

March 26, 2021

Ms. Heather Hunt
Executive Director
New England States Committee on Electricity (NESCOE)
424 Main Street
Osterville, Massachusetts 02655
Via e-mail to: Governance@NewEnglandEnergyVision.com

Re: New England Energy Vision, Governance Issues

Dear Ms. Hunt:

I. Introduction

Please accept this letter in response to the invitation issued by NESCOE Manager Matthew Nelson to submit written comments by March 26, 2021 in response to the Governance Forum convened by NESCOE on February 25, 2026. These comments are submitted on behalf of Consumer Advocates of New England (CANE), a (currently) informal organization of the region's statutorily authorized ratepayer advocates. CANE consists of the Connecticut Office of Consumer Counsel, the Maine Office of the Public Advocate, the Massachusetts Attorney General's Office, the New Hampshire Office of the Consumer Advocate, and the Rhode Island Division of Public Utilities and Carriers.¹

II. Key Themes and Reform Imperatives Emerging from the Governance Forum

CANE thanks NESCOE for convening such a useful and timely gathering. More broadly, we express our appreciation to NESCOE for highlighting issues relating to the governance of our regional transmission organization, ISO-New England, as part of the NESCOE New England Energy Vision initiative. We share the view of the state authorities represented by NESCOE that in a number of respects the existing governance structure of ISO New England "lacks the requisite transparency and accountability necessary for the public to have confidence in ISO-NE decisions related to resource adequacy, system planning, and operation requirements for the New England region."² We agree with the sentiment widely expressed at the February 25 Forum that ISO New England governance reform is an essential element to achieving necessary progress in the other realms (wholesale electricity market design and transmission system planning).

We share the concerns and aspirations of many of the forum participants. In particular, as noted at the forum, the recent report prepared for NESCOE by Exeter Associates, "Governance Structure and Practices in the FERC-Jurisdictional ISOs/RTOs," demonstrates that our regional

¹ The Public Advocacy Division of the Vermont Department of Public Service has also historically been a participant in the informal CANE collaboration but is not a signatory to this letter.

² <https://newenglandenergyvision.com/governance-reform/>.

transmission organization is an outlier in significant and problematic ways. The forum revealed numerous reasons why significant reform of ISO New England governance is necessary if our RTO is to fulfil its pivotal role in the provision of so essential a public service as electricity throughout our region:

ISO-NE's Lack of Transparency

- Unique among its federally regulated counterparts, ISO New England's stakeholder advisory body, NEPOOL, conducts all of its proceedings behind closed doors.
- In addition, the deliberations of the Joint Nominating Committee of the ISO Board of Directors are strictly confidential until they reach a point in the process at which the election of the committee-approved slate is a foregone conclusion. There is no opportunity to learn which candidates the Committee considered but rejected or why successful candidates were nominated. Some have justified these secretive practices on the classic human-resources ground that candidates have a right to expect that personnel matters will be treated confidentially. This a rationale, however, that ignores the reality that service on the ISO New England board is not a job but a public trust.

ISO-NE's Barriers to Participation

- Only ISO New England and its New York counterpart (NYISO) limit sponsorship of proposed market rule changes to dues-paying members (in New England, members of NEPOOL and in New York, members of the RTO itself) as opposed to stakeholders generally.

Lack of Consumer Advocacy Expertise on the Board

- As noted by Assistant Attorney General Christina Belew of Massachusetts, the ISO New England Board of Directors has not kept faith with the commitment its chair publicly stated in 2009 to assure that there would be at least one director with a background in consumer advocacy. Although there are now former regulators (i.e., former FERC Commissioner Cheryl LaFleur and former Maine PUC Chairman Mark Vannoy) serving as directors, this is not the equivalent of experience in consumer advocate representation. Regulators are charged with balancing ratepayer and other stakeholder interests whereas a director with a consumer advocacy background would bring to the board deep expertise in consumer concerns and viewpoints. It is long past due for ISO-NE to honor its commitment to have a Board member with consumer advocacy experience.

The Stakeholder Process Disadvantages End Users

- As Professor Stephanie Lenhart of Boise State University pointed out, ISO New England was created in response to the region's adoption of electric utility restructuring and the creation of competitive wholesale electricity markets. From its inception, ISO New England was designed to cater to the interests of market participants. As Professor

Lenhart’s presentation documented, design element that may have originally been necessary to obtain buy-in from market players are not necessarily in the public interest today. They should be reexamined and optimized for more fairness and inclusive participation.

- In what was surely an understatement, Professor Seth Blumsack of Pennsylvania State University demonstrated that the decision structure of RTO and stakeholder advisory bodies “can be connected to real outcomes.”³ ISO New England and NEPOOL should conduct a study of the current sector-weighted voting structure to determine the extent to which the voting rules unfairly and unreasonably thwart initiatives that would be in the public interest generally and ratepayers in particular.

A Lack of Consumer Cost Consciousness

- In the New England states Vision Statement issued last October, the states critiqued ISO-NE’s mission statement as having “no explicit relationship to or recognition of the need for consumer cost-consciousness.”
- CANE agrees that the current language of the ISO mission statement requiring the cost effective performance of its functions and providing costs on major initiatives needs to be strengthened. ISO-NE currently does not provide cost estimates for most market changes and the information it does provide is not in a format that aids consumer decision making. The mission statement should be amended to require ISO New England to provide cost estimates for a wider range of initiatives, to conduct post-implementation cost benefit analyses of almost all new market designs, and to provide estimated and real costs in a meaningful context for consumers, e.g., rate impacts.

The strengthened mission statement commitments with respect to cost should be reinforced with a Tariff provision that requires the Internal Market Monitor to perform a cost/benefit analysis of new market designs after they have been in effect for a period of time sufficient to generate adequate data. Ideally the Tariff provision would also require remedial action by ISO-NE if analysis discloses that the market design’s costs outweigh its benefits or that it is otherwise not otherwise cost effective.

III. The Urgent Need for Tariff-Funded Ratepayer Advocacy

In addition to the above recommendations, CANE strongly urges NESCOE—and, by extension, decision makers at NEPOOL, ISO New England, and FERC—to work with the region’s statutorily designated ratepayer advocates to create an independent and tariff-funded

³ The example Professor Blumsack gave, from PJM – was one in which the sector-weighted voting structure prevented the adoption by the stakeholder body of any of six proposed demand curves for the PJM capacity auction, including the one most preferred by “customer-side interests” that would have reduced capacity costs and the prevailing reserve margin by as much as four percent.

organization to represent the interests of ratepayers in the ISO New England governance process. The currently available mechanism for such representation was inadequate when it was launched more than a decade ago and remains so today.

As you know, in Order No. 719 FERC ruled that RTOs “must provide an avenue for customers and other stakeholders to present their views on RTO and ISO decision-making, *and to have those views considered.*” *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008) (Order 719) at ¶ 503. (emphasis added). In response, ISO New England and its stakeholder advisory body, NEPOOL, submitted a compliance filing, which FERC approved on October 21, 2010. *See ISO New England, Inc. and New England Power Pool*, 133 FERC ¶ 61070 (2010) (Compliance Order). Among other things, the Compliance Order explicitly addressed FERC’s concern that NEPOOL, which grew out of the pre-ISO New England Power Pool, relied on rules and procedures that were “too complicated and resource intensive” for stakeholders to navigate effectively. *Id.* at ¶ 13. FERC noted that in response to this concern, ISO-NE and NEPOOL stated they would

provide a newly established Consumer Liaison Group comprising consumer representatives with a point of contact in the ISO-NE External Affairs Department; the contact will regularly provide information, facilitate meetings, and organize speakers, as well as provide ISO-NE resources to help end-users and consumer representatives understand stakeholder processes and key issues. [ISO-NE and NEPOOL] commit to actively engage with and inform consumer organizations, advocates, ratepayers and consumers about issues and NEPOOL processes through various meetings and reports.

Id. Additionally, FERC noted that ISO-NE and NEPOOL had agreed (1) “to provide consumer advocates with the same type of information and staff support that are provided to NECPUC [the New England Conference of Public Utility Commissioners], including monthly briefings and conference calls” and (2) to “invite[] the highest level officials from each state consumer office to meet with the [ISO-NE] Board in an open discussion forum” at which point ISO-NE would “then determine appropriate steps regarding interaction between Board and officials.” *Id.* at ¶ 16.

CANE does not contend that ISO New England and NEPOOL have failed to honor these FERC-approved commitments. Our point, rather, is that when examining these commitments in hindsight, with full knowledge of the extent to which the result has been actual consideration of ratepayer advocate views as required by Order 719, the need becomes apparent for a fresh look at effectuating those commitments.

In its Compliance Order, FERC did not order the establishment of a regional consumer advocate. However, FERC did so “without prejudice” and specifically reserved the right of any interested party to “reintroduce such a proposal in the stakeholder process if the Consumer Liaison Group prove[d] inadequate.” *Id.* After ten years, it is clear that the construct designed by the region for Order 719 compliance, has indeed proven inadequate.

Since 2010, ISO-NE has played an important role helping to educate consumers, presenting quarterly briefings, providing written updates, developing a helpful website and app, and being responsive to consumer questions. But FERC envisioned more. Order 719 contemplates (1) direct engagement between consumers (and other stakeholders) and key RTO decisionmakers; and (2) that consumer advocates will not merely be heard, but their views actually *considered* by the RTO's governing body. Order 719 at ¶ 503.

The CLG has not provided consumers' direct access to the Board or provided a forum for participation in decision making. The CLG has not been a point of contact for the ISO Board. Indeed, in the last eleven years, the Board has only met with the CLG once. The CLG has no advocacy function and it is no substitute for the right to gather actionable information, to conduct analysis, to present the results of such analysis to decisionmakers, and to have the positions of ratepayer advocates considered.

Participation of state-authorized consumer advocates in NEPOOL is not an adequate substitute. Connecticut, Maine, Massachusetts, and New Hampshire are voting members of the NEPOOL end-user sector. Each pays \$500 per annum for the privilege. This participation does not, however, assure that ratepayers are suitably represented in deliberations. End-users are one of six NEPOOL sectors, each of which enjoys 16.5 percent of the voting rights on the NEPOOL Participants' Committee (the other one percent of voting rights belonging to provisional NEPOOL members).⁴ As of February 2021, NEPOOL listed 37 members of the end-user sector.⁵ In other words, at present a mere 1.78 percent of the NEPOOL voting power is held by the duly authorized representatives of those who are the ultimate payors of 100 percent of the cost of the region's electricity grid. Even if such a minuscule amount of voting power were truly appropriate for the state-designated representatives of ISO New England's 15 million end users, logistics and practical realities to effective participation loom large for end user advocates.

A review of ISO-New England "Update on Recent and Upcoming Regional Activities" (February 26, 2021) shows that a consumer advocate office wishing to participate in all aspects of NEPOOL would need to be available on eight days in March, six days in April, and six days in May.⁶ "There must be a way to ensure that the representation of consumer interests is not defeated by the diffuse nature of RTO workloads," observed former state utility regulator and

⁴ See Exeter Associates, "Governance Structure and Practices in the FERC-Jurisdictional ISOs/RTOs," February 2021 (Exeter Report), prepared for NESCOE and available at http://nescoe.com/wp-content/uploads/2021/02/ISO-RTOGovernanceStructureandPractices_19Feb2021.pdf, at 3-7.

⁵ See https://nepool.com/wp-content/uploads/2021/02/C-Sector_Roster.pdf.

⁶ These numbers are based on scheduled meetings of the NEPOOL Participants' Committee, Markets Committee, Reliability Committee, Planning Advisory Committee, and Transmission Committee.

NARUC President Travis Kavulla two years ago, calling such workloads “bewildering.”⁷ A better word might be “overwhelming,” particularly when consumer advocates are attempting to work alongside NEPOOL members whose business interests as large profit-seeking corporations lead them to staff NEPOOL gatherings on a gavel-to-gavel basis. This is no match for a small ratepayer advocate office such as that of New Hampshire, which has a professional staff of four, of which roughly half of a fulltime-equivalent is devoted to NEPOOL matters (supplemented by between five and ten hours per month of outside consulting help). Although the interests of individual states’ ratepayer advocates do not always align completely, they are sufficiently coextensive as to make obvious the advantages of one centralized source of analysis, advocacy resources and engagement, particularly one funded via the ISO-New England Tariff.

It is long past time for our RTO, its stakeholder advisory body, the state authorities represented by NESCOE, and FERC to acknowledge forthrightly that ratepayers are the ultimate “customers” of a regional transmission organization and thus deserve – as primal stakeholders distinct from those entities doing business with or through ISO New England – an influential voice in RTO governance. Thus, the region and all of its stakeholders should embrace the idea of assuring that ratepayer advocates will play a meaningful role in guiding and overseeing ISO New England, leveraging the opportunities provided by membership in the end-user sector of NEPOOL.

In that regard, it was particularly encouraging to hear Chair Matthew Nelson of the Massachusetts Department of Public Utilities, in his capacity as his state’s NESCOE manager, open the governance forum by acknowledging forthrightly that “NEPOOL doesn’t seemingly give enough voices to the state and consumer interests.” He characterized “transparency” as “an essential piece of the stakeholder process” and noted that public access to the governance processes of our RTO has been “inadequate.” The reforms that would be required to address Chair Nelson’s concerns, as well as those set forth in these comments, will require changes to the NEPOOL Participants Agreement. Though it may be challenging for other NEPOOL stakeholders to embrace such reforms, we hope to convince all involved – our fellow stakeholders, the state interests represented by NESCOE, federal regulators, and even the region’s Congressional delegation – that both the legitimacy and impact of our RTO’s governance mechanisms would be enhanced by the creation of a tariff-funded vehicle for ratepayer advocate participation.

IV. Conclusion

The undersigned state-authorized ratepayer advocates thank NESCOE for the opportunity to participate in the Governance Forum, to have the benefit of the insights offered by the experts

⁷ Travis Kavulla, “Problems in Electricity Market Governance: An Assessment” (R Street Institute, 2019), available at <https://www.rstreet.org/wp-content/uploads/2019/08/FINAL-RSTREET180.pdf>, at 11. Mr. Kavulla’s conclusion that the workload was “bewildering” was based on what was then a decade-old assessment from the federal Government Accountability Office (GAO) of annual stakeholder meetings that ranged from 57 to 611 depending on the RTO.

who spoke at the Forum, and to provide these comments. For the reasons set forth in this letter, we believe there is a pressing need for governance reform at ISO New England. For us, the lynchpin of such reform would be the establishment of a tariff-funded consumer advocate representative organization that would complement the Consumer Liaison Group. We therefore earnestly hope NESCOE will recommend such an initiative to our RTO, to its stakeholder advisory body NEPOOL, and, ultimately, to FERC.

Sincerely,

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