

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

ISO New England Inc. and)
New England Power Pool) **Docket No. ER09-1051-000**

**STATEMENT OF JED M. NOSAL TO SUPPORT ORAL TESTIMONY
PRESENTED AT THE FEBRUARY 4, 2010 TECHNICAL CONFERENCE
REGARDING RTO RESPONSIVENESS**

Good afternoon. My name is Jed M. Nosal. I am an Assistant Attorney General in the Office of the Massachusetts Attorney General Martha Coakley (“Massachusetts Attorney General”). I am the Chief of the Massachusetts Attorney General’s Office of Ratepayer Advocacy. By statute, the Massachusetts Attorney General intervenes on behalf of Massachusetts electricity ratepayers in proceedings before federal energy agencies, the Massachusetts Department of Public Utilities, and state and federal courts. I greatly appreciate the opportunity to participate in this important discussion on RTO responsiveness.

The Massachusetts Attorney General represents ratepayer interests by pursuing priorities that strive for safe and reliable service, and just and reasonable rates. Consistent with these priorities, the Massachusetts Attorney General supports energy policies that put the interests of customers first, minimize rate impacts, and ensure long-term, tangible benefits for ratepayers.

As the Commission is aware, ISO New England (“ISO-NE”) and the New England Power Pool (“NEPOOL”) make many of the most important decisions concerning New England’s electricity system. Thus, last March, the Massachusetts Attorney General became a voting member of NEPOOL in order to engage in and

influence the stakeholder process before matters reach the Commission. We fully appreciate how difficult it is to continually provide effective input in the ISO-NE/NEPOOL stakeholder process. The Massachusetts Attorney General is more fortunate than many to have some resources to staff and participate in most of the major NEPOOL Committees. A year into our voting member status, we have achieved tangible benefits for Massachusetts customers, a diminished need to litigate issues before the Commission, and a better understanding of the long-term needs of our region. Likewise, we have experienced some disappointments and have first-hand knowledge of the resources necessary not just to attend stakeholder meetings, but to be an informed and productive contributor to the process. For most consumers, however, the stakeholder process remains too complicated and too time consuming. They just cannot devote the resources necessary under the current system.

There is no doubt that the companies in the energy industry—whose bottom line is directly affected by ISO-NE and NEPOOL’s decisions—can afford to meaningfully affect the process; and, they do so very effectively. Many of ISO-NE/NEPOOL’s decisions indirectly affect end users; however, it is impractical to think that end users or their advocacy organizations can devote the same amount of resources to effectively monitor and influence the stakeholder process.

The Commission, recognizing these barriers, issued Order No. 719. The Order sought to address the inequality by requiring each RTO or ISO to provide customers and other stakeholders with direct access to the ISO-NE board of directors (“Board”), and thereby to increase the Board’s responsiveness to these entities. Furthermore, Order No. 719 encouraged each RTO to include in its mission statement the organization’s purpose,

guiding principles, commitment to responsiveness to customers and other stakeholders, and *ultimately to the consumers who benefit from and pay for electricity services.*

In response to Order No. 719's directive to examine ISO-NE's RTO Responsiveness, ISO-NE and NEPOOL initiated a comprehensive stakeholder process designed to improve responsiveness in compliance with Order No. 719. ISO-NE and NEPOOL formed a working group that was open to all interested stakeholders. The Massachusetts Attorney General's Office served as one of the four chairs of the working group representing the interests of New England's state consumer advocates.

Through the working group, the Massachusetts Attorney General outlined several concerns regarding ISO-NE's responsiveness and, working with other participants, offered solutions to the working group. Our concerns centered on the fact that end-use consumers are not able to consistently provide effective input about their interests, because the ISO-NE/NEPOOL decision-making process is complicated and extremely time-intensive. Additionally, we noted that most consumers and their advocates lack the resources required to meaningfully monitor and participate in the stakeholder process. The lack of adequate ratepayer involvement in the ISO-NE/NEPOOL stakeholder process could lead to decisions that are not in the best interests of end-use consumers.

As such, the Massachusetts Attorney General offered and supported several initiatives designed to address specific consumer concerns about the existing ISO-NE/NEPOOL stakeholder process. First, the Massachusetts Attorney General, along with the other state consumer advocates, expressed concerns over our difficulties in directly engaging ISO-NE staff compared with other participant groups. For instance, ISO-NE issues monthly memoranda to the New England Conference of Public Utility

Commissioners (“NECPUC”) representatives detailing current issues before ISO-NE and the NEPOOL technical committees. ISO-NE also holds monthly conference calls with NECPUC representatives to discuss issues in the memoranda, along with any other concerns that may arise. Thus, we advocated that state consumer advocates should receive similar treatment as NECPUC.

Second, ISO-NE’s stated “Objectives” did not require ISO-NE to assess the costs initiatives would impose on ratepayers prior to the initiatives’ adoption. Accordingly, the Massachusetts Attorney General, along with other state consumer advocates, requested that ISO-NE incorporate a cost concept into its mission statement, as well a commitment to provide economic analysis of ISO-NE initiated tariff changes and alternatives proposed by regional stakeholders.

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

Fourth, the Massachusetts Attorney General and others expressed concerns that the state consumer advocates and individual consumers lacked the necessary resources and expertise to meaningfully participate in the ISO-NE/NEPOOL stakeholder process.

Therefore, the Massachusetts Attorney General requested that ISO-NE designate a consumer liaison representative within the organization that would regularly interact with consumer advocates and individual consumers, explain current ISO-NE initiatives, and field consumer concerns to be addressed with ISO-NE Staff and Board.

Finally, the Massachusetts Attorney General recommended that ISO-NE open its Board meetings to the public as the California ISO, Midwest ISO and ERCOT have done. Open or public meetings would eliminate any actual or perceived secrecy surrounding the Board's decision-making process, increase stakeholder involvement, and ensure that Board members are accountable and ultimately responsive to the region's needs.

As a result of the working group process, the stakeholders agreed to a set of compromises to address ratepayer concerns. Some of the proposals put forth by the Massachusetts Attorney General, namely requiring two Board members to possess consumer advocate experience and making Board meetings open to the public, met considerable resistance from ISO-NE and other NEPOOL participants. However, overall, the Working Group was open to consumer concerns and the Massachusetts Attorney General's proposed solutions. All of the participating parties put forth significant effort to reach a set of mutually-agreeable compromises to sufficiently address consumer concerns. ISO-NE has stated that it would implement these compromises immediately, rather than postponing implementation until after Commission approval.

First, ISO-NE agreed to treat the state consumer advocates and NECPUC equally by preparing monthly memoranda for monthly conference calls with state consumer advocate representatives. ISO-NE has met these obligations every month since its compliance filing in this docket. These calls have helped keep all six state consumer

advocate offices current on regional issues and allowed them to present ratepayer concerns directly to ISO-NE. Additionally, ISO-NE proposed a meeting between the Board and the highest level state consumer advocate officials. While scheduling conflicts have prevented this meeting to date, we look forward to getting the Board and the state consumer advocates together in the near future. Similar to the structure of the Board's meetings with state utility commissioners, each state consumer advocate should have the opportunity to discuss regional issues of customer concern directly with the Board. Moreover, we expect the ISO-NE Board to schedule these meetings regularly, at least as often as the Board meets with the region's state public utility commissioners.

Second, ISO-NE revised its mission statement, committing it to strive for cost-effectiveness and to provide information on proposed initiatives that will allow stakeholders to evaluate the implications of ISO-NE's activities. ISO-NE's revised mission statement will require it to provide "quantitative and qualitative information" on cost impacts for proposed initiatives. On numerous occasions, the state consumer advocate offices, as well as other NEPOOL stakeholders, have requested that ISO-NE provide NEPOOL with quantitative and qualitative impact analyses for certain initiatives in accordance with the revised mission statement. The institutionalization of this change to the mission statement remains a work-in-progress as our requests to date have resulted in only mixed success. In the instances where ISO-NE has provided the requested analyses, we have found the analyses to be informative. We expect ISO-NE to provide quantitative and qualitative information as a matter of routine, and not merely when convenient, even in the face of increasing regulatory and stakeholder demands. Most importantly, ISO-NE must provide cost impact analyses not only of its proposals, but also

analyses of reasonable alternatives offered by NEPOOL participants. As we all agree, such information is vital to effectively evaluating the cost-effectiveness of regional initiatives.

Additionally, ISO-NE revised its mission statement committing it to “strive to perform all its functions and services in a cost-effective manner, for the benefit of all those served by the ISO.” Several participants did not feel that this cost-effectiveness language went far enough. Instead, these participants advocated for a mission statement revision that would require ISO-NE to provide reliable service at the “lowest reasonable cost to consumers.” ISO-NE adamantly opposed this alternative because such a change would, in ISO-NE’s estimation, replace its function as an operator of the regional markets with a regulatory role that would require it to weigh alternatives to meet the region’s needs, a role that properly belongs to the region’s stakeholders and to the Commission in its independent judgment. The Massachusetts Attorney General supports the principle that ISO-NE should provide reliable service at the lowest reasonable cost over the long-term. Ultimately, however, the Massachusetts Attorney General supported the inclusion of the “cost-effectiveness” language, because, at a minimum, it obligates ISO-NE to consider cost implications in the performance of its duties. In an effort to reach a mutually-agreeable compromise, the Massachusetts Attorney General supported the alternative that ISO-NE eventually adopted.

Third, in response to our concerns about Board transparency, ISO-NE and NEPOOL agreed to post Board Committee meeting agendas, to clarify that any stakeholder can submit written comments for the Board’s consideration, and to enhance the CEO’s reports of Board and Committee actions in his monthly reports to the

NEPOOL Participants Committee. The Board Chairman also issued a memorandum to the working group committing the Board to work with the Joint Nominating Committee to ensure that the Board always retains consumer advocacy experience. Consistent with its right to submit written comments for the Board's direct consideration, the Massachusetts Attorney General sent a letter to the Board concerning ISO-NE's 2010 operating budget. The Board provided a timely response.

Finally, in an effort to address the fact that consumers lack the resources necessary to meaningfully participate in the stakeholder process, the working group formed a "Consumer Liaison Group" ("CLG"). The newly-formed CLG has established quarterly meetings and has already convened on four occasions to date. In what could be the working group's most successful compromise, ISO-NE has provided the CLG with information on requested topics. With this information, customers have provided informed input on various ISO-NE initiatives. For example, at the December 2009 meeting, which Commissioner Phillip Moeller attended, customers contributed to a lively exchange on topics varying from renewable energy development to escalating regional transmission costs. From my perspective, the CLG has been very productive. We look forward to developing the CLG's role as a contributor that shapes regional energy policy.

While ISO-NE did not incorporate all of the proposals that we presented to the working group, our Office was encouraged by the overall success of this stakeholder process. We also were encouraged by ISO-NE's commitment to improve its responsiveness to consumer concerns. But, the agreement on the initiatives presented in ISO-NE's Compliance Filing only represents a first step.

Over the last several months, ISO-NE, the Massachusetts Attorney General, state consumer advocates, and individual consumers have worked together to ensure that the Order No. 719 compromises achieve the desired outcome. However, if we ultimately find that ISO-NE has not committed to making these initiatives work to the benefit of ratepayers, the Massachusetts Attorney General plans to pursue more substantial changes. For example, the Massachusetts Attorney General will advocate for public board meetings, published board meeting minutes, and mandatory consumer advocate experience for board members. If the Commission approves ISO-NE's Compliance Filing, we respectfully request that it also require ISO-NE to file a report in one year to update the Commission on the progress of these initiatives and permit stakeholders to submit comments.

Thank you for the opportunity to participate in this important discussion today. I look forward to your questions.

Respectfully submitted,

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ATTORNEY GENERAL**

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