

Comments from Public Interest Organizations On New England States' Governance Reform Technical Forum

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Acadia Center, Conservation Law Foundation (CLF), Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC), Sierra Club, and the Sustainable FERC Project (Public Interest Organizations) appreciate the opportunity to comment on the New England Energy Vision governance reform forum held on February 25, 2021. Public Interest Organizations strongly support the New England States (States) in exploring the necessary governance reforms to ensure that the decision-making process by ISO New England (ISO-NE) allows for meaningful participation by the States and all relevant stakeholders. Reform of ISO-NE governance is critical in harmonizing State, consumer, and other public interest priorities, such as climate mitigation, equity, and environmental justice, with ISO-NE actions.

In our comments below, Public Interest Organizations discuss ISO-NE's current governance structures and the barriers they pose to transparency, accessibility, and meaningful input from stakeholders. As New England States have taken action to mitigate the climate crisis, deficient ISO-NE governance structures have caused an increasingly wide gap between States' policy priorities, adopted by the region's democratically-elected leaders, and ISO-NE actions. This misalignment presents a significant challenge for New England States in meeting their climate goals and in avoiding unnecessary consumer costs. The goal of governance reform should be to ensure that New England States and consumers are provided a meaningful voice in ISO-NE's decision-making process and have the ability to hold ISO-NE accountable to ensure its actions promote just and reasonable rates in accordance with rather than in opposition to State policy goals and requirements.

Public Interest Organizations suggest several potential reforms for consideration, including: (1) aligning ISO-NE's mission statement with State decarbonization goals and policies; (2) removing barriers to participation in the ISO-NE and New England Power Pool (NEPOOL) stakeholder processes; (3) improving ISO-NE's decision-making processes; and (4) improving ISO-NE's Board of Directors and leadership policies and structures. We highlight multiple avenues for New England States to pursue these reforms, including through advocacy to ISO-NE and NEPOOL, through tools relating to the Federal Energy Regulatory Commission's (FERC or Commission) Order 719, through FERC's recently opened docket on future electric market design, and if necessary, through initiation of a new FERC proceeding. States will likely need to advocate for a broad suite of reforms through multiple channels to ensure necessary governance reform is achieved.

I. Why Reforms to ISO-NE Governance Are Needed

In recent years, ISO-NE actions have increasingly diverged from or come into conflict with policies adopted by the democratically-elected leaders of the New England States, resulting in higher consumer costs and erecting barriers to the achievement of State climate goals. These

conflicts are evident, for example, in the way ISO-NE has defined and operated the region's Forward Capacity Market (FCM), leading to higher costs and equity, climate, and clean energy concerns. As currently structured, the FCM excludes significant quantities of State policy-driven renewable capacity from participation, depriving the region's residents of a clean energy future by preventing clean energy generators from having access to a critical revenue source.¹

Because these renewable generators serve States' clean energy contracts, their exclusion from the FCM causes ISO-NE to purchase instead capacity from other generators even though it is not needed. This results in over procurement and forces consumers to overpay for fossil fuel plants they don't need. Unquestionably, the current FCM structure is extremely costly and needs reform. Left unchecked, over the next 10 years, the costs of over procuring capacity in New England could reach \$3 billion.² Besides concerns with the operation of the FCM, ISO-NE has also taken other actions that support and extend the lives of fossil fuel-fired generation, resulting in higher consumer costs. As part of its flawed fuel security process, for example, ISO-NE has prolonged the operation of the Mystic Generating Station in Everett, MA, the largest fossil fuel plant in the region, to the tune of \$400 million in subsidies, which must be paid by the region's consumers.³ As the NESCOE Vision Statement makes clear, "[a]bsent fundamental changes...the result of the existing market structure will be that some states' ratepayers will continue to overpay for electricity, constrained by a wholesale market not aligned with a rapidly transitioning resource mix and consumer investments in clean energy and decarbonization."⁴

Outcomes such as these reveal serious flaws in and shortcomings of ISO-NE governance. Without reform, the ISO-NE system will impede rather than facilitate the States' implementation of clean energy and environmental laws. Not only will there continue to be unnecessary cost implications and detrimental climate effects but also adverse consequences to public health for all consumers and residents, in particular for low-income communities and long suffering environmental justice communities.

Other key issues and problems in ISO-NE governance include:

¹ See *Comments from Public Interest Organizations on New England States' Wholesale Market Design Technical Forums* (February 24, 2021), <https://newenglandenergyvision.files.wordpress.com/2021/02/energy-vision-wholesale-market-comments-nrdc-sierra-club-acadia-center-and-conservation-law-foundation.pdf>.

² Rob Gramlich (2019), *Too Much of the Wrong Thing: The Need for Capacity Market Replacement or Reform*, <https://gridprogress.files.wordpress.com/2019/11/too-much-of-the-wrong-thing-the-need-for-capacity-market-replacement-or-reform.pdf>.

³ See *Protest and Comments of Public Interest Organizations* (May 23, 2018), FERC Docket No. ER18-1509, <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=14927204>. For more on the flawed underpinnings of ISO-NE's fuel security exercise, see also Synapse Energy Economics (2018), *Understanding ISO New England's Operational Fuel Security Analysis*, <https://www.synapse-energy.com/sites/default/files/Understanding-ISO-NE-OFSA-18-028.pdf>.

⁴ New England States, *New England States' Vision for a Clean, Affordable, and Reliable 21st Century Regional Electric Grid* (October 16, 2020), <http://nescoe.com/resource-center/vision-stmt-oct2020/>.

- A lack of transparency that undermines the public’s knowledge of and trust in ISO-NE’s role and decision-making. This includes an ISO-NE stakeholder process at NEPOOL that takes place largely behind closed doors as well as an opaque Board of Directors that holds its meetings in private with only barebones meeting summaries published to inform the public of the Board’s activity.
- Inadequate stakeholder processes that undervalue or exclude New England States, consumers, and other public interest perspectives from regional grid conversations and decisions. Within the ISO-NE stakeholder process at NEPOOL, States, consumers, and other public interest perspectives receive inadequate voice and representation, with barriers to entry and limited voting power—or in the case of the New England States none at all. States, consumers, and other public interest voices further have no representation on the ISO-NE Board. This lack of representation results in consumer and environmental concerns consistently being given little to no weight in ISO-NE’s decisions. Although ISO-NE communicates with States via public utility commissions and the New England States Committee on Electricity (NESCOE), given the persistent and growing conflicts between State policies and ISO-NE market rules and planning, it is unclear that these conversations are impactful on ISO-NE decision-making, even when New England States speak unanimously.⁵

II. Goals of Reform

A majority of New England States have made clear their goals in combating climate change. Further, all six States have expressed a clear interest in minimizing consumer costs and protecting public health. Bringing ISO-NE’s decisions and operations into alignment with these interests is essential in achieving State policy goals and doing so in a cost effective manner. This is particularly important given the seismic shifts in the grid that are happening now and that will continue to happen in the future—driven in significant part by New England State laws and policies—to decarbonize electricity and other sectors, including the need to fully integrate distributed energy resources like electric vehicles, rooftop solar, and energy storage.

New England States and the region’s stakeholders need a reformed ISO-NE governance structure that works in concert with, rather than in opposition to, these State policy priorities, and that is accountable to the States and the region’s stakeholders, including consumers. The primary

⁵ NESCOE, *RE: Pathways to the Future Grid – ISO-NE Analysis*, Memo to ISO-NE Board of Directors (November 2, 2020), <http://nescoe.com/resource-center/isoboard-analysis-nov2020/> (“Since at least 2017, NESCOE has voiced a consistent view about ISO-NE’s interest in and advocacy around carbon pricing. In April 2017, NESCOE communicated to the New England Power Pool (NEPOOL) that it does not support a new, incremental carbon pricing-style mechanism administered by ISO-NE and subject to FERC jurisdiction to execute the requirements of state laws. NESCOE affirmed those views in May 2020, and last month in the Vision Statement. NESCOE also recently commissioned an Analysis of Carbon Pricing Impacts to the New England Power Sector that showed a potential net impact to consumers of net carbon pricing between \$1 Billion to \$3.7 Billion annually. Simply, NESCOE does not agree that ISO-NE should pursue the administration of a new, incremental carbon price. This disagreement counsels that ISO-NE should prioritize time and resources on possible pathways to harmonize state laws and wholesale markets that the states consider viable.” (internal footnotes omitted)).

goal of reforming ISO-NE governance should be to ensure that States, consumers, and other public interest organizations are provided a meaningful voice in ISO-NE decision-making and that State policy objectives and the public interest receive sufficient consideration. A better, reformed ISO-NE would also provide tools and expertise in regional markets and transmission planning to help complement and achieve States' environmental, environmental justice, and equity priorities.

III. Specific Governance Reforms to Consider

To advance these goals, Public Interest Organizations propose several reforms, with the aim of correcting critical shortcomings in and removing current barriers to effective governance. We note that existing governance constructs and failures have built up over many years, and while improvements are possible in the short-term, some corrections will take longer to institute. Many reforms may also require action and buy-in from ISO-NE and NEPOOL and/or FERC.

ISO-NE governance reform should be viewed as an iterative process by which changes are implemented and evaluated to ensure they are accomplishing intended outcomes, such as enhanced consumer protection and reflection of the public interest in decisions. Where challenges persist following adopted reforms, further measures should be explored.

a. Reform ISO-NE's Mission Statement

A significant barrier to better ISO-NE decision-making and governance is the too-narrow lens through which ISO-NE views its current role. The grid operator has frequently cited perceived limitations in its mission statement, Tariff, and role as barriers to fully accounting for State policy goals in its decisions.⁶ Public Interest Organizations believe ISO-NE has in some cases too narrowly interpreted its mission and obligations under the Federal Power Act and relevant FERC orders. For example, when ISO-NE adopts market rules (such as the Minimum Offer Price Rule) that attempt to counteract State policy requirements, it narrowly interprets its stated mission to ensure that wholesale markets are “economically efficient,” are “consistent with proper standards of reliability and the long-term sustainability of competitive markets,” and “compensate at fair value (considering both benefits and risks) any required service.”⁷ Part of administering efficient, fair, and sustainable wholesale markets must entail adopting market rules and structures that work with rather than against New England State policy requirements, to ensure the region's grid is reliable and cost-effective within State legal frameworks and consistent with the authorities reserved to States over power generation under the Federal Power

⁶ See, e.g., Gordon Van Welie, President and CEO, ISO-NE, “Wholesale Markets Are Evolving to Support New England's Clean Energy Transition: Potential Pathways and Implications for Resource Adequacy” (January 14, 2021), at 2, https://www.iso-ne.com/static-assets/documents/2021/01/iso_ne_pathways_presentation_january_2021_update_fpmf_final.pdf (“The primary challenge is that federal and state energy and environmental objectives are not aligned . . . Efficiency and resource neutrality are prioritized in the wholesale electricity markets while state legislatures are requiring clean energy and decarbonization”).

⁷ ISO New England Inc., *Transmission, Markets, and Services Tariff*, at § I.1.3 (September 10, 2020), https://www.iso-ne.com/static-assets/documents/regulatory/tariff/sect_1/sect_i.pdf.

Act. Failing to properly accommodate State climate and clean energy laws raises consumer costs, violates the public interest, and is neither efficient, fair, nor sustainable.

While we believe ISO-NE has greater authority—and an obligation—to facilitate the achievement of New England States’ policy requirements, given these prior challenges, further clarification of its mission might facilitate better governance and outcomes. To be clear, clarification of ISO-NE’s mission is needed to ensure ISO-NE actions are consistent with and help actively facilitate New England State laws, not to replace State policy judgments or insert ISO-NE’s own policy judgments with respect to, among other things, decarbonization, environmental justice, and the permitting of generation and transmission infrastructure.

One possible reform would be to add to the Mission of ISO-NE in § I.1.3 of the Tariff a duty “to facilitate and plan for the cost effective integration of resources needed to achieve decarbonization of the region’s electricity grid, consistent with local, state, and federal climate and clean energy laws and policies and protection of the region’s consumers.” Such an approach would be consistent with other RTOs such as CAISO, which explicitly recognizes the need to achieve state clean energy goals in its vision statement.⁸

b. Reforms to ISO-NE/NEPOOL Stakeholder Processes

i. Remove barriers to public participation and the press

The current stakeholder processes at ISO-NE are insufficient and create further barriers to effective governance. While ISO-NE conducts certain stakeholder processes directly, the principal stakeholder forum for discussion of ISO-NE actions is NEPOOL, a private, membership-based organization that requires members to be approved and pay annual dues to participate. Under NEPOOL rules, members of the general public are only allowed to attend meetings if they are invited and pre-approved. NEPOOL meetings are further closed to the press and the discussions that take place behind closed doors are considered to be non-public and confidential.

While many NEPOOL meeting materials are posted publicly and meeting minutes are subsequently made available, the barriers to entry and restrictions on public access and the press prevent broader public participation and inhibit members of the public from being informed about key ISO-NE decisions and conversations that affect their energy bills, state economies, and quality of the environment. Subsequent proceedings at FERC on some but not all ISO-NE decisions presented and discussed at NEPOOL are not a substitute for greater public and press engagement early in the process when these decisions are being shaped and formulated. This is particularly true given the significant deference generally afforded ISO-NE by FERC.

⁸ CAISO, “Our commitment,” <http://www.caiso.com/about/Pages/OurCommitment/default.aspx> (last visited March 26, 2021) (“The ISO vision for 2020 and beyond drives our strategies for the next five years. During this time, the ISO will work with others in the industry to strike the balance between achieving the state’s clean energy goals and maintaining reliability, efficiency and affordability.”).

These restrictions are not the norm. Every other FERC-regulated RTO/ISO region provides significantly more public and press access to its stakeholder process. Specifically:

- California ISO’s (CAISO) Open Meeting Policy permits members of the public, including press, to attend meetings, including meetings by teleconference, except for portions of meetings that are in executive session. This policy is intended to “afford[] the public the greatest possible access consistent with other duties of the corporation” and applies to “all meetings of the ISO Board of Governors, all standing, advisory, and ad hoc committees appointed by the Board of Governors, and any other ISO governing body as set forth in the ISO bylaws.”⁹
- The Midcontinent ISO’s (MISO) stakeholder meetings are open to the public, including press, and generally include a public meeting notice that includes the following message: “Please keep in mind that the audience may include members of the press and representatives of various governmental authorities, in addition to industry stakeholders.”¹⁰
- The New York ISO (NYISO) permits members of the public, including press, to attend committee meetings in person, except for those portions of meetings that take place in executive session.¹¹
- PJM’s stakeholder meetings are open to the public, including the press. To ensure “participants can freely discuss the wide range of complex issues that are before them,” PJM has adopted a code of conduct that, among other things, requires members of the media to obtain permission from speakers before quoting them by name or organization.¹²
- The Southwest Power Pool’s (SPP) bylaws state that “SPP meetings shall be open,” subject to certain restrictions needed to safeguard confidentiality of sensitive information.¹³

⁹ CAISO, *Open Meeting Policy* (effective December 9, 2019), at 1, <http://www.caiso.com/Documents/CaliforniaISOOpenMeetingPolicy.pdf>.

¹⁰ MISO, *Stakeholder Governance Guide*, Appendix 12 (Public Meeting Announcement), at 51 <https://cdn.misoenergy.org/Stakeholder%20Governance%20Guide105455.pdf>.

¹¹ NYISO, *By-Laws of the Management Committee*, at § 4.16 (Participation Rules), https://www.nyiso.com/documents/20142/1408883/mc_by_laws.pdf.

¹² PJM, *PJM Manual 34: PJM Stakeholder Process* (effective January 27, 2021), <https://www.pjm.com/-/media/documents/manuals/m34.ashx>.

¹³ Southwest Power Pool, *Bylaws*, at § 3.5 (effective April 30, 2020), at § 3.5 <https://www.spp.org/documents/13272/current%20bylaws%20and%20membership%20agreement%20tariff.pdf>.

In recent years, NEPOOL has rejected proposals to similarly provide access to its meetings, going so far as attempting to modify its rules to more explicitly bar press participation and coverage and rejecting proposed rules to expand access.¹⁴

We strongly urge New England States to exert influence and pressure on ISO-NE and NEPOOL to modernize its stakeholder process to provide public access that is at least consistent with open meetings standards adopted in other regions. If ISO-NE and/or NEPOOL refuse, we urge the States to take their case to FERC on behalf of the public and urge the Commission to mandate reforms consistent with Order 719, which requires Regional Transmission Organizations (RTO) and Independent System Operators (ISO) processes to be inclusive, fairly balance diverse interests, represent minority interests, and be responsive.¹⁵

- ii. Examine NEPOOL's voting sectors and voting shares and whether they align with achievement of State policies and the public interest

To the extent NEPOOL continues to play a significant role in ISO-NE stakeholder processes, we encourage New England states to examine the organization's representation and voting practices and whether they align with the public interest and State policy requirements.

Under the current ISO-NE stakeholder process at NEPOOL, NEPOOL member stakeholders are organized into six principle sectors: Alternative Resources, End Users, Generation, Publicly Owned Entities, Suppliers, and Transmission. When ISO-NE proposals are brought to NEPOOL for consideration, each of these sectors receives a roughly equal voting share (approximately one-sixth), with that voting share divided among the members of the sector. While New England State representatives and NESCOE are able to attend NEPOOL meetings, they do not receive a vote, either individually or collectively.

The End User Sector, of which some of our Public Interest Organizations are members, includes representatives of large energy users in the region, consumer advocates, and environmental organizations, which split the sector's one-sixth vote. Public interest focused entities (consumer advocates and environmental organizations) that are members of NEPOOL thus represent less than one-sixth of the overall NEPOOL vote. As discussed in the section above, public interest focused groups that are not members of NEPOOL as well as citizens in the region receive no vote or voice at NEPOOL. Currently, for example, there are no environmental justice organizations or other community-based New England groups represented.

Most voting stakeholders at NEPOOL are companies that participate in the electricity industry. This includes significant cumulative voting shares for owners and marketers of incumbent power generation, including the region's fossil fuel-fired power plants, and owners of the region's transmission assets. While there is a range of stakeholders within individual NEPOOL sectors, many of which are engaged in technologies needed to decarbonize the grid,

¹⁴ See *New England Power Pool Participants Committee*, 166 FERC ¶ 61,062 (January 29, 2019); see also *Protest and Comments of Public Interest Organizations* (September 14, 2018), FERC Docket No. ER18-2208, <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=15040770>.

¹⁵ Order 719, FERC Stats. & Regs. ¶ 31,281, at 504-509.

companies that are interested in and profit from the current, polluting grid have outsized voices in the stakeholder process that can reinforce the status quo.

We urge States to examine critically the existing NEPOOL stakeholder process to ISO-NE, including issues of representation and voting shares, to determine whether this process supports the evolution needed to decarbonize the region's grid, both in the near-term and over the next 10, 20, and 30 years. Public Interest Organizations believe the current structure does not appropriately represent the diverse interests of the region due to its restrictive access and voting structure, which undervalues the perspectives of States and the public, and is a barrier to necessary change. While the NEPOOL process as currently formulated does not control ISO-NE decisions—ISO-NE can and in many cases does ignore NEPOOL recommendations—this process nonetheless has a significant influence on ISO-NE decision-making and the direction of the region's wholesale electricity markets and transmission system.

The current NEPOOL structure concentrates diverse consumer advocate, end user, and environmental organization participants into a single End User sector with limited collective voting power. To provide a more representative and balanced NEPOOL process, at a minimum, the End User sector at NEPOOL should be expanded to provide separate voting sectors for consumer advocates, end users, and environmental organizations, with each receiving the same voting share as do other NEPOOL sectors covering interests such as generators, suppliers, and transmission owners. In MISO, for example, there are separate voting sectors for eligible end-user customers, environmental groups, and public consumer advocates, as well as a voting sector for state regulatory authorities.¹⁶

The lack of more diverse representation and voting power at NEPOOL inhibits other critical reforms. Of note, increased transparency in the NEPOOL stakeholder process, which alone is insufficient to correct its flaws but might help shed light on and counteract the power of incumbent industry, has been roundly rejected by the majority of NEPOOL sectors and members. In fact, only a majority of members in the End User Sector (including Public Interest Organizations) have supported a proposal to modestly increase press access at NEPOOL meetings. Majorities of every other NEPOOL sector not only rejected this proposal but supported instead adopting even more restrictive NEPOOL rules to bar members of the press from joining NEPOOL and attending its meetings.¹⁷ While these more restrictive NEPOOL rule changes were ultimately rejected at FERC, NEPOOL's prior rules, which continue to severely limit both press and public participation in the stakeholder process, remain in effect.¹⁸

¹⁶ MISO, "MISO Region Engagement," <https://www.misoenergy.org/stakeholder-engagement/miso-engagement/> (last visited March 23, 2021).

¹⁷ See *Protest and Comments of Public Interest Organizations* (September 14, 2018), FERC Docket No. ER18-2208, <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=15040770>.

¹⁸ In a January 29, 2019 order, FERC rejected NEPOOL's proposal to adopt even more restrictive press rules than those the organization already had in place, determining that NEPOOL had failed to show that these proposed changes were just and reasonable and not unduly discriminatory and preferential. *New England Power Pool Participants Committee*, 166 FERC ¶ 61,062 (January 29, 2019), at P 49.

c. *ISO-NE decision-making process reforms*

- i. Establish special stakeholder committees or working groups when ISO-NE is making certain decisions

We recommend the creation of stakeholder task forces or working groups to address specific topics prior to the initiation of larger stakeholder processes to determine proposed rule changes. Such topics would be those where ISO-NE Tariff changes would likely have a significant impact on the resource mix and costs, and which involve a wide range of differing perspectives that may create potential barriers to consensus. The goal of these task forces or working groups would be to develop at a minimum a set of consensus principles to guide any future Tariff change proposals in advance of their development and filing at FERC.

Such task forces could potentially be established at NEPOOL, though reforms to current NEPOOL processes and representation, as recommended above, are needed to correct the deficiencies of that stakeholder forum. Stakeholder task forces should include a balance of representatives from across stakeholder interests and sectors, including separate representation of consumer advocate and environmental group perspectives (as opposed to the current NEPOOL structure that combines these interests into a single End User sector), as well as representatives from the New England States.

- ii. Create a funded regional consumer advocate organization

Public Interest Organizations also support the creation and funding of a regional consumer advocacy organization, as recommended by Christina Belew from the Massachusetts Attorney General’s Office at the February 25 technical forum. Such an organization would provide greater capacity and resources for state consumer advocates in New England to engage with ISO-NE, at NEPOOL, and at FERC on behalf of the region’s consumers, who ultimately pay for the electricity system. A regional consumer advocacy organization, the Consumer Advocates of the PJM States (CAPS), has existed in the PJM region since 2013 and provides a potential model for New England.¹⁹ CAPS is funded under PJM’s tariff.

- iii. Require State review and approval of various ISO-NE decisions to ensure that state policy objectives have been adequately considered

Currently, the only role for the states, via NESCOE, in resource adequacy is a single vote on the determination of the reserve margin.²⁰ We recommend expanding the States’ role in the determination of ISO-NE resource adequacy rules, as well as other policies. This expanded role could be modeled on the Southwest Power Pool (SPP) Regional State Committee (RSC) structure. SPP’s bylaws provide that the RSC will “determine the approach for resource

¹⁹ See Consumer Advocates of the PJM States, Inc., <http://pjm-advocates.org/>.

²⁰ See Jennifer Chen and Gabrielle Murnan (2019), *State Participation in Resource Adequacy Decisions in Multistate Regional Transmission Organizations*, Duke Nicholas Institute for Environmental Policy Solutions, <https://nicholasinstitute.duke.edu/publications/state-participation-resource-adequacy-decisions-multistate-regional-transmission>.

adequacy across the entire region.”²¹ The RSC is also given responsibility to determine certain proposals pertaining to transmission funding and charges, the transmission planning process, and financial transmission right allocation.

At a minimum, New England States should be given the same role as the SPP RSC for approval of changes to or new resource adequacy approaches prior to their filing at FERC. In addition, one or two public interest and environmental group non-voting liaison positions should be created to participate in discussions with the States under this expanded role.²²

- iv. Require an enhanced impact assessment for key decisions that incorporates environmental externalities and environmental justice criteria

Regional energy grid operations and infrastructure investments have significant implications for the root causes of electricity consumption’s contribution to climate change. Further, the reforms to regional electricity market rules and transmission planning processes contemplated by New England States’ Energy Vision will—if implemented—determine the timing and effectiveness of these reforms in achieving the systemic changes needed to transform the system. An essential ingredient of future decision-making is prioritizing the benefits of the rapid and equitable achievement of climate goals. Knowing which pathways offer the optimal benefits requires a reframed approach to evaluating changes to market rules and transmission infrastructure investments. These include the benefits of eliminating greenhouse gas emissions through rapid decarbonization of electricity while simultaneously electrifying the broader economy; considering the social value of investing in environmental justice communities; and improving the health and safety of the residents of the region, most especially those who are at greatest risk from climate change and have borne a disproportionate burden from the current system. It is important for ISO-NE to provide sufficient information and tools for stakeholders to evaluate how certain market design changes could impact these interests.

Current evaluations of proposed Tariff modifications are insufficient. When conducted, such evaluations are too narrowly defined and do not adequately capture the proposals’ full impacts beyond impacts on market clearing prices and outdated and expensive definitions of reliability. For example, the impact assessment of ISO-NE’s April 2020 proposed Energy Security Improvements measured social welfare benefits as the reduction in total production costs incurred to meet real-time loads, even though payments by load to suppliers would increase. Emissions changes were projected to vary under different scenarios but were not a factor in the conclusions of the Impact Assessment.²³

²¹ Southwest Power Pool, *Bylaws*, at § 7.2 (effective April 30, 2020), <https://spp.org/documents/13272/current%20bylaws%20and%20membership%20agreement%20tariff.pdf>.

²² A similar proposal is made with regard to the SPP RSC in *Public Interest Organizations’ Principles for Good RTO Governance, Southwest Power Pool’s RTO West Market Proposal* (March 3, 2021), <https://sustainableferc.org/wp-content/uploads/2021/03/20210304-item-03a-resource-adequacy-reform-PJM-presentation.pdf>.

²³ ISO New England Inc., *Compliance Filing of Energy Security Improvements Addressing New England’s Energy Security Problems*, Appendix C: Energy Security Improvements Impact Assessment,

Public Interest Organizations recommend that all proposals for major Tariff changes filed by ISO-NE for approval by FERC incorporate an enhanced impact assessment by a neutral third party, with similar transparency and public inclusion criteria described elsewhere in these comments. At a minimum, the analysis should provide sufficient information to allow for an understanding of how proposed Tariff changes are forecasted to impact consumers' energy burden, environmental externalities and co-benefits (e.g., carbon emissions and criteria pollutants that damage human health), and environmental justice (e.g., geographically-measured implications for historically marginalized people and historically disinvested communities, especially people of color, low-income residents, indigenous peoples, and English isolated residents). Explicitly and comprehensively evaluating the impacts of market reforms and transmission planning scenarios is the only way to measure and implement market designs and transmission planning scenarios that reduce emissions most effectively while addressing disproportionate impacts on environmental justice communities, as well as consumers more broadly defined. A more thorough, up-front assessment of costs and impacts could help to avert the outcome in the Energy Security Improvements proceeding where FERC ultimately rejected the proposal, finding it would increase costs by \$20 million to \$257 million per year.²⁴

Such an analysis is necessary to enable comparison of the impacts of various proposals to the status quo and ensure that changes to one part of the regional market or transmission system do not conflict with New England States' broader climate and equity goals. The studies should be provided to all stakeholders, including NEPOOL members voting on proposed Tariff changes, and to FERC so neither stakeholders nor regulators are forced to evaluate proposals based on broad claims of benefits without any actual quantification of such claims.

The metrics used in a comprehensive impact assessment could be defined by the task forces or working groups described above. Public Interest Organizations recommend that, at a minimum, these metrics are developed and applied in a way that illuminates the grid's potential role in reducing carbon emissions and addressing the "long-standing inequity experienced by communities most vulnerable to effects of climate change and most at risk of pollution, displacement, energy burden, etc."²⁵ The task forces or working groups would also have input into and review these analyses for proposals falling under their subject area purview. To ensure that this requirement is not overly burdensome, a threshold can be established to determine what constitutes a "major" Tariff change based on a preliminary cost determination along with a determination of potential risk to environmental justice communities and/or consumers.

d. Reforms to ISO-NE Board and Leadership Structure

i. Change or expand the composition of the ISO-NE Board

Analysis Group (April 15, 2020), https://www.iso-ne.com/static-assets/documents/2020/04/energy_security_improvements_filing.pdf.

²⁴ *ISO New England Inc.*, 173 FERC ¶ 61,106 (October 30, 2020), at PP 1, 55.

²⁵ See Climate Justice Working Group to the Massachusetts Global Warming Solutions Act Implementation Advisory Committee, *Refined List of Preliminary Recommendations* (February 24, 2020), <https://www.mass.gov/doc/iac-climate-justice-work-group-policy-priorities/download>.

ISO-NE is overseen by a 10-member (including the ISO-NE President and CEO) Board of Directors. Although members of the Board hold expertise in a variety of relevant areas, there are interests who are not represented that, unless addressed, present obstacles to achieving a decarbonized, consumer-centric grid, consistent with New England State policy requirements and goals. We recommend that New England States push ISO-NE to adopt and/or FERC to require changes to or expansion of the composition of the ISO-NE Board and the process of nominating Board members in the following ways.

First, New England States should be directly represented on the ISO-NE Board to ensure the States' policy objectives and perspectives are reflected in the Board's discussions and decision-making on the direction of ISO-NE. Providing for New England State representation on the Board is important and necessary given persistent conflicts between State policies and ISO-NE market rules and actions and the reluctance of the Board and ISO-NE leadership over the last several years to take meaningful steps to resolve these conflicts and respect New England States' policies. As an example of this failure: In May 2016, New England States released a "Problem Statement" that identified many of the same concerns raised in their October 2020 Energy Vision Statement, and called for ISO-NE (and NEPOOL) action "even if imperfect" and "incremental" to address these issues. In 2016, the States expressed optimism that the region could "succeed in crafting a way forward that enjoys relatively broad support, cognizant of the timing imperatives" of climate change and other priorities.²⁶ Yet nearly five years later, ISO-NE has not adopted any meaningful measures to address these concerns. To the contrary, ISO-NE has continued to take and propose actions, ratified by its Board, that further exacerbate the problems and conflicts identified by the States.²⁷

While ISO-NE has recently initiated a "Future Grid Initiative" to explore potential paths forward, the outcome of this process is uncertain. Given the urgent need to address climate change and other State priorities, New England does not have time to wait for ISO-NE and its Board to potentially change. The Board structure that has led to the status quo is not working. Creating two or more Board slots for New England State representatives (potentially rotating among the States and/or representing different parts of the region, such as northern and southern New England) would help ensure that State perspectives and priorities are reflected in the Board's deliberations, including under the Future Grid Initiative, and, hopefully, influence the Board's direction to ISO-NE to ensure the grid operator is responsive to States' concerns.

Second, we urge New England States to ensure public interest perspectives are also reflected on the Board. Given the lack of consumer advocacy, environmental justice, or environmental protection representation, ISO-NE decisions consistently ignore and underrepresent consumer interests; fail to recognize the consumer benefits and technological

²⁶ New England States, *Problem Statement* (May 17, 2016), https://nepool.com/uploads/IMAP_20160517_Problem_Statement.pdf.

²⁷ See, e.g., Sustainable FERC Project, "New England Grid Operator Misses the Mark on Clean Energy," May 22, 2020, <https://sustainableferc.org/new-england-grid-operator-misses-the-mark-on-clean-energy/>; Sustainable FERC Project, "Senators Urge New England Grid Operator to Address Climate," September 19, 2019, <https://sustainableferc.org/senators-urge-new-england-grid-operator-to-address-climate/>.

capabilities of clean energy; and show a lack of urgency in responding to power sector pollution and the dangers of climate change, even if just to align ISO-NE market rules and planning practices with the adopted policy requirements of the States. In addition to creating Board slots for the States, requiring that the ISO-NE Board include consumer, environmental, and environmental justice perspectives would help improve decision-making and the legitimacy of Board decisions, which significantly affect the region's residents.

Finally, we recommend that the process of nominating Board members be made more transparent and reformed to ensure that a diversity of voices, including but not limited to the states and consumer, environmental, and environmental justice advocates, are represented and heard from an early point in the process. Though nominated to serve only three years at a time, ISO-NE Board members are frequently expected to be renominated to serve a total of three terms, thus remaining on the Board for nearly a decade. These nominations should be subject to appropriate scrutiny to ensure Board appointments secure the best and right collection of experiences, skills, and independence needed to oversee ISO-NE in the critical decades ahead as the grid must decarbonize. While the current Board nominating process provides for a degree of participation across NEPOOL sectors and the States, the lack of transparency in the nominating process and the limitations in terms of NEPOOL's restricted membership and sector compositions, leaves much to be desired.

ii. Increase transparency by making ISO-NE Board meetings public

The lack of transparency in the ISO-NE Board nominating process is repeated in the lack of transparency in Board deliberation and decisions. As noted above, CAISO's Board of Directors meetings are open to the public as are meetings by committees of the Board. SPP and MISO also hold open Board meetings, and NYISO provides public access to the minutes from its Board meetings.²⁸ Given the importance of the regional electricity grid and its management to all residents, New England should similarly have an open and transparent ISO-NE Board of Directors. We understand that certain issues, including sensitive discussions around grid security, may require a greater level of confidentiality. However, the default should be open meetings, with special rules and exceptions made as warranted. The majority of discussions need not and should not take place behind closed doors.

iii. The ISO-NE Board should establish a special committee on climate change, similar to its special committee on information technology and cyber security

The ISO-NE Board has formed a Special Committee on IT and Cyber Security and has a portion of its website dedicated to delineating the steps the organization is taking to protect the grid and the marketplace from the security risks that cyber intrusion threats pose.²⁹ This

²⁸ See Exeter Associates, Inc. (2021), *Governance Structure and Practices in the FERC-Jurisdictional ISOs/RTOs*, Table ES-5, Prepared for NESCOE, <https://newenglandenergyvision.files.wordpress.com/2021/02/nelson-exeter-presentation.pptx>.

²⁹ ISO-NE, "Cybersecurity to Protect the Grid and Marketplace," <https://www.iso-ne.com/about/what-we-do/in-depth/cybersecurity-initiatives> (last visited March 22, 2021).

prioritized and sustained focus by ISO-NE leadership on a systemic threat that encompasses organization-wide operations is appropriate and necessary.

As has been seen in dramatic relief in other parts of the country and the world, grid operators' preparation for and management of growing climate-driven threats can be a matter of life and death, or the driver of devastating upheaval for consumers and market participants alike. Going forward, maintaining grid resilience and reliability will become ever more challenging, especially if the carbon intensity of electricity is not cut to nearly zero. While there is little that grid operators can do about cyber security but prepare for, prevent, and respond to disruptions, the intrinsic role that electricity generation has played in today's manifestations of climate change offers an opportunity for ISO-NE to be integral to the action necessary to proactively address the threat of climate change. Therefore, Public Interest Organizations recommend the following:

- The ISO-NE Board should establish a special committee on climate change and use a consultative process with stakeholders to identify a Board member to lead the special committee;
- All meetings of this special committee should be open to the public and media and all meeting materials should be posted on the ISO-NE website;
- ISO-NE management should create and adopt a set of operational and planning criteria addressing the regional grid's role in climate change; and
- ISO-NE management should further establish a senior-level position to coordinate the implementation of climate-centered operation and planning criteria and who is also responsible for reporting to stakeholders on outcomes and results of those criteria.

IV. Potential Pathways for Achieving Governance Reform

As the primary regulator of ISO-NE, FERC has the authority and the responsibility to oversee ISO-NE's governance rules. FERC also has jurisdiction over certain NEPOOL rules and practices.³⁰ Accordingly, the governance issues identified by the New England States, Public Interest Organizations, and other stakeholders can be addressed in one of three ways: (a) through changes submitted by ISO-NE and/or NEPOOL to FERC for approval; (b) through a

³⁰ *New England Power Pool Participants Committee*, 166 FERC ¶ 61,062 (January 29, 2019), at P 48 (“NEPOOL’s rules with respect to membership fall within the Commission’s jurisdiction because they directly affect Commission-jurisdictional rates. Membership in NEPOOL confers voting rights, and the outcomes of NEPOOL votes both signal to the Commission stakeholder approval of ISO-NE proposals and have the potential to generate alternative ‘jump ball’ proposals for Commission consideration. Thus, NEPOOL’s rules with respect to membership directly affect what filings the Commission receives pursuant to FPA section 205. Our finding that NEPOOL’s rules with respect to membership directly affect jurisdictional rates is consistent with Commission precedent. The Commission has found that the stakeholder process within an RTO/ISO ‘is a practice that affects the setting of rates, terms, and conditions of jurisdictional services of the type that the Supreme Court has held falls within the Commission’s jurisdiction.’” (internal footnotes omitted)).

FERC-initiated process for review of governance, either specific to ISO-NE or generally for all RTOs and ISOs; or (c) through a petition for changes filed at FERC by the New England States or other stakeholders.

a. Filing by ISO-NE

ISO-NE has the ability to make changes to its rules and structures, including governance rules, through filings with FERC under Section 205 of the Federal Power Act (FPA).³¹ NEPOOL also has the ability to file revised organizational rules with FERC for review and approval. New England States should encourage ISO-NE and NEPOOL to consider this option to address governance issues raised by the States and stakeholders.

Taking this path has several potential benefits, including the potential for development of a set of changes with broad support and the lower standard for approval of changes under Section 205 of the FPA, as compared to a petition under Section 206 of the FPA (as discussed further below).³² To the extent that an ISO-NE proposal developed through this process doesn't meet all of the goals raised by States and stakeholders, NEPOOL could potentially file its own proposal under the "jump-ball" provision of ISO-NE's tariff,³³ which would also be entitled to review under Section 205. However, this path also has significant challenges, inasmuch as any proposed governance changes would have to go through the current, flawed stakeholder process dominated by incumbent market participants. Stakeholders that benefit from the current governance process could potentially block, delay, or dilute proposed changes. The "jump-ball" provision also suffers from these limitations as a "jump-ball" proposal may only be filed by NEPOOL and not by the New England States as part of an ISO-NE filing.

To the extent ISO-NE and/or NEPOOL may be able to make some of the changes recommended above to their rules and governance practices that may not require FERC approval (e.g., increasing ISO-NE Board transparency or increasing access to NEPOOL meetings), New England States should similarly pressure these organizations to do so.

b. FERC Generic Proceeding

After establishing the framework for RTOs and ISOs in the late 1990s through Order 888 and Order 2000,³⁴ FERC conducted a review of the performance of RTOs and ISOs starting in

³¹ 16 U.S.C. § 824d.

³² 16 U.S.C. § 824e.

³³ Participants Agreement, at § 11.1.5, <https://nepool.com/uploads/Op-PA.pdf>.

³⁴ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 78 FERC ¶ 61,220 (March 4, 1997); *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 (December 20, 1999).

2007 and culminating in Order 719 in October 2008.³⁵ One of the main topics of the review was “enhancing the responsiveness of RTOs and ISOs to customers and other stakeholders, and ultimately to the consumers who benefit from and pay for electricity services.”³⁶ In Order 719, FERC recognized that its previous orders had not mandated specific governance requirements for RTOs and ISOs and that concerns had developed regarding the responsiveness of RTOs and ISOs to customers and other stakeholders.³⁷ As a result, FERC held that each RTO and ISO has an obligation to be responsive to the needs of customers and other stakeholders and that such obligation would be assessed based on four criteria: (a) inclusiveness; (b) fairness in balancing diverse interests; (c) representation of minority populations; and (d) ongoing responsiveness.³⁸ FERC required each RTO and ISO to submit a compliance filing demonstrating its adherence to these criteria.³⁹ On October 21, 2010, FERC accepted ISO-NE’s compliance filing without requiring any changes.⁴⁰ In doing so, FERC dismissed several comments by stakeholders, including requests that ISO-NE be required to open its Board meetings to the public, by noting that Order 719 did not require the specific changes requested and that those changes had not passed through the ISO-NE stakeholder process.⁴¹ Since that time, FERC has not conducted any review of RTO and ISO governance, either generically or specific to ISO-NE.

The moment is ripe for a new FERC review of RTO and ISO governance. The first review was conducted when RTOs and ISOs were approximately ten years old; approximately ten years have passed since the completion of those reviews. Dissatisfaction with current governance structures is by no means limited to ISO-NE, with substantial discussions in recent years regarding issues with other RTOs and ISOs, including some states considering withdrawing from RTOs and ISOs based on such concerns. Such a review is also appropriate in light of the changing electric and energy markets, including the greenhouse gas emission reduction laws and policies in many states, the increased federal attention to climate change, and the need to more directly address environmental justice issues.

The New England States should encourage FERC to take up these issues. One potential avenue to do so is the recently opened docket on Modernizing Electricity Market Design.⁴² The initial technical conference in that docket, on March 23, 2021, was specific to resource adequacy and capacity markets but the overall scope of the docket is broader and could certainly include

³⁵ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (October 17, 2008) (Order No. 719), at P 12.

³⁶ *Id.* at P 479.

³⁷ *Id.* at P 480.

³⁸ *Id.* at PP 482, 504; 18 CFR 35.28(g)(6).

³⁹ Order No. 719, at P 504.

⁴⁰ *ISO New England Inc. and New England Power Pool*, Order Accepting Compliance Filing, 133 FERC ¶ 61,070 (October 21, 2010).

⁴¹ *Id.* at PP 71, 78.

⁴² Docket No. AD21-10, Modernizing Electricity Market Design.

consideration of how the governance of RTOs and ISOs must be reformed to address stakeholder concerns and meet the needs of the changing energy system. Governance could also be raised within the topic areas themselves. For example, a key component of the discussions at the March 23 technical conference was the ongoing conflicts between the capacity market rules and state procurement of resources to meet decarbonization goals.⁴³ Governance reforms could be critical to resolving such issues going forward. The New England States should file comments in the Modernizing Electricity Market Design docket encouraging FERC to conduct a review of RTO and ISO governance and particularly to address the issues raised by the New England States, Public Interest Organizations, and other stakeholders.

The New England States should encourage FERC to structure the proceeding in a way that avoids the limitations of the Order 719 compliance process. In Order 719, FERC issued a set of broad criteria for all RTOs and ISOs to meet but provided very limited details on what specific policies and actions would be needed to meet those criteria. Subsequently, FERC considered the compliance filing of each RTO and ISO separately and gave significant weight to decisions of that RTO or ISO's existing governance process. In conducting a new review of RTO and ISO governance, the New England States should encourage FERC to look more specifically at each RTO and ISO's existing structure and stakeholders' concerns with that structure, as well as comparing the RTOs and ISOs to each other to facilitate consideration of best practices and limitations. In addition, FERC should recognize that existing flaws in the governance process may limit the ability of stakeholders to get changes to that process into a compliance filing and should therefore give greater consideration to stakeholder responses to RTO and ISO filings.

The States should also take advantage of other opportunities to communicate with FERC to highlight the ISO-NE governance problems and necessary reforms discussed above and encourage the Commission to take up these issues.

c. Petition FERC for Specific Changes

Should advocacy for a filing by ISO-NE and/or NEPOOL or a generic proceeding at FERC prove unsuccessful, New England States should submit a complaint under Section 206 of the FPA requesting that FERC find that ISO-NE's current governance practices are unjust and unreasonable and proposing alternatives. This process would give the States the greatest latitude to detail and propose their ideal governance structure. However, Section 206 filings are subject to a high standard, since they must demonstrate that the status quo is unjust and unreasonable before the proposed changes can even be considered and the burden of proof rests with the complainant. While Public Interest Organizations believe the current governance structure is unjust and unreasonable, New England States would need to ensure that a Section 206 filing

⁴³ See for example, the Pre-Conference Statement of ISO New England: "Given the states' more active role in resource procurement and the resulting shift in the resource mix, New England must address concerns about FCM's failure to account for the capacity provided by sponsored resources that do not clear the market as a result of the application of the MOPR." *Pre-Conference Statement of ISO New England Inc.* (March 19, 2021), FERC Docket No. AD21-10, at 3, <https://www.ferc.gov/sites/default/files/2021-03/Panel1-vanWelie.pdf>.

makes a strong case using the issues being raised in the States' technical forums that the flaws in the current ISO-NE governance process meet this standard.

* * *

Thank you for considering these comments. Public Interest Organizations support New England States' examination of important and necessary reforms to the ISO-NE governance structure, including the ones we propose above, to better protect consumers and the public interest. We further support States' examination of other interrelated grid issues, including wholesale markets, transmission planning, and environmental justice, as part of the Energy Vision process to ensure New England's grid is able to meet the region's electricity needs cleanly, equitably, affordably, and reliably. Public Interest Organizations appreciate the opportunity to submit these comments, and we look forward to hearing from the States on the next steps, including further opportunities for public participation, in these discussions.

Sincerely,

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