

133 FERC ¶ 61,067
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.

California Independent System
Operator Corporation

Docket No. ER09-1048-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued October 21, 2010)

1. On April 28, 2009, the California Independent System Operator Corporation (CAISO) submitted a compliance filing addressing the market reform requirements established by the Commission in Order No. 719.¹ In an order issued November 19, 2009, the Commission accepted CAISO's compliance filing, subject to conditions, but reserved for judgment in a separate order, CAISO'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.² The November 19 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 CAISO's compliance with Order No. 719 to follow.³

¹ *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 No. 719-A), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

² *California Independent System Operator Corp.*, 129 FERC ¶ 61,157, at P 14 (2009) (November 19 Order), *order on reh'g*, 131 FERC ¶ 61,110 (2010).

³ The Technical Conference was held February 4, 2010.

2. For the reasons discussed below, we find that CAISO 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.⁴ 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.⁵

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.⁶ Finally, Order No. 719 encouraged, but did not require, that RTOs and ISOs ensure that management programs, including executive

⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 477.

⁵ *Id.* P 502.

⁶ *Id.* P 556.

incentive compensation, give appropriate weight to responsiveness to customers and other stakeholders.⁷

B. CAISO's Compliance Filing

6. CAISO states that it satisfies Order No. 719's directives relating to stakeholder responsiveness. First, CAISO asserts that its Board makes its decisions at publicly noticed, open meetings in which any stakeholder or other interested party can address the Board directly. CAISO claims that this practice alone ensures inclusiveness as defined in Order No. 719. CAISO states that meetings of the CAISO Board are open to the public and allow stakeholders the opportunity to directly engage the Board on individual decision items, providing stakeholders the ability to directly rebut CAISO management before the Board.

7. CAISO states that in addition to providing direct access to the Board, CAISO also employs a transparent and well-organized stakeholder process to ensure consideration of stakeholder views prior to consideration by the Board. CAISO states that these views are routinely provided to the Board with Board decisional items, and letters from stakeholders to Board members are included in the meeting materials. CAISO states that the steps in the stakeholder process are outlined on CAISO's website such that stakeholders know at all times where a particular stakeholder process stands, including the entire written record of each stakeholder process. CAISO states that there are multiple opportunities for stakeholder input during the course of a stakeholder process, including opportunity to comment on all issue papers, subsequent straw proposals, and after the final draft proposal.

8. CAISO states that it plans to improve this process going forward. CAISO explains that the Stakeholders and Industry Affairs group – a formal group that manages a centralized stakeholder process, developed at the direction of and with the approval of the CAISO Board – will be working toward formalizing the method for communicating stakeholder feedback to the Board. CAISO notes that before adopting any particular rule, the Stakeholders and Industry Affairs group plans to seek stakeholder feedback regarding the appropriate mechanism.

9. CAISO states that its open, public Board meetings ensure fairness among participants. CAISO also notes that its Board is independent, as its members are appointed by the State Governor and confirmed by the state senate, by law. Stakeholders have input on Board member selections via a diverse review process that makes recommendations to the Governor. CAISO states that this assures diverse stakeholder

⁷ *Id.* P 561.

involvement in vetting qualified candidates for the Board while preserving the Board's independence and quality through the selection of candidates vetted through the Governor's appointments office and reviewed by the senate in public hearings for their confirmation.

10. CAISO states that the stakeholder process also facilitates fairness by being open to all stakeholders, regardless of classification. CAISO notes that comments from all stakeholders are processed in the same manner. CAISO also states that it assigns a staff member to facilitate stakeholder meetings who is not affiliated with the project being discussed, tasking that person with the objective of making the meeting balanced, ensuring that all views are heard and no one is cut off, including participants by phone.

11. CAISO states that the Board acts as an independent backstop to ensure that no group of stakeholders has undue influence over the decisions that stem from the stakeholder process. CAISO notes that the Board has taken action over the strong objection of major market sectors in the past, highlighting the Board's ability to act as a check on the stakeholder process in ensuring fairness.

12. CAISO states that the same practices and procedures that provide inclusiveness and fairness in balancing diverse interests, as described above, also ensure that the Board is fully informed of minority views. CAISO states that it is not aware of any circumstances in recent years in which minority stakeholder views that were expressed during the stakeholder process have not been presented to the Board. CAISO also notes that the Board has altered its decisions at times to specifically accommodate minority interests, including in July 2008 when the Board altered its motion language regarding its decision on uneconomic adjustment to specifically ensure legal and appropriate protections for existing transmission contracts, based on concerns raised by the California Department of Water Resources. CAISO also notes that stakeholders that wish to elaborate on their own positions typically submit letters or make presentations to the Board.

13. CAISO states that it has mechanisms in place to ensure ongoing responsiveness to stakeholders. CAISO notes, for example, that it has an annual customer survey on stakeholder processes that allows participants to assess and provide feedback on the performance and effectiveness of the stakeholder process, Board, and customer service. CAISO also conducts periodic targeted surveys of participants regarding specific initiatives. CAISO also notes that the Stakeholders and Industry Affairs group is dedicated to the continuous improvement of the stakeholder process, establishing goals each year. CAISO further claims that its customer service staff is accountable through their individual performance plans, and that the compensation of every CAISO employee depends to some degree on responsiveness to customers and other stakeholders.

14. Finally, CAISO states that it has posted on its website a wide range of information addressing its corporate objectives and plans, including a mission statement, as required by Order No. 719.

II. Notice of Filing and Responsive Pleadings

15. Notice of CAISO's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 21,795 (2009), with interventions, comments, and protests due on or before May 26, 2009. Motions to intervene and notices of intervention were accepted by the Commission in the November 19 Order. Comments and protests addressing RTO/ISO responsiveness issues were filed by Western Power Trading Forum (WPTF), Modesto Irrigation District (Modesto), Electricity Consumers Resource Council (ELCON), Wal-Mart Stores Inc. (Wal-Mart), Transmission Agency of Northern California (TANC), and the Portland Cement Association and ArcelorMittal USA, Inc. (Industrial Consumers). On June 10, 2009 and June 18, 2009, respectively, CAISO and WPTF submitted answers.⁸

A. Protests and Comments

16. Comments generally supportive of CAISO's filing were submitted by Wal-Mart. Wal-Mart notes that it has worked effectively with CAISO in the development of CAISO's existing stakeholder procedures.

17. ELCON asserts that the ISO/RTO 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.⁹ ELCON states that ISO/RTO 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 ISO/RTO stakeholder processes are flawed, the Commission should conduct

⁸ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the answers submitted by CAISO and WPTF because they have provided information that assisted us in our decision-making process.

⁹ See U.S. Government Accountability Office, *Electricity Restructuring – FERC Could Take Additional Steps to Analyze Regional Transmission Organization's Benefits and Performance* (Sept. 2008).

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

18. 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 a 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.

19. TANC argues that too often CAISO's stakeholder process results in a one-sided exercise. TANC notes, for example, that CAISO's use of a straw proposal only occurs after the release of an advance issue paper or study plan, at which point the CAISO staff has already decided on a course of action.¹⁰ TANC also claims that unreasonably tight timeframes is a recurrent problem within CAISO's stakeholder processes. TANC argues that in circumstances where an emergency response is not required, the quality of comments and, therefore, decision making would greatly increase if the stakeholders had sufficient notice of proposed meetings and adequate time to review background material for those meetings developed by CAISO.

20. TANC urges the Commission to require CAISO to develop a stakeholder process that achieves consensus on issues and incorporates stakeholder input early on in the decisional process. Specifically, TANC states that the Commission should require CAISO to employ a means of approaching issues of concern to stakeholders in a manner comparable to the negotiated rulemaking process. TANC notes that although this process adds an additional step into the traditional rulemaking process, the additional effort is justified to the extent it will reduce both the likelihood of litigation over the regulation at issue and the difficulty in enforcing it. TANC adds that, as one of the participants in the negotiating committee, CAISO should have the same voice in shaping the proposal as

¹⁰ As an example, TANC points to the stakeholder process regarding the Integrated Balancing Authority Areas (IBAA) proposal.

other participants, and that no consensus could be reached without the approval of all parties—including CAISO.¹¹

21. TANC argues that the Commission, at a minimum, should specify minimum standards with respect to the steps in the CAISO stakeholder process, including standards as to what constitutes sufficient notice for convening stakeholder meetings/conference calls, for the submission of stakeholder comments, and for subsequent consideration of those comments prior to CAISO taking action. TANC also notes that CAISO has created a helpful calendar function on its website that assists market participants in tracking deadlines of stakeholder processes currently underway. TANC states, however, that these tools should not substitute for adequate notice and timelines with respect to setting up meetings/conference calls or soliciting comments.

22. TANC urges the Commission to require CAISO to explain its consideration of stakeholder comments and how it took those comments into account during its decision-making processes. TANC further urges the Commission to require CAISO to report certain metrics with respect to the facets of its decision-making processes.¹² TANC

¹¹ TANC notes that under the Negotiated Rulemaking Act, the agency itself is a member of the negotiating committee, and its representatives are prohibited from serving as a chair of the committee or as a facilitator during the course of the committee's discussions. Instead, TANC points out that the members must select a neutral facilitator, and the Negotiated Rulemaking Act specifies useful procedures for selection of such a facilitator. TANC states that the ADR provisions of CAISO's MRTU Tariff similarly outline procedures for the selection of mediators. TANC states that the stakeholder process would improve if CAISO followed similar procedures for the selection of a mediator in the event that CAISO employs the Negotiated Rulemaking model to address a problem it encounters in administering the California energy markets.

¹² TANC asserts that these metrics should not merely include the number or length of meetings, the number of attendees at meetings, or the number of comments received, although CAISO should be required to report these facts as well. TANC argues that these metrics should delve much deeper to explore the ways that CAISO attempted to gather stakeholder comments. TANC explains that such metrics could include items like how much time was offered for stakeholders to analyze and review the CAISO proposal prior to the comment date, how many meetings CAISO convened away from its own headquarters, how many different industry sectors were engaged in the stakeholder process, how many revisions to the CAISO proposal advocated by stakeholders were adopted, and how diverse interests with limited resources were accommodated in the process. TANC notes that the Commission could require such metrics be reported in a standard format and be filed with each proposed tariff revisions.

states that with each tariff revision, the Commission should require CAISO to describe the stakeholder process they employed for that particular tariff revision and how/whether CAISO accommodated concerns raised in the stakeholder process in its decision-making process. TANC states that requiring CAISO to answer this information would assist it in the early steps of decision making. TANC also argues that CAISO's stakeholder processes should be included in its Tariff. Finally, TANC submits that CAISO, by relying on its annual survey to solicit comments from stakeholders, has fallen short of the procedural requirements outlined in Order No. 719 for developing this compliance filing with stakeholder input and incorporates no dissenting views in its compliance filing.

23. Modesto states that when CAISO wants to conduct a fair and complete stakeholder process, it knows how to do so. Modesto points to the litigation in Docket No. ER01-313-000.¹³ Modesto notes that in that proceeding Modesto proposed its own rate design to stakeholders and fielded questions from the CAISO staff and stakeholders. Modesto notes that CAISO made certain adjustments to its proposed rate design that reflected Modesto's positions. By contrast, Modesto states that CAISO's IBAA proposal failed as a fair and complete stakeholder process.¹⁴ Modesto asserts that stakeholders should be given sufficient opportunity to present their views and get feedback from CAISO staff and others. Modesto also states that CAISO, too often, has become more of a stakeholder in its own right rather than a mediator of interests. Modesto adds that the Commission should not be hesitant to defer ruling on the merits of a CAISO proposal until the proposal has a chance to be discussed before a Commission settlement judge or mediator.

B. CAISO's Answer

24. CAISO notes that the arguments made by TANC and Modesto focus principally on the stakeholder process preceding the Board's deliberations and further focus on one proceeding, i.e., the IBAA proceeding. CAISO submits, however, that the Commission has already reviewed and rejected assertions that the stakeholder process in that

¹³ *California Indep. System Operator Corp.*, 99 FERC ¶ 63,020, at 65,086 (2002), *aff'd*, Opinion No. 463, 103 FERC ¶ 61,114, at P 12-15 (2003).

¹⁴ Modesto claims that the proposal changed dramatically several times, thus preventing stakeholders from understanding the objectives of CAISO. Modesto states that once the entities affected became aware of this change, significant questions and concerns were raised. Modesto claims that only upon request did CAISO grudgingly open a stakeholder process. Modesto states that while interested parties were allowed to present their views to the CAISO Board, the discussion had an adversarial tenor to it.

proceeding was inadequate.¹⁵ CAISO concludes that TANC's and Modesto's dissatisfaction with the outcome of the IBAA proceeding does not provide a basis for finding inadequacies in the CAISO's stakeholder process.

25. CAISO also responds to TANC's proposed reforms. First, CAISO argues that TANC fails to present any evidence confirming its alleged inadequacies with the CAISO's existing procedures. CAISO also notes that it has internal quality guidelines for stakeholder meetings, which include advance notice provisions. CAISO claims that it tracks compliance with these guidelines and that it achieved a 94 percent compliance rate in 2008. CAISO argues that making these timelines inflexible, as proposed by TANC, would restrict CAISO's ability to respond to new needs as they emerge with no countervailing benefit.

26. CAISO states that it reports the results of its stakeholder processes to the Commission in its tariff filings. CAISO claims that the additional details that TANC seeks are unnecessary. CAISO adds that, contrary to TANC's contentions, the Negotiated Rulemaking model does not provide a model that supports requiring the stakeholder process that TANC seeks. CAISO states that the Negotiated Rulemaking Act does not require agencies to use negotiated rulemaking; rather, it leaves the choice of using negotiating rulemaking to an agency's discretion. CAISO argues that mandatory negotiation is not more appropriate for CAISO than for a federal agency. CAISO notes that it is a public utility under the FPA, not a joint venture or cooperative, charged by state law and Commission regulation with operating and ensuring the reliability of the CAISO grid. CAISO states that the responsibility for fulfilling this charge falls on CAISO management and the CAISO Board, and that decisions must be made by CAISO with stakeholder input, not by negotiation or mediation.

27. CAISO also disagrees with TANC's argument that, because CAISO relied upon its annual client survey to identify client concerns, CAISO did not adequately comply with the Commission's directive that CAISO consult with stakeholders in preparing its compliance filing on responsiveness. CAISO states that the survey provided CAISO with the necessary information to address the issues in the filing, and thus it made no sense to consult CAISO's stakeholders a second time in order to elicit the same information. Finally, CAISO notes that the survey successfully identified stakeholder concerns about responsiveness.

¹⁵ CAISO answer at 24 (citing *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271, at P 337 (2008)).

C. Additional Answers

28. WPTF requests that CAISO provide opportunities for more extended agenda time where an individual stakeholder, or a set of stakeholders, could make presentations on issues that they believe warrant further consideration by the Board. WPTF claims that this allowance would help ensure that the Board does not adopt proposals without notice that certain stakeholders believe the CAISO staff recommendations are in error, and would provide an opportunity for stakeholders to raise critical issues that warrant the Board's consideration. WPTF also recommends that the CAISO hold town hall type meetings once or twice a year.

29. WPTF argues that stakeholders need a clear mechanism to raise issues and a process to suggest that something needs a more in-depth stakeholder process. WPTF argues that CAISO should adopt an issues database that ensures that all stakeholder input is captured in a central repository regardless of how the issue is presented to CAISO, that CAISO assign a responsible person to shepherd the issue through CAISO until a response is provided, and that CAISO provide a meaningful and timely response. WPTF states that while CAISO's website provides information on where a stakeholder process stands, it does not include an issues-based tracking device that spans all initiatives and includes questions or comments that have arisen within or outside of the comments. Nor does it ensure a response that reflects real consideration of stakeholder input.

30. WPTF also requests that, in cases where CAISO elects not to address a stakeholder concern, CAISO provide a timely explanation supporting its decision. WPTF also states that CAISO needs a better mechanism to distribute information to stakeholders. WPTF argues that the default rule should be that CAISO releases information to all stakeholders at the same time so as to avoid giving any market participant a market advantage. In addition, WPTF asserts that CAISO should adopt a practice that ensures that stakeholders are receiving the same guidance from CAISO; for example, if a stakeholder raises an issue that is relevant to more than just that stakeholder, CAISO should inform all stakeholders of the issue and CAISO's response.

31. WPTF states that CAISO should follow a structured decision-making process whenever possible. Specifically, WPTF recommends that CAISO: (i) provide an issue description and any straw proposals for addressing the issue without pre-judging the solution; (ii) request written stakeholder comments; (iii) post stakeholder input; (iv) consider the comments with a mind open to approaches that differ from the straw proposal; and (v) develop and post a position, including a response to stakeholder input and a description of whether and how stakeholder input was factored into CAISO's position. WPTF states that if time does not permit CAISO staff to follow this process, at a minimum, CAISO staff should inform the Board that it subverted the regular process and stakeholders should have the ability to bring more detailed discussions to the Board before the Board acts. WPTF states that, in addition, the CAISO should endeavor to complete any skipped steps after the fact (e.g., posting stakeholder input and providing a

description of the rationale for the final staff recommendation) to complete the transparency of the process and enable stakeholders to appeal to the Board.

32. WPTF claims that CAISO's surveys and meetings are tools for collecting input, but that they are insufficient because they occur after the fact and can be issue specific. WPTF also claims that the surveys are inherently insulated by the survey questions asked and the inability of others to respond with alternative points of view. WPTF asserts that a conference focused on the stakeholder process, on the other hand, would allow stakeholders to raise a list of concerns on, and proposed improvements to, the CAISO decision-making framework. WPTF requests that the Commission order CAISO to hold a conference for stakeholders to provide specific input on ways CAISO can provide needed improvements in its stakeholder discussions that aid CAISO in its decision making. WPTF also states that following such conference, CAISO should provide a summary of the issues discussed and the improvements they deem necessary. WPTF asks the Commission to require a compliance filing within 120 days on the results of such discussion and potential tariff changes with the appropriate improvements.

III. Technical Conference on RTO/ISO Responsiveness

33. On February 4, 2010, the Commission held a technical conference to provide an additional forum for interested parties to discuss issues related to both CAISO'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.

34. 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).¹⁶ The notice stated that, in addition to the

¹⁶ 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.

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.

35. 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 the CAISO are summarized below, as submitted by the CAISO, TANC, and DayStar Farms (DayStar).

A. CAISO's Comments

36. CAISO reiterates its position that its governance provisions satisfy the RTO/ISO responsiveness requirements of Order No. 719. CAISO also asserts that its governance provisions allow for sufficient transparency in its Board and stakeholder processes and foster active participation in those processes by all interested parties.

B. Additional Post-Technical Conference Comments

37. TANC reiterates its positions, as summarized above. Among other things, TANC recommends that the Commission require that CAISO include with its tariff filings a discussion of the stakeholder process. TANC argues that the Commission should also consider the requirement that CAISO follow a tracked stakeholder schedule as set forth in its tariff. TANC notes that in conforming to such a schedule, CAISO would be afforded the opportunity to make tariff filings in emergency situations absent stakeholder consensus with the stipulation that CAISO include a detailed description of the emergency in its filing.

38. TANC states that the Commission should make clear that such an emergency tariff amendment would be an interim solution until the final tariff amendment could be developed through a stakeholder process that conforms to the tracked schedule. TANC also argues that the Commission should not defer to filings that are purported to result from the stakeholder process, and should recognize that stakeholders do not waive their rights before the Commission when they fail to participate at the stakeholder level. TANC states that comments made during the technical conference have made clear that market participants are not always able to participate in stakeholder processes, for a variety of reasons. Finally, with regard to RTO and ISO bias in favor of transmission owners, TANC alleges that the Commission should take special note of such potential influence when an RTO or ISO is dominated by a small number of large transmission owners.

39. Daystar challenges the adequacy of CAISO's stakeholder processes as they relate to a specific initiative, i.e., to the CAISO Renewable Energy Transmission Planning Process (RETPP). DayStar notes that issues raised during the RETPP process have been met with a lack of responsiveness from CAISO, including issues relating to non-reliability transmission project.

IV. Discussion

40. For the reasons discussed below, we find that CAISO's existing governance procedures and stakeholder processes meet the requirements of Order No. 719. As discussed below, we also believe that many of the additional 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 stakeholder processes as RTOs and ISOs continue to evolve and improve.

41. 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, 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. 2000.¹⁷

42. Before addressing the CAISO-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.

¹⁷ *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).

43. 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.”¹⁸ 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 CAISO, 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.

44. In our analysis, below, we address CAISO’s compliance with each of the Order No. 719 governance criteria.

A. Inclusiveness

45. First, we address whether CAISO’s governance procedures and stakeholder processes satisfy Order No. 719’s inclusiveness requirement. With respect to this criterion, Order 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.¹⁹

46. We find that CAISO’s governance procedures and stakeholder processes satisfy the inclusiveness requirement of Order No. 719. As CAISO points out in its filing, CAISO’s Board meetings are publicly-noticed open meetings at which any stakeholder or other interested party can address the Board directly on individual decisional items before the Board takes action. In addition, written materials submitted to the Board in advance of these meetings summarize views expressed during any stakeholder process. These written summaries include an identification and discussion of each stakeholder view that has been expressed during the course of the stakeholder process and, when appropriate or useful, a matrix outlining the various positions of individual stakeholders along with CAISO staff’s response. In addition, stakeholders may submit comments directly to any

¹⁸ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 509.

¹⁹ *Id.* P 505.

Board member at any time, with any such submittals included in the Board's meeting materials before a decisional item is voted on. We find that these processes are sufficient to bring the views of stakeholders before the Board, as the Commission's inclusiveness criterion requires.

47. We also note CAISO's commitment to further improve the inclusiveness of these processes. CAISO notes that, in 2008, it solicited stakeholder feedback addressing whether CAISO: (i) uses a consistent stakeholder process for resolving policy differences; (ii) takes the appropriate amount of time to resolve stakeholder issues related to policy initiatives; (iii) resolves policy issues efficiently and effectively; (iv) provides adequate opportunity for stakeholder input on policy initiatives; (v) adequately incorporates stakeholder input into its policy decisions; (vi) accurately presents stakeholder positions to the Board; and (vii) provides an adequate opportunity for stakeholders to communicate views to the Board. CAISO states that the stakeholder responses to these inquiries were generally supportive of its existing procedures, but also identified areas in which further improvements were warranted. Specifically, CAISO was asked to improve its openness to changing policy proposals based on stakeholder comments and better inform stakeholders of the disposition of their comments. CAISO states that it was asked to more accurately reflect stakeholder positions in Board Documents.

48. CAISO states that, in response, CAISO's Stakeholders and Industry Affairs Group has established, as its goal, the improved management of the comments received in the stakeholder process so that stakeholder will better understand how CAISO incorporates this input into its policy decisions. In addition, the Stakeholders and Industry Affairs Group is considering revised procedures for communicating stakeholder comments to the Board. CAISO states the Manager of Stakeholders and Industry Affairs has performance goals tied to addressing these issues.²⁰ We encourage CAISO to work with its stakeholders in addressing these issues.

B. Fairness in Balancing Diverse Interests

49. We next consider whether CAISO'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 ensure that no single stakeholder group can

²⁰ The Manager of Stakeholder and Industry Affairs oversees the Stakeholders Affairs Group, an organizational structure within CAISO's External Affairs Division. The Stakeholders Affairs Group manages CAISO's centralized stakeholder process.

dominate.²¹ Order No. 719 explained that this criterion was necessary to ensure that the RTO or ISO will make well-informed decisions that reflect the full range of competing interests that may be affected.²²

50. We find that CAISO's governance procedures and stakeholder processes satisfy the fairness requirements of Order No. 719. First, we note that CAISO makes its decisions through its Board, a governance body chosen through a balanced process that allows for input from all interested stakeholder groups. As explained by CAISO in its filing, a thirty-six member Board Nominee Review Committee, with stakeholders from six diverse sectors, reviews and ranks a list of qualified potential Board members provided by a professional search team. The search team presents at least four candidates to the Governor for his or her consideration for each vacant Board seat. We find that this process provides all stakeholders with adequate opportunity for involvement in vetting qualified candidates for the Board.

51. CAISO's stakeholder processes also ensure fairness in balancing diverse interests. These processes, as CAISO notes in its answer, include internal quality guidelines governing the meetings of its stakeholders, including standards addressing advance notice requirements and the utilization of conference calls. CAISO adds that, in its tariff filings, it reports the results of its stakeholder processes to the Commission.

52. In considering tariff amendments, moreover, CAISO uses a three-stage stakeholder process to solicit comments on its proposals. This process is available to all customers on an equitable basis. CAISO, moreover, assigns a staff member to facilitate stakeholder meetings for the purpose of ensuring that all views will be heard. Finally, as noted above, CAISO allows stakeholders to communicate their views directly to the CAISO Board.

C. Representation of Minority Positions

53. We next consider whether CAISO'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. 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.

²¹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 507.

²² *Id.*

54. We find that CAISO has complied with this Order No. 719 requirement. First, CAISO asserts, and we agree, that the same Board practices and procedures that ensure inclusiveness and fairness in balancing diverse interests, as summarized above, also support the finding that the CAISO Board, when it considers a decisional item, will have the benefit of any minority view that may have been relevant.

55. CAISO notes, for example, that with the benefit of this open process, its Board has, on occasion and when appropriate, altered its decisions to specifically accommodate minority interests, as it did in a July 2008 action addressing uneconomic adjustment *vis à vis* existing transmission contracts (a minority position raised by the California Department of Water Resources). We also note that CAISO's governance policies allow for the submission of written stakeholder comments to the Board. These comment summaries, as noted above, may include a matrix detailing various stakeholder positions. By providing the Board with these views, CAISO ensures that the Board is aware of the positions and arguments taken by all stakeholders and ensures that minority and majority positions are presented to the Board at the same time. CAISO states that is not aware of any circumstance in recent years in which minority stakeholder views expressed during the stakeholder process have not been presented to the Board.

D. Ongoing Responsiveness

56. We next consider whether CAISO'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 consider customer and other stakeholder needs as the architecture or market environment of the RTO or ISO changes.²³

57. We find that CAISO's existing governance policies and stakeholder processes satisfy Order No. 719's requirements regarding ongoing responsiveness. CAISO's stakeholder process provides for dialogue between CAISO and its stakeholders on an ongoing basis. In addition, CAISO utilizes an annual survey to solicit stakeholder feedback, using a third-party consultant to conduct the survey. We are also encouraged by CAISO's commitment, as noted above, to improving the transparency of this process as it relates to the Board's consideration of stakeholder views.

58. Commenters request that additional, specific transparency revisions be adopted by CAISO. While we encourage CAISO to consider these revisions and to work with its stakeholders regarding the ongoing responsiveness of its governance processes, we are not persuaded that any specific reforms should be imposed by the Commission at this

²³ *Id.* P 509.

time pursuant to Order No. 719. Nor are we persuaded that TANC's request that CAISO be required to explain or justify its rejections of stakeholder proposals in its tariff filings is required by Order No. 719. CAISO, when it submits a section 205 filing, generally highlights disputed issues considered by its stakeholder body and explains the reasoning behind its proposals. An aggrieved market participant may raise its concerns in a protest.

59. Nor are we persuaded that TANC's request that CAISO be required to employ a negotiated rulemaking model is required by Order No. 719. TANC relies on allegations relating to a single stakeholder forum (the IBAA proceeding) and its substantive outcome. However, this evidence, even if taken as undisputed, does not demonstrate that CAISO's underlying processes are fundamentally unworkable or otherwise inconsistent with the broad governance policy mandates of Order No. 719.

60. Moreover, the negotiated rulemaking model, as described in the Negotiated Rulemaking Act,²⁴ would be an overly burdensome method to require for CAISO in all circumstances. While negotiated rulemaking may be appropriate in some instances, this rulemaking model may add unnecessary steps and time to the stakeholder process were it required for all CAISO proceedings. The Negotiated Rulemaking Act gives a federal agency discretion as to whether to implement the procedure, and directs the agency to consider, among other things, whether the negotiated rulemaking procedure will "unreasonably delay the issuance of a notice of proposed rulemaking or a final rule."²⁵ This provision implicitly recognizes that, in some instances, the negotiated rulemaking procedure may unreasonably delay rulemaking or, in CAISO's case, a draft proposal. It would therefore be inappropriate to require the negotiated rulemaking procedure in all cases.

61. WPTF similarly argues for a "structured decision-making process," which would include the development of straw proposals, the solicitation of stakeholder comments, and issuance of a final decision based on those stakeholder comments. It is unclear, however, that this proposed process differs significantly from CAISO's current stakeholder process, except for the increased emphasis WPTF places on CAISO being responsive to stakeholder proposals. We have already addressed this concern, as described above, and will therefore not require CAISO to revise its stakeholder process as requested by WPTF.

²⁴ 5 U.S.C. § 563 (2000).

²⁵ *Id.* § 563(a)(5).

62. WPTF recommends several changes to CAISO Board meetings to improve the consideration of minority viewpoints. TANC states that, in its experience, not enough time is provided for stakeholders with minority viewpoints to fully explain their views. CAISO's open meeting policy does not appear to contain formal time limits or rules of procedure at CAISO Board meetings that prevent minority stakeholders from fully and satisfactorily presenting their views.²⁶ However, in the event that informal restrictions are imposed on stakeholders, we find that CAISO should, within reason, allow minority stakeholders the time to present their views to the CAISO Board to their satisfaction. However, because CAISO should be given sufficient flexibility in this matter, we will not direct CAISO to adopt a specific speaking order or meeting structure.

63. WPTF also recommends that CAISO maintain an issues database. This policy, which may be helpful to the stakeholder process and may be considered by CAISO, is not required by Order No. 719.

64. TANC requests that the stakeholder process be enumerated with sufficient specificity in CAISO's tariff. However, this requirement is not contemplated by Order No. 719. Moreover, the Commission has found that only those items which significantly affect the rates, terms, and conditions of service must be included in a tariff on file with the Commission.²⁷

65. TANC also argues that CAISO's filing was not developed through a sufficiently collaborative stakeholder process. In addition, WPTF requests that the Commission require CAISO to convene a supplemental stakeholder forum to consider additional governance reforms. Order No. 719 required RTOs and ISOs to work with stakeholders and interested parties in the preparation of their compliance filings.²⁸ CAISO, in response, states that it relied on its annual client survey, with respect to this input. CAISO also points out that its Stakeholders and Industry Affairs Group are considering

²⁶ "CAISO Open Meeting Policy" available at <http://www.caiso.com/docs/1998/11/06/199811061413004715.pdf>.

²⁷ See *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (finding that utilities must file "only those practices that affect rates and service significantly, that are reasonably susceptible to specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous").

²⁸ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 578.

additional reforms to its stakeholder comment procedures and that CAISO's existing governance procedures and stakeholder processes otherwise satisfy the requirements of Order No. 719. We find that, under these circumstances, the convening of a new or supplemental stakeholder forum to consider the RTO/ISO governance requirements of Order No. 719 is not required.

66. With respect to DayStar's allegations regarding the adequacy and outcome of the CAISO transmission planning process, we find that DayStar's concern is beyond the scope of this proceeding. Specifically, CAISO's Revised Transmission Planning Process proposal was submitted by CAISO on July 26, 2010 and is being addressed by the Commission in a separate proceeding to which DayStar is a party.²⁹ Issues relating to other aspects of CAISO's currently-effective transmission planning process were addressed by the Commission in a June 19, 2008 order.³⁰

67. 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.

E. CAISO's Mission Statement

68. We find that CAISO has satisfied Order No. 719's requirement that CAISO post on its website its mission statement or organizational charter. With respect to this requirement, Order No. 719 encouraged RTO and ISO 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.³¹ 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.

²⁹ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,067 (2010).

³⁰ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008); *reh'g denied*, 127 FERC ¶ 61,172 (2009).

³¹ *Id.* P 556.

The Commission orders:

CAISO'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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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 Groups³² support the utilization of consumer advocate funding mechanisms of the sort currently used by PJM and the Midwest Independent 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.

³² Consumers Union, National Consumer Law Center, AARP, Consumer Federation of America, and Public Citizen.

Financial Marketers³³ 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 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

³³ 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.

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.³⁴ ITC Companies³⁵ contend that a hybrid structure will compromise and undermine board independence.³⁶ 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, 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.³⁷ 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

³⁴ *See, e.g.*, Illinois Commission at 1.

³⁵ International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

³⁶ Old Dominion at 10; North Carolina Coop. at 6; Xcel at 6; PSEG at 16-18; MidAmerican at 4-6.

³⁷ *See also* EPSA at 8.

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.³⁸ Dayton disagrees, stating that such a requirement would be unduly 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.³⁹ Commenters also propose staggering board members' terms.⁴⁰

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.⁴¹ 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

³⁸ 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.

³⁹ *See* Financial Marketers at 6.

⁴⁰ *See* NASUCA at 19; ELCON at 5.

⁴¹ *See* Old Dominion at 12-13; Steel Producers at 4; NASUCA at 5; ELCON at 4.

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.⁴² The New York Independent System Operator, Inc. (NYISO) states that it has 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.⁴³

⁴² 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 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.

⁴³ *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).

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.⁴⁴

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.

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.⁴⁵

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

⁴⁴ 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.

⁴⁵ 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.

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*.

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.

Jon Wellinghoff
Chairman