has lowered the cost of participation by providing internet and phone participation in stakeholder meetings. PJM states that it has also funded the participation of consumer advocates in some of PJM's larger special meetings. Finally, PJM states that it coordinates monthly calls with consumer advocates to keep them informed and seek their input. PJM states that the issue of whether its Board meetings should be open has been discussed by PJM's stakeholders, but that no consensus has emerged. PJM states that, currently, its Board meetings are closed. However, PJM states, the semi-annual general session meetings and the PJM annual meeting are open meetings that are held between PJM stakeholders and the PJM Board.

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

28. P3 submits comments generally supportive of PJM's existing governance structure and stakeholder processes. P3 argues that when considering RTO responsiveness issues, the Commission cannot lose sight of the fundamental organizing principle giving rise to RTOs, i.e., their need to be governed and managed on an independent basis. P3 argues that if the system of independent RTOs is to continue strongly as it exists today, RTOs must maintain the confidence of all participants, including the transmission and generation owners who have committed billions of dollars of assets to RTOs.

29. ODEC argues that, while PJM's governance structure and stakeholder processes are fundamentally sound, improvements should be considered regarding the implementation of these processes, including better facilitation by PJM staff, more consistent application of the rules governing the stakeholder process, continued improvement in Board/stakeholder interaction, a clear understanding of the roles and responsibilities of the Board, PJM management and stakeholders, and a clear focus that

PJM's purpose is to provide benefits to the ultimate consumer. ODEC argues, however, that any changes made to PJM's existing processes should be undertaken through PJM's stakeholder forums.

30. New Jersey Public Power states that it is hopeful regarding the work being undertaken by GAST. North Carolina Coop agrees, urging the Commission to give the GAST process sufficient opportunity to complete its work.<sup>20</sup> The North Carolina Coop notes that an important goal of the GAST process will be to provide greater efficiency in the stakeholder process, an objective that should improve the ability of smaller, resource-constrained stakeholders, including consumer advocates, to more meaningfully participate in PJM's stakeholder processes. P3 and the North Carolina Coop assert that the GAST process is also the appropriate forum to consider the sector voting issues, as raised in this proceeding. In addition, P3 argues that the GAST process is the appropriate forum to consider the structure of stakeholder meetings, the transparency of the stakeholder process, and the role of PJM (staff and Board) in that process.

31. APPA adds that the GAST process is expected to generate options addressing each of these issues and is intended to develop a stakeholder consensus, where possible. APPA argues, however, that whether through the GAST process or otherwise, PJM should consider: (i) direct stakeholder access to its Board at frequent intervals with no management "filtering"; (ii) open Board meetings, with agendas made public in advance and opportunity for stakeholder comment on agenda items; (iii) Board member attendance at working group/technical committee meetings when appropriate; (iv) a hybrid board with majority independent members and minority stakeholder members; (v) mandated mission statement modifications to include a specific obligation of PJM to be responsive to stakeholders and end-use customers, to provide reliable electricity service at the lowest reasonable cost to consumers, and to demonstrate that any new market or expansion of a market provides net benefits to consumers;<sup>21</sup> (vi) require as an initial and ongoing function of any process of designing and administering wholesale markets that PJM consider the impacts on end-use consumers both before and after implementation; and (vii) require periodic stakeholder-driven reviews of PJM's

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<sup>20</sup> See also ODEC Comments at 4-5 ("proper implementation of the existing stakeholder process and revisions to that process through an open and inclusive stakeholder process is the best course to addressing stakeholder responsiveness with policy guidance from the Commission.").

<sup>21</sup> See also New Jersey Public Power Comments at 3.

governance process and protocols to assure that its governance processes are structured as appropriate to PJM's changing character and mission.<sup>22</sup>

32. ODEC commends the work of PJM's Liaison Committee, noting that the quality of discussion and comfort of communication between the Committee's participants and the PJM Board has improved with each meeting.<sup>23</sup> APPA generally agrees, but notes that the Liaison Committee provides only periodic and limited contact to the Board and often focuses more on day-to-day operations rather than long-term policy issues.

33. Delaware Cities and Towns argue that PJM should be required to adopt a hybrid board, reserving certain seats for representatives of various segments of the industry, as followed by the Electric Reliability Council of Texas (ERCOT). The Delaware Cities and Towns argue that a hybrid board is appropriate because it ensures that all viewpoints within the industry are considered prior to board action.

34. Finally, PSEG renews the concerns summarized above regarding the asserted deficiencies in PJM's existing sector voting procedures. PSEG argues that adequate weight is not given in the voting process to assets that are directly impacted by the matters being voted on. PSEG asserts that PJM should weight votes based on upon which members have a direct interest in the outcome of a decision. PSEG adds that a bicameral voting process should be adopted, whereby a member's vote is counted both on a *per capita* basis and on an asset ownership basis.

#### **IV. Discussion**

35. For the reasons discussed below, we find that PJM'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 the GAST process and/or in succeeding stakeholder forums.

36. 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,

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<sup>22</sup> New Jersey Public Power supports APPA's recommendations regarding these matters.

<sup>23</sup> See also P3 Comments at 7.

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>24</sup>

37. Before addressing the PJM-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.

38. 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>25</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 PJM, 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.

39. In our analysis, below, we address PJM's compliance with each of the Order No. 719 governance criteria.

**A. Inclusiveness**

40. First, we address whether PJM's governance procedures and stakeholder processes satisfy Order No. 719's inclusiveness requirement. With respect to this criterion, Order

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<sup>24</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), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>25</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 509.

No. 719 found that an RTO's or ISO's practices and procedures must be 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>26</sup>

41. We find that PJM has satisfied Order No. 719's inclusiveness requirement. Specifically, we find that PJM'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 PJM Board. We note, for example, that PJM's Liaison Committee operates as a stakeholder advisory committee to the Board and serves to foster better communications between the Board and PJM's stakeholders. Under PJM's existing practice, it posts *ex parte* communication to the Board on its website. This provides all members and interested persons access to written communications that have been submitted to the Board. In addition, at least two Board members attend each meeting of the PJM Members Committee, which are held approximately seven times each year. At each members committee meeting, a report of the vote is created and presented to the Board for its consideration. The record for each issue considered in the stakeholder process, including any minority positions written by members, is available to the Board.

42. With respect to Industrial Consumers' proposal to modify the eligibility for PJM's end-use sector to include only "true" direct end-use customers and/or their legally authorized representatives, we find that PJM's existing governance procedures sufficiently allow for sector challenge. Under the PJM Operating Agreement, any member may request that PJM review the qualification of another member in the challenging member's sector to participate in that sector, i.e., an intra-sector challenge. Additionally, any group consisting of five members, or more, may challenge the qualifications of any member participating in any other sector, i.e., an inter-sector challenge.

#### **B. Fairness in Balancing Diverse Interests**

43. We next consider whether PJM'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 must ensure that no single stakeholder group can dominate.<sup>27</sup> Order No. 719 explained that this criterion was necessary to ensure that the

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<sup>26</sup> *Id.* P 505.

<sup>27</sup> *Id.* P 507.

RTO or ISO will make well-informed decisions that reflect the full range of competing interests that may be affected.<sup>28</sup>

44. We find that PJM's sector-weighted voting procedures at the senior level committees in PJM (e.g., the Members Committee and the Markets and Reliability Committee) ensure that PJM's practices and procedures for decision making consider and balance the interests of its customers and stakeholders, and ensure that no single stakeholder group can dominate.<sup>29</sup> PJM's stakeholder process permits equal voting rights of 20 percent to each of its five member sectors. Thus, the end use sector, which includes consumer advocates, has the same opportunity to vote on an issue being considered as other sectors in the senior standing committees. Under the sector weighted voting approach, each membership sector (i.e., the electric distributors, the end use customers, the generation owners, the other suppliers, and the transmission owners) has one vote, which is cast in proportion to the number of members voting in favor of the specific issue being considered to the total number of members voting for and against the issue. Such proposal must receive two-thirds sector-weighted vote to be passed (3.335 or higher out of the possible 5.00).

45. In addition, PJM has a protocol that allows for stakeholder input into the development of compliance filings required of PJM by the Commission (the PJM Strawman Proposal for Addressing Compliance Filings).<sup>30</sup> Given that all members may

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* P 507.

<sup>30</sup> The protocol requires, among other things that within five days of receiving a Commission order, PJM will notify members electronically, using the Members Committee's electronic mail distribution list, of the order and the associated compliance directive. If the stakeholder process is not feasible, the protocol may be bypassed, specifically in the case of Commission direction or when there is limited time available for development of the filing. If PJM recommends a stakeholder process the notice will contain: (i) a PJM-recommended stakeholder process including dates/timeline; (ii) a ballot – members vote to undertake the stakeholder process defined by PJM, or alternatively vote that no process is needed; and (iii) a date by which ballots are to be submitted. In proposing a process PJM may designate a working group and/or a Markets and Reliability Committee or Members Committee vote and will allow members to prepare majority and minority position statements. Additionally, PJM will specify a voting mechanism (straw vote; sector vote) and all members are invited to participate. Where a stakeholder process is used that does result in the requisite two-thirds or greater sector weighted outcome, and should membership agree by general acclamation, PJM's filing transmittal will include any and all member-prepared position statements.

participate and have the opportunity to present their views to the membership and, if sector-weighted votes are cast at the Members Committee, to the Board, we find that the protocol satisfies the fairness in balancing diverse interests criterion of Order No. 719.

46. Dayton proposes that sector-weighted voting be retained, but that an additional component be established in which votes would be counted weighted by investment in transmission and generation assets. In contrast, Industrial Consumers argue that PJM's end-use sector be given at least 50 percent of the sector-weighted vote. Regarding the concerns raised, we find that modifications to PJM's existing sector weighted voting structure are not required to satisfy Order No. 719's fairness in balancing diverse interests criterion. We have also found that PJM meets the Order No. 719 requirements to balance diverse interests and therefore modifications to PJM's existing governance structure are not required. However, as discussed below, we encourage stakeholders to continue the GAST process, which will examine alternative voting structures.

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

47. We next consider whether PJM'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>31</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.

48. We find that PJM has satisfied this Order No. 719 requirement. Specifically, we find that PJM's existing governance procedures and stakeholder processes are sufficient to ensure that minority views are considered by the PJM Board during its deliberations. Minority views can be expressed to the Board at the PJM Members Committee meetings, the annual meeting and, as discussed further below, the general session meetings.

49. Additionally, in order to more efficiently present minority positions, a form has been developed which is posted on PJM's website to enable stakeholders to communicate directly to PJM and the Board. The minority position statements will be included with other related documents for review in the Issue Tracking System available on PJM's website.

50. We also note that the Liaison Committee includes representatives from each of the five sectors. Equal representation from each of these sectors ensures that both majority and minority viewpoints will be taken into account by the Board. Each membership

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<sup>31</sup> *Id.* P 508.

sector elects its own representatives to the Liaison Committee. Each year, for at least two of the PJM Board meetings with the Liaison Committee, all of the Board members will be in attendance. Additionally, the PJM Liaison Committee charter provides that the Board will make good faith efforts to have significant attendance at each Liaison Committee meeting.

51. Additionally, PJM's procedures allow stakeholders access to Board members at the general session meetings. PJM holds such meeting semi-annually. The general sessions are a forum in which the stakeholders and the Board participate in panel discussions on topics jointly developed by the Board and the Liaison Committee. Both the Liaison Committee and the general session meetings ensure that the minority views of customers and stakeholders are forwarded, at the same time as the majority views, to the Board during the deliberation process.

52. We also note that, under the PJM Operating Agreement, members are permitted to create user groups, an opportunity to raise minority positions at the highest committee level in PJM's stakeholder process, i.e., before the Members Committee. Specifically, any five or more members sharing a common interest may form a user group to present proposals to the Members Committee for consideration. If the Members Committee does not adopt the user group's proposal, the user group may present the proposal directly to the Board if nine-tenths of the user group supports the proposal.

53. In light of these procedures and processes, we find that implementing various commenters' proposals is not required for PJM to satisfy the representation of minority positions requirement of Order No. 719. For example, Industrial Consumers request that PJM be required to consider, in a stakeholder proceeding, publication of all Board votes on market issues. In addition, Joint Consumers Counsel and the Illinois Commission propose that the PJM Board: (i) conduct open meetings; (ii) be experienced in advocating for residential consumers; (iii) reserve two of its seats for retail electricity consumer advocates; and (iv) establish a standing Board committee to address issues concerning ultimate consumers.<sup>32</sup> Order No. 719, however, does not require these Board changes.<sup>33</sup>

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<sup>32</sup> Industrial Consumers also propose that a standing Board committee be established to address issues relating to ultimate consumers.

<sup>33</sup> We note that PJM states that it would be open to working with its membership to include explicit guidance that would note experience in representing retail consumer interests as one criterion to consider in identifying potential future candidates to Board seats.

54. We also find that Order No. 719 does not require the development of a funding mechanism for consumer advocates, as proposed by Joint Consumers. We note that PJM states it has lowered the cost of participation by providing internet and phone participation for stakeholder meetings. In addition, PJM states that this matter can be raised with its membership and that it has funded the participation of some consumer advocates in some of its larger special meetings, such as its annual meetings and general sessions. PJM further states that it coordinates monthly calls with consumer advocates to keep them informed and seek their input.

55. The Illinois Commission argues that PJM's business practices and procedures fail to provide entities that are not PJM members (namely state commissions) with meaningful participation and representation. We note, however, that under PJM's Operating Agreement, at section 8.2.2 (Regulatory Authorities), the Commission and other federal agencies with regulatory authority over a member, and each state electric regulatory commission with regulatory jurisdiction within the PJM region, are permitted to nominate one representative to serve as an *ex officio* non-voting member on each of the standing committees.<sup>34</sup> As the Commission has noted previously, moreover, the Organization of PJM States, Inc. (OPSI) allows PJM to more effectively and efficiently coordinate with the regulatory commissions within the PJM footprint by providing a conduit for information between the states and the RTO.<sup>35</sup> OPSI has representatives and members attending various PJM meetings, including meetings of the Members Committee, the Planning Committee and the Transmission Expansion Advisory Committee.

#### **D. Ongoing Responsiveness**

56. We next consider whether PJM'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

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<sup>34</sup> Additionally, section 8.2.3 of the PJM Operating Agreement provides that each state consumer advocate may nominate one representative to serve as an *ex officio* member on each of the standing committees. Upon a written request by a state consumer advocate to PJM and a fee, a state consumer advocate may designate a representative to each of the standing committees who will be entitled to vote in the end-use customer sector in senior standing committees (i.e., the Members Committee and Markets and Reliability Committee). Further, the state consumer advocate will have no liability under the Operating Agreement, other than the annual fee.

<sup>35</sup> *PJM Interconnection, L.L.C.*, 113 FERC ¶ 61,292, at P 39 (2005) (Order on Funding Mechanism for Organization of PJM States, Inc.).

consider customer and other stakeholder needs as the architecture or market environment of the RTO or ISO changes.<sup>36</sup>

57. We find that PJM has satisfied Order No. 719's ongoing responsiveness requirement. For the reasons discussed above, PJM's existing business practices and procedures are well-equipped to provide ongoing responsiveness to stakeholders. PJM's Liaison Committee, for example, is a standing stakeholder advisory committee to the Board. The Board will also receive ongoing input from stakeholders through its directors' attendance of the Members Committee. Ongoing responsiveness will also be ensured by the right of stakeholders to participate and provide input into the development of compliance filings and through the ability of stakeholders to participate in annual meetings and general sessions meetings with the Board. In addition, PJM conducts regular customer satisfaction surveys designed to timely measure and assess customer concerns. We agree with PJM these existing processes will permit PJM's Board to continue to consider customer and other stakeholder needs as its architecture and/or market environment changes.

58. We also note PJM's commitment to the GAST process, an ongoing, comprehensive review of stakeholder needs and concerns. We agree with PJM that PJM's commitment and facilitation of this stakeholder forum satisfies the ongoing responsiveness requirement of Order No. 719.

59. ODEC asserts that greater transparency in the budget process would help ensure that the budget supports PJM's goals and the members' annual plan, Order No. 719, however, does not require that changes addressing this concern be addressed here. Nonetheless, we encourage ODEC to use PJM's interactive stakeholder process, including the Finance Committee, to discuss how PJM's budget process supports the goals of PJM's annual plan. At the conclusion of the stakeholder process, we also encourage PJM to provide its recommendation regarding the coordination of the budget and the development of the annual plan, if any, at a Members Committee meeting.

60. 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.

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<sup>36</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 509.

**E. PJM's Mission Statement**

61. Finally, we find that PJM has satisfied Order No. 719's requirement that PJM 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 customers, other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.<sup>37</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.

62. PJM states that its website includes both its mission statement and a comprehensive discussion of the various methods employed by PJM and the stakeholders to ensure PJM's commitment to responsiveness to stakeholders and end-users. PJM explains that at an April 16, 2009 stakeholder meeting, ODEC requested that PJM consider updating its mission statement. However, PJM explains that a stakeholder consensus was not reached on this issue. PJM states that it has closely considered the suggestions and stakeholder discussion, but is not proposing to make the requested changes to its mission statement as part of this compliance filing. Additionally, PJM asserts that the governance discussion on its website explicitly addresses PJM's commitment to stakeholders and end-use customers.

63. Regarding ODEC, *et al.*'s request for revisions to PJM's mission statement, Order No. 719 did not require modifications to RTOs' or ISOs' existing mission statements. PJM posts its mission statement on its website as required by Order No. 719. For this reason, we find PJM to be compliant with the mission statement requirement of Order No. 719.

**The Commission orders:**

PJM'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>37</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281at 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>38</sup> support the utilization of consumer advocate funding mechanisms of the sort currently used by PJM and the Midwest Independent

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<sup>38</sup> Consumers Union, National Consumer Law Center, AARP, Consumer Federation of America, and Public Citizen.

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>39</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. Financial Marketers urge the Commission to actively monitor

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<sup>39</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.

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>40</sup> ITC Companies<sup>41</sup> contend that a hybrid structure will compromise and undermine board independence.<sup>42</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>40</sup> See, e.g., Illinois Commission at 1.

<sup>41</sup> International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

<sup>42</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>43</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>44</sup> Dayton disagrees, stating that such a requirement would be unduly

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<sup>43</sup> See also EPSA at 8.

<sup>44</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>45</sup> Commenters also propose staggering board members' terms.<sup>46</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>47</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>48</sup> The New York Independent System Operator, Inc. (NYISO) states that it has

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<sup>45</sup> See Financial Marketers at 6.

<sup>46</sup> See NASUCA at 19; ELCON at 5.

<sup>47</sup> See Old Dominion at 12-13; Steel Producers at 4; NASUCA at 5; ELCON at 4.

<sup>48</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, and more frequent reporting back to higher level committees; (iii) improving meeting

(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>49</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>50</sup>

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

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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>49</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), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>50</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.

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>51</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>51</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