

**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 ON TECHNICAL CONFERENCE ON RTO/ISO
RESPONSIVENESS
BY
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

**NATIONAL ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES**
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

By: Jody M. Kyler
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (phone)
kyler@occ.state.oh.us

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The National Association of State Utility Consumer Advocates (“NASUCA”) hereby submits the following comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Technical Conference on RTO/ISO Responsiveness (“Technical Conference”), where FERC heard comments on how regional transmission organizations (“RTOs”) and independent system operators (“ISOs”) could improve their stakeholder processes and Board of Directors structures to more effectively address the concerns of all parties involved. NASUCA is a voluntary organization comprised of offices from 40 states and the District of Columbia, charged by

their respective state laws to represent utility consumers before federal and state utility regulatory commissions, before other federal and state agencies, and before federal and state courts. Many NASUCA members have extensive experience with regulatory policies governing the electric utility industry and have participated in proceedings concerning RTOs/ISOs. NASUCA members' primary interest is the protection of residential and other small utility consumers. RTO responsiveness is important for consumers as their electricity rates and the reliability of their electric service are affected by RTO/ISO decision-making.

In its Notice providing the agenda for the Technical Conference,¹ the Commission stated that the above-referenced dockets will remain open for 30 days following the technical conference in order to provide an opportunity for the filing of written comments.² Because of the wealth of discussion points raised at the Technical Conference that could help ensure adequate consumer representation in RTO/ISO decision-making, NASUCA submits these follow-up Comments on these issues. NASUCA's Comments address issues and proposals raised at the Technical Conference in hopes of assisting the Commission in adopting the best approach to RTO/ISO Governance for the nation's residential consumers

Previously, NASUCA filed a *Report on Model Corporate Governance for Regional Transmission Organizations and Independent System Operators* ("NASUCA Report" June 2009) in the above-captioned dockets. In that Report, NASUCA proposed changes to RTO/ISO stakeholder processes and Board of Directors structures that would

¹ FERC Notice Providing Agenda for Technical Conference (January 8, 2010).

² FERC Notice at 2.

better ensure that consumer interests were adequately represented. The purpose of these Comments is to help the Commission identify best practices and to recommend changes to RTO/ISO governance that will more effectively take into account the interests of consumers, including the retail residential consumer class.

I. DISCUSSION

A. Comments on the Stakeholder Process Panel

1. Resource-Intensiveness of the Stakeholder Process

As both the consumer representatives and the RTO/ISO representatives emphasized at the Technical Conference,³ the current RTO/ISO stakeholder process is very resource-intensive, which hinders the adequate representation of consumer interests. Particularly in the current economic environment, consumer advocates have significantly constrained resources both in terms of staff and finances. Additionally, some consumer advocates are located in states with more than one RTO/ISO, making frequent participation in both RTOs/ISOs very difficult. Further, it is important to note the large number of meetings involved in the stakeholder processes of the RTOs/ISOs. As

³ Oral Comments of William Fields (Maryland Office of People's Counsel) in Panel One, FERC Webcast of the Technical Conference ("FERC Webcast"), available at <http://capitolconnection.gmu.edu/ferc/ferc.htm#> at 12 minutes 38 seconds; Oral Comments of Paul Williams (Portland Cement Association), FERC Webcast at 17 minutes 35 seconds; Oral Comments of Stephen Kozey (Midwest ISO), FERC Webcast at 43 minutes 5 seconds; Oral Comments of Ray Hepper ("New England ISO"), FERC Webcast at 47 minutes 50 seconds; Oral Comments of Stacy Duckett ("Southwest Power Pool"), FERC Webcast at 51 minutes and 15 seconds.

Chairman Wellinghoff remarked at the Technical Conference, attending such a range of meetings is a “daunting task.”⁴

Commissioner Spitzer noted that the government’s role involves “balancing competing interests.”⁵ Because of the limited resources of consumer representatives, there is currently an imbalance of interests from the very start of the stakeholder process.⁶ The current imbalance undermines consumer engagement in a decision-making process that can adversely affect the rates ultimately paid by consumers. At the Technical Conference, Chairman Wellinghoff noted that there should be more meaningful opportunities for consumer participation.⁷ Therefore, NASUCA would like to echo its earlier comments and the concerns that were raised at the Technical Conference in advocating that steps need be taken to ensure consumer representation at both the lower and higher levels of the stakeholder process.⁸ Particularly at the higher levels of RTO/ISO governance, NASUCA urges the Commission to adopt the Model RTO Corporate Structure described in the NASUCA Report.⁹

⁴ Opening Remarks of Chairman Wellinghoff, FERC Webcast at 3 min. 27 seconds to 4 min. 3 seconds (citing the fact raised in both the NASUCA Report and GAO Report that MISO had 611 meetings in 2007). Additionally, Chairman Norris specifically called the MISO stakeholder process a “cumbersome” one at 8 min. 24 seconds.

⁵ Opening Remarks of Commissioner Spitzer, FERC Webcast at 6 min. 32 seconds.

⁶ Oral Comments of Paul Williams, FERC Webcast at 19 minutes 20 seconds.

⁷ Opening Remarks of Chairman Wellinghoff, FERC Webcast at 4 min. 54 seconds.

⁸ The NASUCA Report suggests altering the RTO/ISO Board of Directors to require two Board Members with experience representing consumers. Further, NASUCA recommends the creation of Standing Committees for consumer issues as well as changes to existing Advisory Committee membership, Board voting procedures, and procedures for the removal and nomination of Board members. *See* NASUCA Report for full details on NASUCA’s recommendations.

⁹ NASUCA Report at p. 10-19.

2. Mission Statement Revisions

NASUCA supports the comments of panelists at the Technical Conference who suggested that RTO/ISO mission statements should be revised to explicitly require RTOs/ISOs to consider the impact of their decisions and market operations on consumers. Accordingly, the Commission should require RTOs/ISOs to implement least-cost planning principles that would explicitly require the RTO/ISO to provide maximum benefit to consumers at the lowest reasonable cost.¹⁰ If RTO/ISO mission statements included an explicit directive that one of the goals of RTOs/ISOs is to provide reliable service at the lowest reasonable price to consumers, and if personnel at the highest levels of RTO/ISO decision-making had performance goals aligned with such expectations, consumers could have greater confidence that RTOs/ISOs would be more likely to consider the financial impact their decisions will ultimately have on consumers. Although some RTOs/ISOs have recognized these concerns in their mission statements, NASUCA suggests revisions to RTO/ISO mission statements to explicitly recognize consumer interests as a best practice for all RTOs/ISOs. Further, a compliance audit should be performed by the Commission or another outside party to verify that mission statements and procedures have been properly implemented.

¹⁰ Oral Comments of Patrick McCuller, FERC Webcast at 31 minutes 10 seconds; Oral Comments of John Anderson, FERC Webcast at 80 minutes 50 seconds; Oral Comments of Lisa Fink (Maine Public Utilities Commission), FERC Webcast at 139 50 seconds. Further, in Order 2000, the Commission specifically stated, that its goal in forming RTOs/ISOs was “to promote efficiency in wholesale electricity markets and to ensure that electricity consumers pay the lowest price possible for reliable service.” Final Order, 89 FERC ¶ 61,285.

3. The Voluntary Nature of RTOs/ISOs Causes Stakeholder Bargaining Power Imbalance

Because of the voluntary nature of RTO participation,¹¹ a common problem cited on multiple occasions at the Technical Conference is an inherent imbalance of bargaining power in the stakeholder process which currently favors transmission owners. As Paul Williams of the Portland Cement Association, John Anderson of Electric Consumers' Resource Council, and Patrick McCuller noted in their oral comments,¹² RTOs/ISOs are dependent on the continued voluntary membership of transmission owners. Transmission owners have the voluntary option to seek or terminate RTO/ISO membership and can either end their affiliation or switch RTOs/ISOs if they are unhappy with the results of the stakeholder process.¹³ While RTO/ISOs are supposed to be independent, and despite protestations from transmission owners that they do not always get their way, the reality is that RTOs/ISOs cannot exist without transmission owner members.

Transmission owners may argue that the various contractual conditions and FERC requirements limit the ease with which they may depart from RTOs/ISOs, but the reality is that their ability to do so must inevitably loom large in the RTO/ISO stakeholder relationship. The departure of even one or two transmission owners will inevitably

¹¹ The Commission created RTOs/ISOs to provide non-discriminatory access to the transmission grid. The RTOs/ISOs operate the transmission grid by managing the transmission assets owned by others. Order 2000 established RTOs/ISOs through a stakeholder process involving transmission-owning entities, encouraging them to voluntarily become members of RTOs/ISOs. First, an RTO/ISO can not operate without transmission assets to manage and second the RTO/ISO structure was developed from the voluntary stakeholder process that predominantly consisted of transmission owning entities, those with a vested interest. Thus, from the start of RTO design and participation there is an inherent bias in the operations of the RTO/ISO favoring transmission owners.

¹² Oral Comments of Paul Williams, FERC Webcast at 20 minutes; Oral Comments of John Anderson during Question & Answer ("Q&A"), FERC Webcast at 69 minutes 10 seconds; Oral Comments of Patrick McCuller, FERC Webcast at 29 minutes 24 seconds.

¹³ For example, see FirstEnergy Corporation's recent decision to switch from the Midwest ISO to PJM in FERC Docket ER09-1589.

spread RTO/ISO costs over a smaller pool, and may compromise the RTO/ISO's scope and configuration to the detriment of the entire structure. Therefore, despite an RTO/ISO's best intentions to the contrary, there is an obvious built-in incentive to accommodate the interests of the transmission owners. This eats away at the effective independence of the RTO/ISO, and leads to an imbalance of bargaining power within the stakeholder structure because discontented transmission owners can always threaten to simply terminate their membership in the RTO/ISO to avoid adverse impacts to their interests.

Transmission owners may also argue that their ownership of billions of dollars in assets entitles them to greater consideration in the stakeholder process. Yet the flip side must equally be true – that consumers are charged the rates which ultimately pay for those billions of dollars in assets, and the level of those rates affect the value of their homes and businesses. But unlike transmission owners, consumer representatives do not have the luxury of being able to opt out of their RTO/ISOs. To them, nothing about RTO membership is voluntary. If displeased with the results of the RTO/ISO stakeholder process, there is little consumer representatives can do to mitigate disadvantageous RTO decision-making.

NASUCA therefore urges the Commission to recognize there is an imbalance in the RTO/ISO stakeholder process that is tilted in favor of the transmission owners. NASUCA recommends that the stakeholder process be reexamined to ensure there is equal bargaining power between representatives of each of the sector interests and equal consideration given to each sector's concerns by the RTOs/ISOs. The reform process should involve the Commission enacting the improvements to RTO/ISO governance

suggested in the NASUCA Report,¹⁴ recommending that task forces be created in each of the RTOs/ISOs to assess sector representation and assess impacts to stakeholder balance, and adopting other equally effective solutions of the Commission’s choice.

4. Potential Best Practices Suggested at the Technical Conference

The key to appropriate stakeholder processes is the cultivation of meaningful opportunities for stakeholders to engage with RTO/ISO decision-making, without draining the resources of stakeholders in the process. RTO/ISO governance structures must be designed to allow meaningful opportunities not only for stakeholders to offer their thoughts to the RTO/ISO, but to cultivate a culture of understanding between the RTO/ISO and its stakeholders.

Consumers have found structures that are designed around the discussion of particular topics of interest between the RTO/ISO and its stakeholders particularly useful. One example of a potential practice which NASUCA recommends is the California ISO’s (“CAISO”) use of an “Issues Paper” to start off its stakeholder processes and to gain stakeholder input on the issues surrounding certain topics.¹⁵ Further, NASUCA recommends the posting of comments by parties during the stakeholder process on the RTO/ISO website. This is another practice currently adopted by CAISO. Following the posting of comments, however, the RTO/ISO should respond to the comments in writing and this response should be posted on its website. NASUCA also supports the development of reasonable schedules to allow adequate consideration of stakeholder

¹⁴ NASUCA Report.

¹⁵ Oral Comments of Don Fuller in Panel One, FERC Webcast at 45 minutes.

input. If the RTO/ISO does not allow enough time for stakeholders to adequately review documents prior to a stakeholder meeting or comment date, the stakeholder process will not allow for informed and meaningful input on the RTO/ISO matter. NASUCA also supports the regular holding of Symposiums between the Board of Directors and consumer interests to discuss major issues before the RTO/ISO that would impact consumers.¹⁶

Similarly, MISO has established special “Hot Topics” discussions directly between its Advisory Committee and its Board to address high priority issues or issues of special interest.¹⁷ The MISO Board, with input from the Advisory Committee, identifies a topic for each of its meetings. In consultation with the Advisory Committee and MISO management, the Board develops and distributes specific questions that it would like to receive input on from each of the stakeholder sectors. The stakeholder sectors then prepare written whitepapers for discussion directly with the Board at the MISO Advisory Committee meetings. As the NASUCA Report suggested,¹⁸ the Hot Topics committee could be another best practice for adoption by all RTOs/ISOs.

RTO/ISO Consumer Liaison Committees such as those used at the New England ISO (“NE-ISO”) and PJM Interconnection (“PJM”) are also worth exploring and were mentioned as a potential best practice at the Technical Conference by Commissioner

¹⁶ Oral Comments of Don Fuller in Panel One, FERC Webcast at 46 minutes. Although the specific CAISO Symposium mentioned by Don Fuller was not of this nature, NASUCA would support using the Symposium idea to facilitate direct contact between Boards of Directors and consumer representatives.

¹⁷ Oral Comments of Stephen Kozey, FERC Webcast at 83 minutes.

¹⁸ NASUCA Report at 14.

Moeller.¹⁹ To the extent such Liaison Committees foster communication to and from the Board and each of the sectors of the RTO/ISO, including the sectors representing consumer interests, such stakeholder structures would be beneficial. Discussions at the Technical Conference indicated that such an approach appeared to be developing positive results in New England. However, NASUCA's experience to date with PJM illustrates the potential disadvantage of an approach which creates yet another layer of stakeholder meetings. Whether from lack of resources to attend on the part of consumer advocates, or from an absence of clear reasons from PJM to participate, PJM's filed comments note that consumer advocates have not yet been active in its process. The jury is therefore still out as to whether liaison committees are a useful tool or more of a feel-good distraction from meaningful engagement on RTO/ISO issues.

NASUCA also supports other methods for increased consumer information that were proposed at the Technical Conference. Considering the expertise being developed by the RTOs/ISOs and the resource constraints of consumer groups, the RTOs/ISOs could play more of a role in helping apprise consumers of developing issues which may impact them. For example, Southwest Power Pool cited its "Org Report" describing the major stakeholder issues and activities that would impact consumers, which NASUCA would endorse as a Best Practice for RTOs/ISOs.²⁰

Further, both PJM and the Midwest ISO currently have hired liaisons to interact regularly with consumer advocates. While RTOs/ISOs have not instituted liaison positions with structural safeguards to ensure the liaison's independence from the

¹⁹ Oral Remarks of Commissioner Moeller during Panel One, FERC Webcast at 73 minutes 45 seconds.

²⁰ Oral Comments of Stacy Duckett, FERC Webcast at 79 minutes 15 seconds.

RTO/ISO, the liaisons nevertheless have been helpful in facilitating information exchange between the RTO/ISO and consumer advocates. PJM's consumer liaison provides monthly teleconferences with consumer advocates to inform them of ongoing activity at the RTO, relevant proceedings at this Commission, and other major upcoming issues. Such information is helpful and appreciated by consumer representatives. The RTOs/ISOs, however, must make a commitment to provide the liaisons with better information, including quantitative and qualitative information about cost impacts of proposed initiatives in the region, which RTOs/ISOs are often unwilling to provide. Merely allowing liaisons to provide lists of topics and other presentations is not sufficient to provide consumers the tools to take initiatives. Although consumer liaisons currently fall short of the type of RTO-funded independent staff recommended by NASUCA in its report, such liaison assistance has been helpful, particularly in PJM. Thus, NASUCA supports the establishment of such consumer liaisons in all RTOs/ISOs.

Thus, a number of potential reforms are already available and could be adopted by the Commission as models of Best Practices for RTOs/ISOs, increasing the odds of effective consumer participation in the stakeholder process.

5. Funding for Consumer Participation

NASUCA supports the establishment of the funding mechanism for consumer advocates mentioned at the Technical Conference.²¹ As Chairman Wellinghoff noted, there needs to be consideration of funding for consumer participation.²² Both William Fields of the Maryland Office of People's Counsel and John Anderson of the Electric

²¹ Oral Comments of William Fields, FERC Webcast at 13 minutes 37 seconds.

²² Opening Remarks of Chairman Wellinghoff, FERC Webcast at 4 min. 34 seconds.

Consumers' Resource Council also mentioned this issue at the Technical Conference. Although the current teleconferencing and Webex capabilities for many RTO/ISO meetings are greatly appreciated, a remote technological presence is an insufficient substitute for a physical presence representing consumer interests at the stakeholder meetings. This sentiment was echoed by Commissioner Spitzer during the Stakeholder Process panel.²³

As noted above, the creation of a "Liaison Committee" or "Hot Topics Committee" can be useful to consumer representatives, but these practices are themselves adding yet another layer of meetings and conference calls that require resources. Also, assignment of RTO/ISO employees to the task of interacting with consumer advocates and providing information on topics during conference calls is helpful, but it is not a substitute for personnel directly responsible to the consumer advocate offices being fully engaged in the process and reviewing proposals and identifying issues that affect the consumers' interests.

MISO has already taken measures to reimburse consumer advocate travel, but reimbursement of travel expenses is only part of the solution. Consumer advocates in many parts of the country lack the resources to participate fully in the RTO/ISO stakeholder process on a consistent basis. Because issues in the stakeholder process can be considered over periods of many months, or even years, consistent and dedicated participation is critical to being informed and effective. For many retail customers, particularly those in the restructured states, retail rates are tightly linked to the wholesale prices set by wholesale energy and capacity markets. Even in traditionally regulated

²³ Oral Remarks of Commissioner Spitzer, FERC Webcast at 85 minutes 15 seconds.

states, retail customers are directly impacted by the prices their local utility pays or receives for wholesale purchase power transactions, as well as by capacity requirements. The market rules and policies that are vetted through the PJM stakeholder process affect those wholesale prices for energy and capacity and, thus, have a direct effect on retail customers' bills.

Further, RTO/ISO rules on demand response and energy efficiency have a direct effect on retail customers' opportunities to participate in those types of programs. This is not true just for the high level import of wholesale market rules, but also for the details of the rules, which, for example, could determine the opportunities available to individual retail customers to economically participate in demand response or energy efficiency programs. Thus, participation throughout the stakeholder process is critical to being effective for retail customers.

Consistent and effective participation of consumer advocate representatives in the stakeholder process would not only be beneficial to consumers, but it would also be beneficial to the process and to the RTO/ISO and other stakeholders. Consistent participation would provide a good point of contact for all the consumer advocates in a region which would facilitate communication between the consumer advocates and the RTO/ISO and other stakeholders. Additional resources for the consumer advocate offices would allow them to identify issues and concerns earlier in the process, and improved communication would also allow for the RTO and other stakeholders to learn of the consumer advocates' concerns and positions earlier in the process. This would increase the opportunities for those concerns to be addressed early in the stakeholder process and, hopefully, resolved prior to litigation of the issues before the Commission.

Creation of a tariffed funding mechanism similar to what is provided to state regulators by PJM and MISO may be an appropriate solution to this issue.²⁴ The consumer advocates in the PJM region have argued that such an arrangement is necessary in their region to fully achieve the goals of Order No. 719.²⁵ The consumer advocate offices that comprise NASUCA are focused solely on the representation of the interests of utility consumer interests and for purposes of a dedicated funding mechanism within an RTO/ISO tariff can be easily defined based on their authorization in state law as advocates for the consumers of that state. A dedicated funding mechanism, such that the RTO/ISO has no discretion over disbursement of funds, is necessary because it avoids ethical and legal prohibitions to consumer advocate offices receiving funds from the RTO/ISO, which is a regulated utility. Therefore, NASUCA recommends that funding mechanisms be created for consumer representatives to assist with travel expenses, the ability to hire expert staff, and to facilitate participation in the stakeholder process.

6. Board of Directors' Standard of Review of the Stakeholder Process

Commissioner Spitzer made inquiry about the proper Board of Director's standard of review for terminating the stakeholder process when the Board determines that the process is functioning incorrectly, which prompted a variety of answers by the

²⁴ See Schedule 9-OPSI, PJM Open Access Transmission Tariff.

²⁵ See "Statement of PJM Consumer Advocates" submitted with the Speaker Materials of William F. Fields, Maryland Office of People's Counsel at the Technical Conference on RTO/ISO Responsiveness held February 4, 2010 at the Commission in Washington, D.C. under ER09-1048, et al., filed February 12, 2010; and "Protest of the Ohio Consumers' Counsel and Maryland Office of People's Counsel," ER09-1063, June 26, 2009.

panelists.²⁶ NASUCA suggests that the Board should uphold the “just and reasonable” standard found in Section 205 of the Federal Power Act.²⁷ That standard protects consumers by requiring that rates ultimately charged to them are fair. In order to ensure that the RTO/ISO is providing reliable service at the lowest reasonable cost, the Board should specifically be tasked with ensuring that its decision-making process is producing just and reasonable outcomes for consumers. If the RTO/ISO Board ensures that the “just and reasonable” standard is upheld in its own decision-making, there could be a decrease in the frequency of contentious litigation before the Commission.

**B. Comments on the Board Process and Other Governance Issues
Panel**

**1. Inclusion of Board Members with Experience in
Representing Consumers**

The Technical Conference provided ample reinforcement for NASUCA’s position that the Board of Directors should include two members with experience representing consumers.²⁸ As Chairman Wellinghoff stated at the Technical Conference, ERCOT currently has five consumer representatives on its Board of Directors.²⁹ ERCOT’s inclusion of the consumer voice can help serve as a guide for the Commission in the RTO/ISO responsiveness reform process. Further, as noted in the NASUCA Report, residential customers pay roughly 40% of the country’s electricity revenues and, accordingly, a similar contribution towards the operation and management of the

²⁶ Oral Remarks of Commissioner Spitzer during Panel One Q&A, FERC Webcast at 87 minutes 40 seconds.

²⁷ 16 U.S.C. 824d, Section 205 of the Federal Power Act.

²⁸ NASUCA Report at 11-12.

²⁹ Chairman Wellinghoff’s Opening Remarks, FERC Webcast at 5 minutes 4 seconds.

different RTOs/ISOs.³⁰ At the Board of Director's level, however, there is often no requirement that Board members have direct experience with the interests and issues of these consumers. In many of the RTOs/ISOs, Board members may lack the necessary experience and expertise regarding residential consumer interests, and consequently such interests are not adequately addressed or represented in the stakeholder process.

Notably, as described below, NASUCA is not asking for a hybrid-type Board, where specific seats are designated to represent consumers. NASUCA recognizes the importance of RTO/ISO independence from its stakeholders, and believes that it is appropriate that RTOs/ISOs should be able to take action despite stakeholder opposition. However, just as various RTOs/ISOs already require that their directors have various kinds of experience such as transmission operation and markets,³¹ so too should they be required to have experience with the needs of electric consumers.

Because only the Board, with the advice of senior management, has the right and responsibility to be a final determining vote on any issue, Board members with experience representing consumer interests at this level are essential to ensure that consumers have an effective voice in RTO/ISO decision-making.

2. Open Board Meetings

As noted in the NASUCA Report,³² open Board of Directors meetings are crucial to ensuring public confidence in RTOs/ISOs. The Technical Conference showed a wide

³⁰ NASUCA Report at 1.

³¹ See, e.g. Midwest ISO FERC Electric Tariff, First Revised Rate Sched. No. 1, Article Two, III A.2, at Second Revised Sheet No. 23.

³² NASUCA Report at 5.

range of consensus on this issue.³³ RTOs/ISOs must prove themselves accountable to the public interest. Thus, the essential precondition to any successful RTO/ISO must be a culture of openness and engagement with RTO/ISO stakeholders. Further, a number of panelists referred to the strong justifications for open Board meetings, including public accountability, transparency, stakeholder education regarding RTO/ISO operations, and encouraging better-informed advocacy in subsequent proceedings.³⁴ Janine Migden-Ostrander, the Ohio Consumers' Counsel, noted that both the Commission and most state commissions operate in the sunshine and questioned why RTOs/ISOs should be held to a lower standard.³⁵ NASUCA shares this concern. The Midwest ISO currently has open Board of Directors meetings, including the ability to listen in via teleconference. NASUCA members from the MISO region have found much reassurance in being able to see the Board's engagement in MISO issues. Its success provides a prime example for other RTOs/ISOs.

3. Independent vs. Hybrid Board of Directors

In response to Chairman Wellinghoff's question to the Panelists on the Board Process and Other Governance Issues Panel,³⁶ NASUCA supports having independent boards of directors. NASUCA also strongly supports the establishment of an independent

³³ Oral Comments of Patrick McCuller, FERC Webcast at 31 minutes 27 seconds; Oral Comments of Randy Rismiller (Illinois Commerce Commission), FERC Webcast at 129 minutes 55 seconds.

³⁴ Oral Comments of Randy Rismiller, FERC Webcast at 130 minutes; Oral Comments of Lisa Fink, FERC Webcast at 140 minutes; See also panelist discussion during FERC Webcast starting at 175 minutes.

³⁵ Oral Comments of Janine Migden-Ostrander, FERC Webcast at 176 minutes 24 seconds.

³⁶ Oral Remarks of Chairman Wellinghoff during Panel Two Q&A Wellinghoff, FERC Webcast at 167 minutes 45 seconds.

Board of Directors that includes Board members with experience representing consumers, suggested by Chairman Wellinghoff at the Technical Conference.³⁷

If the Commission finds that a hybrid Board of Directors structure is appropriate, NASUCA recommends requiring that a representative of each of the sector interests be included on the Board in equal proportions, to ensure that the consumer interest is fairly represented. In this context “hybrid” refers to the establishment of a Board of Directors that includes directors with some financial stake in the outcome of RTO/ISO decision-making. Thus, if other sector representatives with a financial interest in the RTO/ISO decision-making are allowed on the Board of Directors, consumer representatives should be included as well.

4. Transparency in the Voting Process

NASUCA supports the proposal raised at the Technical Conference that the Board of Directors should be able to view the individual sector voting on the issues addressed in the stakeholder process.³⁸ By seeing the spectrum of voting, not simply the majority perspective, the Board of Directors can take into account the voting interests of all sectors of the stakeholder process. The increased insight into how the sectors voted and by what degree of magnitude issues passed will allow the Board to make well-informed decisions while taking into consideration minority interests. Such an approach also helps reassure stakeholders that their concerns are being heard, whatever the outcome of a dispute. As Robert Fernandez explained, the Board of Directors of the New York ISO is aware of

³⁷ Oral Remarks of Chairman Wellinghoff, FERC Webcast at 167 minutes 45 seconds.

³⁸ Oral Comments of Tamara Linda during Panel Two, FERC Webcast at 150 minutes.

each sector's votes.³⁹ The transparency of MISO's open Board meetings also shows a degree of Board interest in minority positions, which is facilitated by reporting the full range of sector viewpoints. NASUCA suggests that the Commission require all RTOs/ISOs to adopt this practice.

5. Board of Directors Term Structure

NASUCA supports staggered Board of Directors terms of three years cited by both the California ISO and Janine Migden-Ostrander at the Technical Conference.⁴⁰ In order to avoid self-perpetuation of current RTO/ISO leadership and to offer the opportunity for Board members with experience representing consumers to be appointed to the Board at regular intervals, a staggered Board of Directors term structure is necessary. Thus, NASUCA encourages the adoption of staggered Board terms in RTO and ISOs.

II. CONCLUSION

In addition to the suggestions already raised by the NASUCA Report, there are a number of additional proposals that could benefit consumer representation. Accordingly, NASUCA recommends that the Commission require changes to the current RTO/ISO Governance structure to increase RTO/ISO responsiveness to consumer interests. NASUCA believes that the model RTO document that it prepared and that was cited in the Commission's Notice provides a solid basis for pursuing RTO/ISO reform.

³⁹ Oral Comments of Robert Fernandez (New York ISO), FERC Webcast at 55 minutes 5 seconds.

⁴⁰ Oral Comments of Don Fuller during Panel One, FERC Webcast at 161 minutes.

Respectfully submitted,

/s/ electronically filed

Jody M. Kyler

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

Phone (614) 466-8574

Fax (614) 466-9475

kyler@occ.state.oh.us

On Behalf Of:

National Association of State Utility

Consumer Advocates

8380 Colesville Road, Suite 101

Silver Spring, MD 20910

Phone (301) 589-6313

Fax (301) 589-6380

March 8, 2010

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 8th day of March, 2010.

Respectfully submitted,

/s/ electronically filed

On Behalf of:

National Association of State Utility

Consumer Advocates

8380 Colesville Road, Suite 101

Silver Spring, MD 20910

Phone (301) 589-6313

Fax (301) 589-6380