

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

California Independent System Operator Corporation	)	Docket No.	ER09-1048-000
)		
Midwest Independent Transmission System Operator, Inc.	)	Docket No.	ER09-1049-000
)		
Southwest Power Pool, Inc.	)	Docket Nos.	ER09-1050-000
	)		ER09-1192-000
)		
ISO New England, Inc. and New England Power Pool	)	Docket No.	ER09-1051-000
)		
PJM Interconnection, LLC	)	Docket No.	ER09-1063-000
)		
New York Independent System Operator, Inc.	)	Docket No.	ER09-1142-000

**COMMENTS OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

The New York Independent System Operator, Inc. (“NYISO”)¹ hereby submits these comments in response to the technical conference regarding RTO/ISOs’ responsiveness to stakeholders and customers held by the Federal Energy Regulatory Commission (“Commission”) on February 4, 2010.² With the submission of these comments, the NYISO respectfully requests that the Commission approve the pending responsiveness portion of the NYISO’s Order No. 719 compliance filing.

The NYISO supports the Commission’s objective, as set forth in its Order No. 719, that RTO/ISOs have certain practices and procedures in place to ensure that their Boards are

¹ Capitalized terms that are not otherwise defined herein shall have the meanings specified in the NYISO’s tariffs and agreements.

² In its January 8, 2010, notice regarding the technical conference, the Commission established a period for comments. *See* California Independent System Operator, Inc., et al., Notice Providing Agenda for Technical Conference on RTO/ISO Responsiveness, Docket No. ER09-1048-000, et al., at p. 2 (January 8, 2010).

responsive to stakeholders and customers.³ As the NYISO detailed in its May 15, 2009, compliance filing in response to Order No. 719, the NYISO believes that its existing shared governance structure satisfies the Commission's requirements in this regard.⁴ Nonetheless, the NYISO has worked with its stakeholders on an ongoing basis to continue to enhance and improve its existing governance structure in a manner that addresses the specific concerns of NYISO stakeholders and customers, including end-use consumers and various parties representing consumer interests. The NYISO describes below key elements of its existing shared governance structure that provide for the NYISO Board's responsiveness, including recent enhancements that were enacted with stakeholder input to address specific stakeholder concerns.

I. Copies of Correspondence

Copies of correspondence concerning this submission should be served on:

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³ See generally *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64100 (October 28, 2009), FERC Stats. & Regs. ¶ 31,281 (2008) at PP. 477-567 ("Order No. 719").

⁴ New York Independent System Operator, Inc., *Compliance with Order No. 719*, Docket No. ER09-1142-000, at p. 34 (May 15, 2009) ("NYISO Compliance Filing").

⁵ The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2008) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, VA.

II. Background

In its Order No. 719, the Commission required RTO/ISOs “to establish a means for customers and other stakeholders to have a form of direct access to the board of directors, and thereby to increase the board of directors’ responsiveness to these entities.”⁶ The Commission defined “responsiveness” as an RTO/ISO Board’s “willingness, as evidenced in its practices and procedures, to directly receive concerns and recommendations from customers and other stakeholders, and to fully consider and take actions in response to the issues that are raised.”⁷ The Commission required each RTO/ISO to submit a compliance filing that demonstrated that “it has in place, or will adopt, practices and procedures to ensure that its board of directors is responsive to customers and other stakeholders.”⁸

In its May 15, 2009, compliance filing in response to Order No. 719, the NYISO indicated that it believes that its existing shared governance structure satisfies the responsiveness requirements set forth in Order No. 719 and, for that reason, did not propose any modifications. The Commission issued a notice on November 13, 2009, announcing that its staff would hold a technical conference regarding the ISO/RTO responsiveness portion of Order No. 719,⁹ and postponed addressing the responsiveness portion of the NYISO’s compliance filing until after the conclusion of the technical conference.¹⁰ The NYISO participated in the technical conference on February 4, 2010, and provides related comments regarding the responsiveness of its shared governance structure in this submission.

⁶ Order No. 719 at P. 477.

⁷ *Id.*

⁸ *Id.*

⁹ California Independent System Operator Corporation, et al., *First Notice of Technical Conference on RTO/ISO Responsiveness*, Docket Nos. ER09-1048-000, et al. (November 13, 2009).

¹⁰ New York Independent System Operator, Inc., *Order On Compliance Filing*, Docket No. ER09-1142-000, at P. 19 (November 20, 2009).

III. Comments

The NYISO supports the Commission's objective to ensure that RTO/ISOs are responsive to their stakeholders and customers and appreciates this opportunity to provide comments that describe the manner in which the NYISO's shared governance structure provides for the NYISO Board's responsiveness to NYISO stakeholders and customers. The NYISO believes that its existing shared governance structure already satisfies the Commission's requirements for responsiveness to stakeholders and customers as set forth in Order No. 719.¹¹ Under the NYISO's shared governance structure, as approved by the Commission, the NYISO has an independent Board. However, the NYISO Board shares with its stakeholders the rights under Section 205 of the Federal Power Act to amend the NYISO's tariffs and organic agreements and provides stakeholders, including those holding a minority position, with several different avenues for bringing their concerns directly before the NYISO Board. Key elements of the shared governance structure that provide for NYISO Board responsiveness include:

- i. *Amendments to NYISO's Tariffs and Agreements* - The NYISO Board cannot unilaterally amend the NYISO's tariffs and organic agreements under Section 205 of the Federal Power Act.¹² Both the NYISO Board and a super-majority (58%) of the NYISO's stakeholder Management Committee must approve a revision to the NYISO's tariffs and organic agreements before the NYISO may propose such revision to the Commission under Section 205.¹³ This approach differs from those RTO/ISO Boards that have unilateral rights to make Section 205 filings. The voting rights of stakeholders in the

¹¹ NYISO Compliance Filing at 34.

¹² See ISO Agreement, Article 19. The only exception to this rule is that the NYISO Board may make unilateral Section 205 filings in "exigent circumstances," but changes implemented through this procedure will only have a temporary duration, unless they are subsequently ratified by the Management Committee. See *id.* In addition, like any stakeholder, the NYISO Board can unilaterally proposed tariff revisions under Section 206 of the Federal Power Act. See *id.* The NYISO Board has only rarely taken action under Section 206 of the Federal Power Act and only in unusual circumstances.

Management Committee are allocated among five sectors of stakeholders (Transmission Owners, Generators, Other Suppliers, End-Use Consumers, and Public Power/Environmental Parties).¹⁴ Each stakeholder sector's voting weight was carefully established after extensive deliberation¹⁵ and has been approved by the Commission to prevent any stakeholder sector from dominating the decision-making process. In fact, the NYISO's requirement that a measure must have the support of fifty-eight percent (58%) of the voting weight of its stakeholders makes certain that at least two stakeholder sectors plus some members of a third sector must support a measure for it to pass. The End-Use Consumers sector makes up twenty percent (20%) of the Management Committee weighted-voting.¹⁶

- ii. *Approval of NYISO Budget* - The Management Committee is responsible for the preparation of the NYISO's capital and operating budget.¹⁷ The NYISO's budget is prepared through a collaboration of stakeholders and NYISO management, and the Management Committee must "recommend" the resulting budget to the NYISO Board by the same super-majority vote required for the approval of a Section 205 filing. The NYISO Board then makes the final determination regarding the NYISO's budget.¹⁸ However, the NYISO Board has never modified the budget recommended by the Management Committee in any material way.
- iii. *Selection of Directors* - The Management Committee is responsible for conducting a search for a new director and providing the NYISO Board with a list of at least three

¹³ See *id.* at Section 7.10 and Article 19.

¹⁴ *Id.* at Section 7.04.

¹⁵ See *id.* at Section 7.06.

¹⁶ ISO Agreement, Section 7.06.

¹⁷ *Id.* at Section 7.02(e).

¹⁸ *Id.* at Section 5.08.

qualified candidates for each Board vacancy.¹⁹ Stakeholders have formed a Board Selection Subcommittee that works with a recruiter and collaborates with the Board in searching for viable candidates.²⁰ The NYISO Board then makes the final determination regarding the selection of a new Board member.²¹ If the Board selects a candidate that was not forwarded to the Board by the Management Committee, the Board must provide stakeholders with the opportunity to review and comment on the qualifications of the candidate.²² The NYISO Board has filled all six board vacancies with candidates proposed by the stakeholders.

- iv. *Appeals to the NYISO Board* - Any stakeholder that disagrees with a decision made by other NYISO stakeholders in the Management Committee may appeal the decision directly to the NYISO Board.²³ The appeals process is a quasi-judicial process in which the Board reviews the appealed matter on a *de novo* basis and makes a written determination regarding the matter that provides the Board's rationale for its decision. Other stakeholders may submit briefs in opposition to or in support of such appeals. When an appeal arises, the Board may, and frequently has, heard oral arguments prior to making a decision. The NYISO Board has heard twenty-eight appeals since 2000.
- v. *Liaison Committee* - The NYISO currently holds, and has held since its inception, monthly Liaison Committee meetings that provide stakeholder representatives from each stakeholder sector with a regular opportunity to communicate directly with the Board and

¹⁹ *Id.*

²⁰ The ISO Agreement requires that NYISO directors possess a cross-section of skills and experience. ISO Agreement, Sections 5.02 and 5.04. Included in the ISO Agreement's list of relevant skills and experience is consumer advocacy. *Id.* In addition, while the entire NYISO Board is sensitive to consumer impacts, two of the NYISO's directors have specific retail ratemaking experience as former regulators.

²¹ *Id.*

²² *Id.*

²³ *See id.* at Section 5.07.

enables the Board to discuss recent Board deliberations and actions with stakeholder representatives.

- vi. *Joint Board/Management Committee Meeting* - The NYISO also sponsors an annual joint Board/Management Committee meeting (open to all stakeholders) that facilitates further communication and gives the NYISO Board and stakeholders an informal opportunity to exchange views and ask questions on subjects of mutual interest and concern.
- vii. *FERC/PSC Board Attendance* - The NYISO's ISO Agreement expressly permits representatives of the Commission and the New York State Public Service Commission to attend meetings of the NYISO Board.²⁴ Representatives of the New York State Public Service Commission attend the NYISO Board's meeting every month.

In addition to its existing shared governance structure, the NYISO continues to explore with the input of its stakeholders additional mechanisms to improve transparency, increase responsiveness to its stakeholders and customers, and enhance state government and end-use consumer awareness and participation in the NYISO's governance structure. Recent improvements to the NYISO's shared governance structure that have been implemented with the input of stakeholders have included: (i) publicly posting the NYISO Board minutes on the NYISO's website, (ii) requiring NYISO staff to communicate minority positions to the Board through the briefing materials that the directors consider in advance of each Board vote, and (iii) instituting additional measures for the NYISO to report market-related errors to the Commission and stakeholders. In addition, the NYISO is currently working with its stakeholders

²⁴ *Id.* at Section 5.08.

to establish a more formal procedure for soliciting stakeholder input on NYISO compliance filings that are submitted in response to major Commission rulings.²⁵

IV. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. requests that the Commission consider these comments and approve the pending responsiveness portion of the NYISO's Order No. 719 compliance filing.

Respectfully Submitted,

/s/ Ted J. Murphy
Ted J. Murphy
Counsel for
New York Independent System Operator, Inc.

March 8, 2010

²⁵ The NYISO's compliance filings are currently not subject to stakeholder approval. However, the NYISO typically reviews compliance filings with the appropriate stakeholder committees prior to submitting such filings with the Commission.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2010).

Dated at Washington, DC this 8th day of March, 2010.

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