

**UNITED STATES OF AMERICA
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 Nos.	ER09-1050-000
	)		ER09-1192-000
)		
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

**COMMENTS OF PJM INTERCONNECTION, L.L.C. 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**

I. INTRODUCTION

Thank you for the opportunity to provide these written comments to supplement our oral comments at the Federal Energy Regulatory Commission's ("Commission") February 4, 2010 Technical Conference on RTO/ISO Responsiveness in the above-captioned dockets. Appearing today on behalf of PJM Interconnection, L.L.C. ("PJM") is Andrew Ott, Senior Vice President, Markets who is responsible for executive oversight of the State and Member Services division of PJM which includes facilitation and administration of the stakeholder process, and Vincent P. Duane, Vice President and General Counsel of PJM, who heads the legal function at PJM and is responsible for advocating and defending the organization's interests before the Commission and providing counseling and transactional support to the core business units at PJM. Mr. Duane also serves as counsel and secretary to PJM's independent Board of Managers ("PJM Board"). We will address in this statement how PJM's current stakeholder and governance processes satisfy the Commission's responsiveness requirements and the steps that PJM and its stakeholders are making to improve upon those processes.

II. BACKGROUND

In its Final Rule issued in the *Wholesale Competition in Regions with Organized Electric Markets* rulemaking on October 17, 2008 ("Order 719"), the Commission required, among other things, that independent system operators ("ISOs") and regional transmission organizations ("RTOs") increase the responsiveness of their boards of directors to customers and stakeholders by establishing a process to give customers

and other stakeholders direct access to the board.¹ Therefore, the Commission required that RTO/ISOs submit a compliance filing demonstrating that it has a process in place that already meets this requirement, or that it will adopt such a process.² The Commission further indicated that it would assess the responsiveness of the RTO/ISOs' process using four criteria: (1) inclusiveness; (2) fairness; (3) representation of minority positions; and (4) ongoing responsiveness.³

In its compliance filing submitted on April 29, 2009, and amended on May 1, 2009, PJM advised the Commission that it already has processes in place that ensure that PJM's stakeholders and customers have direct access to the PJM Board, which processes are intended to ensure that the PJM Board is responsive to stakeholder and customer needs, that the PJM Board understands the diverse interests of stakeholders and is therefore able to ensure fairness in balancing these interests, and that minority positions are understood by the PJM Board in addition to the positions that have been favorably voted upon and otherwise approved out of the stakeholder process. PJM noted that the processes included posting ex parte communication to the PJM Board on PJM's Web site, the re-establishment of the Liaison Committee, holding semi-annual General Sessions with PJM Members, Board member attendance at the PJM Annual Meeting and Members Committee meetings, and the submission of voting reports to the PJM Board. PJM concluded that the totality of these various processes, when taken together, satisfy the four criteria established by the Commission.

Nevertheless, PJM and its Members have embarked on a process to consider further enhancements to the stakeholder and governance processes using the Governance Assessment Special Team ("GAST"), which is responsible for conducting an assessment of PJM's governance and stakeholder processes on behalf of PJM Members, identifying their issues of concern, and if determined to be necessary, recommending a plan to address the issues that have been raised or identified.⁴ To assist in the assessment, consultants were engaged to facilitate discussions with the approximately 35 PJM Members who routinely participate in the GAST meetings. The GAST has made a great deal of progress in the first phase of its discussions and, with PJM Member Committee endorsement, has continued a second phase of the effort to explore opportunities to improve the efficiency of the stakeholder process and to potentially address concerns raised by participants concerning voting procedures. PJM expects the GAST to make recommendations to PJM Members by the end of 2010.

In its Notice Providing Agenda for Technical Conference on RTO/ISO Responsiveness issued on January 8, 2010 in these proceedings, the Commission indicated that it would like to explore the concerns and proposals raised by the Special Committee on RTO Governance of the National Association of State Utility Consumer Advocates ("NASUCA") in its June 2009 report entitled *Model Corporate Governance for Regional Transmission Organizations and Independent System Operators* ("NASUCA Report"). In its report, NASUCA asserted that existing RTO/ISO structures prevent effective participation by end-use customers in the decision-making process because it is complicated, time-intensive and because consumers and consumer advocates do not

¹ Order 719 at P 477.

² *Id.*

³ *Id.*

⁴ http://www.pjm.com/committees-and-groups/stakeholder-meetings/stakeholder-groups/gast.aspx?sc_lang=en.

have the necessary resources to “meaningfully monitor and influence the stakeholder process.”⁵

III. REFERENCE TO HISTORY AND PRECEDENT

In implementing the requirements directed by Order No. 719 relating to RTO/ISO responsiveness, the Commission should be mindful of the foundational principles which it developed in establishing RTOs and ISOs in the first instance. A careful and workable balance must be struck between these original principles, whose viability and value continue, and the important objective that RTO/ISOs hear and respond to stakeholder interest and opinion.

The bedrock principle of the RTO/ISO is its independence. In Order No. 888, the Commission required entities like PJM to be “independent of any individual market participant or any one class of participants”⁶ and its governance “should prevent control, and appearance of control, of decision-making by any class of participants.”⁷ Similarly, in Order No. 2000, the Commission stated:

the Commission has required that no one constituency in any group or committee be allowed to dominate the recommendation or decision-making process over objection of the other classes, and that no one class holds veto power over the will of the remaining classes.⁸

In the course of implementing this principle of independence to the circumstances of particular RTO/ISOs, the Commission spoke more explicitly in defining distinct roles for stakeholders and the RTO/ISO boards and managements. For example, in the case of the New York ISO, the Commission stated:

We are concerned that NYISO’s governance structure may allow market participants to exert undue influence over the decision-making process. As we explain below . . . NYISO’s RTO proposal does not meet the minimum requirements of that function because it lacks the requisite Section 205 filing

⁵ NASUCA Report at 2.

⁶ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,730 (1996) (Order No. 888), *order on reh’g*, Order No. 888-A, 62 FR 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *appeal docketed*, *Transmission Access Policy Study Group, et al. v. FERC*, Nos. 97-1715 et al. (D.C. Cir.).

⁷ Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,731.

⁸ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089, 31,232 (1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

authority. . .An RTO must limit the authority of committees of the type NYISO employs to an advisory role, at most.⁹

A consistent finding was made in the case of ISO-New England.

While the structure and operation of ISO-NE, in other respects, satisfies the Commission's independence criteria, Petitioners proposal to retain much of NEPOOL's existing control over ISO-NE is inconsistent with the goals and objectives of Order No. 2000. . .In order for ISO-NE to be truly independent of market participants, it must have sole authority to make changes to Market Rules and any other changes it deems necessary without being required to seek approval from NEPOOL. Under a restructured RTO environment, market participant committees such as NEPOOL should serve a purely advisory role.¹⁰

The Commission's emphasis on independence in the early history of ISO/RTO establishment followed from its commitment to ensure fair and non-discriminatory access to transmission and ancillary services for all users of the system. Few would challenge the operational efficiencies that can be realized only through a centralized dispatch over a large region with a diverse portfolio of supply resources and demand requirements. But this large regional span also brings a complex diversity of interests emphasizing more pointedly the need for the independence of the central market administrator and transmission provider. Only by respecting this independence can we expect the RTO/ISO to reconcile or resolve competing demands from constituents advancing different priorities who are often driven by their business or political environments toward short-term outcomes.

So while PJM continues to support enhancing communication, ensuring accountability, and increasing opportunities for stakeholders to provide input into RTO/ISO decision-making, governance reforms designed to promote these objectives must not lose sight of the founding principles and their supporting rationale that drove the creation of these independent entities in the first instance.

IV. PJM'S RESPONSES TO SPECIFIC QUESTIONS CONCERNING THE STAKEHOLDER PROCESS (Presented by Mr. Ott)

A. Consumers' and Consumer Advocates' Ability to Meaningfully Influence the RTO Stakeholder Process.

The NASUCA Report asserts that retail end-use customers and consumer advocates cannot meaningfully influence the RTO/ISO stakeholder process.¹¹ Specifically, it states that residential customers pay approximately 40% of the cost of operating and administering RTO/ISOs and pay a significant percentage of energy and capacity costs of RTO/ISO markets, but "residential consumers do not necessarily have

⁹ *New York Independent System Operator, Inc.* 96 FERC ¶61,059, 61,187 (2001).

¹⁰ *Bangor Hydro-Electric Company*, 96 FERC ¶61,068, 61,259 (2001).

¹¹ NASUCA Report at 6.

a meaningful voice in determining the ‘fairness’ of their share of costs.”¹² Further, the report provides that even when a particular RTO/ISO’s stakeholder process does provide for representation of residential customer interests, “financial limitations of customer representatives do not necessarily make this a meaningful process.”¹³ The report does not break down NASUCA’s concerns by RTO/ISO region but rather sets forth a model for governance that NASUCA recommends be put in place in the various RTO/ISOs to ensure meaningful retail customer participation. As such, PJM would like to distinguish its current stakeholder process because PJM believes it already addresses these concerns. PJM acknowledges that the real concern for consumer advocates within the PJM footprint seems to be the lack of resources to take advantage of the processes offered in PJM, which is discussed in greater detail below.

PJM actively engages with the consumer advocate offices in its footprint to better understand their specific concerns regarding meaningful participation in the PJM stakeholder and governance processes. Many of the recommendations made in the NASUCA Report are already met with PJM’s current construct. Therefore, while PJM is sympathetic to the challenges consumer advocate offices have in regularly participating in the various committees, PJM believes that it has a robust and comprehensive stakeholder process to allow end-use customers and consumer advocates meaningful input in presenting and discussing matters relevant to the PJM membership, as discussed in detail below. Further, state consumer advocates can have meaningful input in establishing the PJM agenda by nominating a representative to serve as an *ex officio* member of PJM’s standing committees and thereby obtaining the right and entitlement to vote in the committee meetings at which stakeholders approve, reject, present and/or influence the various proposals for which PJM or other stakeholders seek to obtain Commission approval.¹⁴ In fact, based on PJM’s current voting sector definitions and voting results that we have observed, wholesale and retail consumer interests combined appear to represent more than 50% of the voting power in the PJM stakeholder process. Therefore we believe that retail consumers are adequately represented in the stakeholder process.

In addition, the PJM Liaison Committee, the primary advisory committee to the PJM Board, also serves as a resource to consumer advocates through which they can foster better communications between the PJM Board and PJM stakeholders by ensuring that they have “open exchanges and information sharing on topics of relevance to the Members and the Board of Managers to promote timely and adequate communications and informed decisions by the Board of Managers.”¹⁵ This Liaison Committee is comprised of the Chair and Vice Chair of the Members Committee, and three sector elected representatives of each of the five membership sectors. The

¹² *Id.*; see also Protest of the Office of the Ohio Consumers’ Counsel and Maryland Office of People’s Counsel at 4 (“OCC/OPC Protest”).

¹³ NASUCA Report at 6, fn. 7.

¹⁴ See PJM Operating Agreement, Section 8.2.3, which gives state consumer advocates the ability to serve as an *ex officio* member of PJM Standing Committees and vote in the End-Use Customer Sector in Senior Standing Committees, but also provides that state consumer advocates aren’t subject to the same liabilities under the PJM Operating Agreement as other PJM Members.

¹⁵ Liaison Committee Charter, a copy of which may be found at <http://www.pjm.com/committees-and-groups/committees/~media/committees/lc/postings/20090122-lc-charter-revision-1.ashx> posted on PJM.com.

Liaison Committee has met with the PJM Board nine times since it was re-instituted in 2007. The sector representatives may switch (at the sector's discretion) for each meeting with Board. This allows a wide variety of stakeholders to participate in these forums. The process for identification of sector representatives was developed by the PJM Members during development of the Liaison Committee Charter in 2007. PJM's stakeholders seem to be satisfied with their current method of selecting members of the Liaison Committee and PJM Board members because they have not expressed any interest in changing these current structures through the Task Force 719 or GAST stakeholder processes.

The existence and activities of the Liaison Committee assist PJM in satisfying all four criteria for stakeholder responsiveness because the committee's meetings are inclusive in that representatives from each of the five membership sectors are represented on the committee, diverse interests are balanced in that given that each of the five membership sectors are equally represented on the committee this will ensure that no single stakeholder group will dominate the meetings, minority interests may also be represented to the PJM Board in that all PJM Members have the right to have representation on the Liaison Committee through their sector, and because this committee has the ability to address ongoing concerns of PJM Members. Consumer advocates can serve on the Liaison Committee as a member of the End-Use Customer Sector. In fact, some representatives of the consumer advocate interest have been asked to participate on this committee in the past. However, to our knowledge, no consumer advocate has ever done so.

A further example of the meaningful role afforded to consumer advocates is the establishment of the Public Interest and Environmental Organization User Group ("PIEOUG"). The members of the PIEOUG are comprised of representatives of consumer advocates, public interest and environmental organizations who meet separately with the PJM Board on an annual basis to discuss public interest and environmental issues.¹⁶ Additionally, customers and stakeholders have several other additional forums in which they can meaningfully participate in PJM's stakeholder process – through the semi-annual General Session meetings, the Annual Meetings and the Members Committee meetings held by PJM. The General Sessions are held twice per year – at the Annual Meeting and then again in December – specifically for the purpose of giving customers and stakeholders greater access to the PJM Board. They provide stakeholders an opportunity to participate in panel discussions on topics jointly developed by the PJM Board and the Liaison Committee. Customers and stakeholders also have access to, and an opportunity to interact with, the members of the PJM Board at the PJM Annual Meeting and at the seven PJM Members Committee meetings held each year that are attended by at least two PJM Board members. The Members Committee is the most senior committee in PJM's stakeholder process, and having PJM Board members present at each of these meetings provides the full Board (who receive a report from their representative(s) in attendance) an opportunity to hear first-hand the deliberations of the stakeholders. Giving customers and stakeholders opportunities to meet with PJM Board members in person at General Session meetings, Annual Meetings and Members Committee meetings to raise any issues of concern that they may have ensures that stakeholders having minority views have the same access to PJM Board members as stakeholders in the majority. Board responsiveness is not synonymous with preference. Responsiveness means having equal access to the PJM

¹⁶ See <http://www.pjm.com/committees-and-groups/user-groups/pieoug.aspx>.

Board, and in PJM's case, consumer advocates have the same access to the PJM Board as any other stakeholder.

Finally, after each Members Committee meeting, a report of each Members Committee sector-weighted vote, known as a voting report, is created and made available to the PJM 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 PJM Board. The voting report ensures that minority interests are represented because the report informs the PJM Board of the votes taken by sector and any other manner of voting that stakeholders have agreed to, and the PJM Board will presumably use those voting reports to keep itself informed of stakeholder preferences and concerns. Further, to make minority position reporting more streamlined for the stakeholders, PJM developed forms to enable stakeholders to identify their minority positions directly to PJM and the PJM Board. These forms are posted on PJM's Web site at <http://www.pjm.com/committees-and-groups/committees/mc.aspx>.

PJM and its Members have also already 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. This protocol, called the "PJM Strawman Proposal for Addressing Compliance Filings," is posted on the Members Committee web page at <http://www.pjm.com/committees-and-groups/committees/mc.aspx>. This protocol requires that PJM notify its stakeholders within five days of 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 options to meet the compliance directive." The protocol also requires that PJM provide the stakeholders with certain information about the Commission's directive and advise them whether PJM intends to recommend a stakeholder process to gather stakeholder input to the prospective filing. The protocol provides that in the case of specific Commission direction or when there is limited time available for development of the filing, a stakeholder process may not be feasible and the stakeholder process may be bypassed in such case.¹⁷

Based on the foregoing, we believe that end-use customers and consumer advocates are already provided ample opportunity to be heard in the PJM stakeholder process in the same manner as any other stakeholder, financial limitations aside.

B. Consumers and Consumer Advocates Lack of Resources to Meaningfully Monitor the Stakeholder Process.

NASUCA and other commenters argued that end-use customers and consumer advocates do not have the financial wherewithal to meaningfully monitor the activities occurring in RTO/ISOs, and therefore, they recommend the Commission require RTO/ISOs to create funding mechanisms to provide financial resources to consumer advocates to allow them to cover their travel costs to attend PJM meetings, hire experts to assist them in presenting, deliberating, and otherwise participating in RTO/ISO stakeholder processes and in FERC proceedings in support of consumer positions,¹⁸

¹⁷ See PJM Strawman Proposal for Addressing Compliance Filings at PP 1, 2.

¹⁸ NASUCA Report at 9; Motion to Intervene and Protest of Portland Cement Association and Arcelormittal USA, Inc. at 6 ("Portland Protest"); Motion to Intervene of the American Public Power Association at 5-6.

similar to the funding that some RTO/ISOs provide to the state public utility commissions in their footprint.¹⁹

PJM is one of the RTO/ISOs that provide state public utility commissions located in its footprint funding to assist in participating in PJM's stakeholder process and overseeing PJM's operations. The funding is not provided directly to the state public utility commissions, but rather is given to the Organization of PJM States, Inc. ("OPSI") through a rate schedule in the PJM Open Access Transmission Tariff ("PJM Tariff"). This rate schedule, Schedule 9-OPSI, details the process established and approved by PJM's stakeholders, and approved by the Commission, that must be followed to obtain the funding and the manner in which the funding is calculated.²⁰ Because the funding for OPSI is set forth in the PJM Tariff, it is subject to stakeholder approval and revision.

When consumer advocates raised with PJM the issue of PJM providing funding for them similar to that which is provided to OPSI, PJM advised them that under PJM's corporate structure, PJM has no unilateral authority to provide or approve a mechanism for such funding but encouraged them to raise the matter with the PJM membership. We understand that the consumer advocates are further considering how they may proceed on this matter.

We do not question that consumer advocates have limited funding to participate in the PJM stakeholder process and we are sympathetic, and have been responsive, to this issue. We would note here that one of the ways that PJM has tried to assist its stakeholders, consumer advocates or otherwise, to reduce the cost to participate in PJM's stakeholder process is by providing internet and phone participation for every stakeholder meeting to ensure that members with travel budget limitations can meaningfully participate in discussions and are able to vote on all issues brought before the stakeholders. Additionally, PJM has funded the participation of some consumer advocates in some of PJM's larger special meetings such as PJM's Annual Meetings and General Sessions, by providing scholarships to help defray the cost of their attendance. Finally, PJM coordinates monthly calls with the consumer advocates to keep them informed of issues that may be relevant to them that are being discussed in the PJM stakeholder process and/or being filed with the Commission. The monthly calls also offer the consumer advocates a means by which to alert PJM management of any particular concerns they wish to address. As we stated earlier, the PJM stakeholders are currently considering ways to make the stakeholder process more efficient which should reduce the burden of participation for all stakeholders.

C. Complicated and Time Intensive Nature of the RTO Decision Making Process.

Some stakeholders have contended that the RTO/ISO decision-making process is complicated and time intensive, and that most end-use customers and consumer advocates do not have the money or personnel that are necessary to meaningfully monitor and influence the stakeholder process.²¹ The result, they say, is that end-use customers don't have the ability to consistently advocate their interests effectively.²²

¹⁹ NASUCA Report at 9-10.

²⁰ See PJM Tariff, Schedule 9-OPSI.

²¹ OCC/OPC Protest at 5; NASUCA Report at 1-3.

²² OCC/OPC Protest at 5.

They point to the Government Accountability Office's September 2008 report to the Committee on Homeland Security and Governmental Affairs entitled *Electricity Restructuring: FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefit and Performance* in support of this contention, which report indicated that PJM held 330 stakeholder meetings in 2007.

PJM understands the time intensive nature of its stakeholder process because the process also strains PJM's resources in terms of the time its employees have to spend preparing for and attending the same meetings. For this reason, PJM and its stakeholders formed a new *ad hoc* body to address opportunities to enhance the stakeholder process. This new body, the GAST mentioned earlier in these comments, has been meeting since April 3, 2009 to discuss Member concerns related to stakeholder process efficiency and voting procedures. Representatives of a wide variety of stakeholders are participating in the GAST, including member representatives, representatives of state commissions and PJM. As with all PJM stakeholder meetings, internet and phone participation are supported in the GAST meetings. PJM has sought to have the participation of consumer advocates in these discussions to address their concerns with the stakeholder process. However, despite the concerns that consumer advocates have lodged in these proceedings regarding the complicated and time intensive nature of PJM's stakeholder process, by and large they have not, to our knowledge, significantly participated in the GAST discussions to voice their concerns or to suggest improvements to the process.

In 2009, PJM maintained 52 distinct stakeholder forums that collectively held 330 stakeholder meetings. As such, PJM would be the first to acknowledge that its stakeholder process could be improved to provide more efficiency and expediency, perhaps by eliminating certain committees that no longer serve the function for which they were created, to eliminate unnecessary reporting relationships, and/or reduce the number of stakeholder meetings. PJM also understands that the GAST discussions won't "fix" every perceived problem that stakeholders are seeking to correct. Some of the numerous issues currently under discussion in the GAST, which may help to make the stakeholder process less complicated and time consuming, are:

- a. increasing transparency within PJM Member process, and between Members and the PJM Board, 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;
- b. 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;
- c. improving meeting procedures and mechanics (voting procedures, phone participation, etc.) by clarifying existing voting rules and then applying them uniformly across similar levels (e.g., at working group level);
- d. clarifying the roles and responsibilities of PJM Members and staff through a facilitated discussion; and,

- e. creating clearer guidelines for sector placement enforcement based on existing and/or refined sector definitions.

As indicated, this is only a partial list of issues currently being discussed in the GAST. Since PJM Members have not yet voted on what issues, if any, they would like to pursue, we cannot report to the Commission that the issues referenced above will definitively be the issues upon which PJM Members decide to focus. We will continue to work with our stakeholders through the GAST process until we have the final areas of focus and then PJM will work to carry out the membership's desires.

D. RTO Structure and Advisory Committee.

The NASUCA Report further recommends that RTO/ISOs establish an Advisory Committee. It envisions that this committee would provide recommendations and present all issues that are to be presented to the RTO/ISO's board by stakeholders to ensure that there is "proper issue identification and flow, and especially that resource-constrained sectors will have one point in the stakeholder process where it is possible to comment on all developing stakeholder issues."²³ NASUCA further proposes that the Advisory Committee have two standing subcommittees, Grid Reliability and Markets, to streamline issues by minimizing the number of meetings that stakeholders must participate in without sacrificing the importance of the issues being addressed.²⁴ The NASUCA Report also suggests that there be four sectors of stakeholders, each of which has 25% of the voting strength of the Advisory Committee.

Such an Advisory Committee is not necessary to achieve greater stakeholder responsiveness in PJM because PJM's Members Committee is the functional equivalent of the Advisory Committee concept. In PJM, issues associated with market and grid reliability are managed separately through the stakeholder process, at lower level committees then up to the senior level committees. In PJM's stakeholder process, the one point in which it is possible to comment on all stakeholder issues is the Members Committee.

PJM will not presume to pre-empt the work that is already being done by its stakeholders in the GAST discussions with respect to the issue of the voting strength of sectors/Members. However, PJM can advise that its current stakeholder process already permits equal voting rights of 20% to each of its five membership sectors. Therefore, the PJM End-Use Sector, which includes the consumer advocates, has the same ability to influence the vote of any issue being considered by the PJM Membership as the Electric Distributor, Generation Owner, Other Supplier, Transmission Owner sectors in the senior standing committees.

The NASUCA Report recommends that RTO/ISOs include in their corporate structure personnel having "the perspective of the residential consumer advocate," who are accorded "the same support and the same gravity as are accorded other core functions of the RTO," which it acknowledges could require that the RTO/ISO establish a department within the "RTO charged with the responsibility for addressing and furthering the interests of the consumer."²⁵ Portland Cement suggests the same.²⁶ PJM's current

²³ NASUCA Report at 13.

²⁴ *Id.* at 14-15.

²⁵ *Id.* at 8.

corporate structure includes departments with individuals possessing expertise in functional areas. These areas are organized according to disciplines and skill set, not according to constituent interests or the perspectives of particular set of stakeholders.²⁷ In our opinion, it would not be appropriate for PJM to carve out a special interest department dedicated to addressing consumer interests when it does not have comparable arrangements for the other sectors of its membership.

Further, the NASUCA Report asserts that an effective way to get immediate input from the RTO/ISO board of directors on “hot topics” which require the RTO/ISO board’s immediate attention or understanding, “within the existing framework of the RTO structure without formal establishment of new committees” is to have “a special committee . . . established to address high priority issues or special interest issues directly from the Board or the Advisory Committee.”²⁸ NASUCA avers that the meetings with the RTO/ISO boards on these “hot topics” could be regularly scheduled or requested on an as-needed basis.²⁹

In our opinion, the creation of yet another committee would not make PJM’s stakeholder process more effective. Rather, it would increase the complexity of the stakeholder process by adding yet another layer of meetings that would be required to occur before PJM could take any action or submit a filing with the Commission for consideration. PJM believes that its existing stakeholder process ensures that “hot topics” are addressed thoroughly and timely, including through the creation of working groups and task forces, for example. Such a special committee would likely also add to the costs of participation in PJM’s stakeholder process, which is contrary to end-use customer interests. PJM is concerned about maintaining costs because it realizes that electricity price increases are a concern for end-use customers, both retail and otherwise. Adding another committee that is duplicative of an existing committee is not in the best interest of PJM, stakeholders or end-use customers. Moreover, we note that the PJM process already includes the ability for PJM Members and stakeholders to form user groups to deal with issues they have in common such as the previously mentioned PIEOUG formed by the consumer advocates in the PJM footprint.

NASUCA also suggests that the chairperson for each of the RTO/ISO’s three senior committees, Grid Reliability Committee, Markets Committee and Advisory Committee, should be from a different sector of the RTO/ISO’s membership so that no one sector could chair more than one of the three senior committees at a given time.³⁰ It further suggests that the vice chairperson of one of the three senior committees must be from a sector different from that of that committee’s chairperson.³¹ PJM’s existing structure already allows for appropriate representation at the chair and vice chair position of its Members Committee. The chair and vice chair positions are assigned for an annual term and rotate through the five sectors such that each sector, including the End-User Sector, will serve as the chair and vice-chair of that senior level committee for

²⁶ Portland Protest at 9.

²⁷ Within one such function, Member Services, PJM has on staff an employee dedicated to liaison with the consumer advocates and public interest groups. This individual reports directly to PJM’s Executive Director of State and Member Services.

²⁸ NASUCA Report at 14.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

one year every five years. This process also provides that the vice chair in one year succeeds to the chair the following year which ensures the chair and vice chair are from different sectors.

PJM employees currently chair all of lower level stakeholder committees and the senior level Markets and Reliability Committee. In the ongoing GAST discussions, PJM Members have expressed a preference that PJM staff continue to chair these committees to provide independent facilitation of the stakeholder discussions.

V. PJM'S RESPONSES TO SPECIFIC QUESTIONS CONCERNING BOARD/STAKEHOLDER INTERACTION (Presented by Mr. Duane)

A. Open RTO/ISO Governing Board Meetings.

The OCC/OPC Protest and the NASUCA Report both argue that RTO/ISO board meetings should be open and public.³² The OCC/OPC Protest points to the open board meetings held by the Midwest Independent Transmission System Operator ("MISO") as an example.³³ This issue is one that PJM and its stakeholders have been discussing for some time. In fact, PJM's Governance Working Group was considering the issue of the appropriateness of open PJM Board meetings as far back as June of 2007, but tabled its discussions for future consideration.³⁴ No action was taken on the issue because there was no consensus on a specific proposal.

At the present time, the meetings of the PJM Board are not open to the general PJM membership, PJM employees or any other stakeholders or interest groups. Rather, the PJM Board meetings are privately held, consistent with *Roberts Rules of Order*, which provides that: "In most organizations . . . by practice or sometimes by rule, membership meetings are open to the public, but board or committee meetings are customarily held in executive session. In the latter case, members of the organization who are not members of the board or committee, and sometimes nonmembers, may be invited to attend, perhaps to give a report, but they are not *entitled* to attend."³⁵

Notwithstanding the foregoing, the semi-annual General Session meetings and the PJM Annual Meeting previously discussed are open meetings that are held between PJM stakeholders and the PJM Board. The Liaison Committee meetings should also be considered open meetings as well because while only members of the committee may attend the meetings in person, all stakeholders can listen to the proceedings of the Liaison Committee by teleconference.

B. Consumer Expertise on the RTO/ISO Governing Board

NASUCA avers that "in evaluating what fair electricity prices are for the RTO, it is essential that the Board include members who have real expertise and experience in

³² OCC/OPC Protest at 4; NASUCA Report at 5.

³³ OCC/OPC Protest at 4.

³⁴ See <http://www.pjm.com/~media/committees-groups/working-groups/gwg/20080724/20080724-item-04-parking-lot.ashx>.

³⁵ RONR (10th ed.), p. 92-93, l. 34-7.

representing consumers.”³⁶ NASUCA also states: “All stakeholders, and the RTO, would benefit from Board members with expertise in residential consumer issues, thus permitting the Board to consider the residential consumer perspectives independently as well as through the Advisory Committee process.”³⁷ Similarly, the Office of the Ohio Consumers’ Counsel and Maryland Office of People’s Counsel assert that because PJM Board members “are not required, nor do they have, experience in advocating for residential consumer interests . . . this perspective is not adequately represented on the Board.”³⁸

PJM agrees that for RTO/ISO boards to be competent and effective they should be comprised of individuals who have functional expertise in certain disciplines generally relevant to electric utilities. Fortunately, PJM does not have to make any changes to its current governance process to address this issue because Section 7.2 the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“PJM Operating Agreement”) requires specific functional expertise for individuals who serve on the PJM Board: “Of the nine Board Members, four shall have expertise and experience in the areas of corporate leadership at the senior management or board of directors level, or in the professional disciplines of finance or accounting, engineering, or utility laws and regulation, one shall have expertise and experience in the operation or concerns of transmission dependent utilities, one shall have expertise and experience in the operation or planning of transmissions systems, and one shall have expertise and experience in the area of commercial markets and trading and associated risk management.”³⁹ Presumably, a former consumer advocate or other individual having experience representing electric utility consumers could meet the functional requirements to qualify to serve on the PJM Board as an individual having the requisite finance, accounting, utility law and/or utility regulation experience.

In that regard, in PJM, the process to serve on the PJM Board is delineated in the PJM Operating Agreement. Pursuant to this process, the PJM Membership Committee elects one representative from each of the five sectors of the Members Committee to serve on a Nominating Committee.⁴⁰ Additionally, three voting members of the PJM Board (i.e. any board member other than the President of PJM) serve on the Nominating Committee as well.⁴¹ This Nominating Committee is responsible for determining whether to obtain the services of a consultant to propose nominees with the requisite background and experience to fill vacancies on the PJM Board, due to the expiration of a current board member’s term of office or the resignation of a board member, or whether to nominate a current member of the PJM Board whose term is expiring and who wants to serve an additional term, without having to retain a consultant.⁴² After the Nominating Committee has made these determinations and settled on a list of nominees to serve on the PJM Board, it must present the list of nominees to the PJM Members Committee for consideration. The PJM Members Committee elects the nine voting members of the PJM Board.⁴³

³⁶ NASUCA Report at 7; *see also* OCC/OPC Protest at 9.

³⁷ NASUCA Report at 3.

³⁸ OCC/OPC Protest at 8.

³⁹ PJM Operating Agreement, Section 7.2.

⁴⁰ *Id.* at Section 7.1.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

Based on the foregoing, former consumer advocates or individuals with experience representing industrial or commercial retail interests can be nominated to serve on the PJM Board pursuant to PJM's existing structure. In addition, consumer advocates currently have the ability to influence who serves on the PJM Board. As a member of the End-Use Customer Sector, consumer advocates can seek to be elected to serve on the Nominating Committee that recommends individuals for board service. If they don't desire to serve on the Nominating Committee, they can also make their recommendations known to their sector representative on the Nominating Committee. Therefore, PJM believes that its current governing documents already allow for service on the PJM Board of individuals having the type of expertise and experience that consumer advocates seek. However, PJM would be open to working with its membership to include explicit guidance in the search process that would note experience representing retail consumer interests as one criterion to consider in identifying potential future candidates for Board seats.

The Office of the Ohio Consumers' Counsel and Maryland Office of People's Counsel also assert that: "While retail consumer interests have the theoretical opportunity of participating at PJM, the opportunity does not assure that their interests will be heard at any or all levels of PJM's governance, which is paramount and required for a more efficient and equitable operating structure."⁴⁴ Therefore, they propose, among other things, that there be "[t]wo seats on the PJM Board (or about 20% of the Board) for members with retail electricity consumer advocacy experience, at least one of which must have expertise in advocacy for retail residential electricity consumers. Two members would provide sufficient representation to avoid marginalizing the perspective and contributions of these members."⁴⁵

PJM is highly conscious that decisions made by RTO/ISOs and their stakeholders can affect the rates charged to retail end-use customers. At the same time, we should appreciate that RTO/ISOs are wholesale environments, and that state retail regulation and energy policy play an important role in the price of electricity to the ultimate consumer. RTO/ISOs fully understand that the competitive markets they administer must return a value proposition to the load serving customers participating in these markets. This interest is well represented today in PJM's stakeholder process and is one to which the PJM Board is continually attentive.

Finally, no particular stakeholder interest is afforded presently a designated seat on the PJM Board. Should PJM designate a seat on the PJM Board to individuals having retail electricity consumer advocacy experience, then generators, transmission owners, financial traders and the like would be disadvantaged without the same representation on the board. More basically, this model of governance has already been rejected by this Commission as inconsistent with Order No. 2000 and its effectuating regulations that specifically provide an RTO "must have a decision making process that is independent of control by any market participant or class of participants."⁴⁶ The place for interest group representation is at the stakeholder level, in the sectors, working groups, task forces and standing committees, not at the PJM Board level.

⁴⁴ OCC/OPC Protest at 8.

⁴⁵ *Id.* at 9.

⁴⁶ 18 C.F.R. Section 35.34(j)(1)(ii).

C. Board Standing Committees

The Office of the Ohio Consumers' Counsel and Maryland Office of People's Counsel contend that the PJM Board should have a standing committee to address retail consumers' concerns.⁴⁷ Portland Cement believes the PJM Board "should have a committee that is dedicated to understanding the impact of RTO actions on end use customers."⁴⁸ For the reasons stated immediately above, PJM does not agree that the PJM Board should have a standing committee to address retail consumers' concerns.

VI. CLARIFYING INDEPENDENCE AND RTO STAKEHOLDER RESPONSIVENESS

Today's technical conference provides the Commission an opportunity to begin a process that would clarify the appropriate balance and interrelationship between RTO/ISO independence and responsiveness. PJM believes the two principles are distinct but not mutually exclusive. This is true, however, only if responsiveness is properly regarded as speaking to due process concepts, such as the opportunity to be heard and participate, the RTO/ISO's obligation to account for and explain its actions, and a process to engage with and challenge the RTO/ISO that is fair and open to all competing interests. PJM is concerned, however, that some might regard responsiveness not generally as a procedural concept, but one measured by comparing how closely and how often RTO/ISO decision-making conforms to the particular interests advocated by a constituent group. Answering this question will inform the other more specific issues being addressed at today's technical conference.

If the Commission can bring clarity in this area, it would hold the promise of assisting in the reform of what is today for all stakeholders admittedly a complicated, time intensive and costly RTO stakeholder process. By way of example, it is unclear how far RTO/ISOs need to engage in compromise and discussion in an effort to reach consensus in order to satisfy the obligation of stakeholder responsiveness? Despite the obvious merit in working to reach greater consensus, if governance is structured in a manner that overemphasizes this objective, the stakeholder process will become unduly lethargic, costly and ultimately ineffective. In fact, many would voice this comment today in regards to RTO/ISO decision-making.

Notwithstanding the results of the PJM stakeholder process, each stakeholder has the right to file comments and protests on RTO/ISO's filings with the Commission. At times, stakeholders have been frustrated that significant time and effort is expended to achieve general consensus within the PJM stakeholder process, only to have the effort repeated in response to protests filed with the Commission to the compromise proposal that emerged from the RTO/ISO's decision-making process. In some cases it would be more efficient and would reduce expenses for all stakeholders if RTO/ISO Boards and management were more clearly empowered to acknowledge earlier in the process the impossibility in obtaining stakeholder consensus for certain issues. These matters would then be presented to the Commission for resolution. Commission guidance on the importance of stakeholder consensus and the tradeoff between consensus building and efficiency in both the RTO/ISO stakeholder process and the FERC filing process would be helpful. This proceeding could begin to provide RTOs/ISOs greater clarity on

⁴⁷ OCC/OPC Protest at 9.

⁴⁸ Portland Protest at 7.

when their need to act independently and objectively must defer to their obligations to be responsive to stakeholder interest and vice versa.

Thank you, on behalf of PJM, for the opportunity to share these comments today with the Commission.